

SENATE BILL REPORT

ESHB 2848

As Reported By Senate Committee On:
Judiciary, February 23, 2006

Title: An act relating to protecting confidentiality of domestic violence information.

Brief Description: Protecting confidentiality of domestic violence information.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Lantz, Ericks, Santos, Williams, Rodne, Priest, Hudgins, Darneille, Morrell, Kessler, McDonald, Roberts, McCoy, Kenney, Campbell, P. Sullivan, Wallace, Hasegawa, Kilmer, Green, Simpson, Wood, Ormsby and Springer).

Brief History: Passed House: 2/13/06, 98-0.

Committee Activity: Judiciary: 2/23/06 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Cindy Fazio (786-7405)

Background: The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. Washington statutory law establishes a number of privileges, including communications between: (1) husband and wife; (2) attorney and client; (3) clergy and confessor; (4) physician and patient; (5) psychologist and client; (6) optometrist and client; (7) law enforcement peer support counselor and a law enforcement officer; and (8) sexual assault advocate and victim.

As to the sexual assault advocate and victim privilege, the advocate may disclose information without the consent of the victim to prevent a clear, imminent risk of serious physical injury or death. Additionally, the advocate is immune from civil or criminal action that arises from a good faith disclosure. In an action arising from a disclosure, the advocate's good faith is presumed.

The Department of Social and Health Services (DSHS) administers state and federal funds for domestic violence programs, which include shelters. The DSHS establishes minimum standards for shelters receiving grants. The shelters must provide certain services, including client advocacy and counseling. Client records maintained by a domestic violence program are not subject to discovery in any judicial proceeding unless certain conditions are met.

The DSHS also administers and disburses state and federal public assistance funds. The DSHS may not disclose the contents of any records, files, or other communications, unless the disclosure is directly connected with the administration of the public assistance programs.

Summary of Bill: Communications made between a domestic violence victim and domestic violence advocate are privileged and may not be disclosed without the consent of the victim. A "domestic violence advocate" is an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by or under the direct supervision of law enforcement, a prosecutor's office, or child protective services of the DSHS. An advocate may disclose confidential communications without the victim's consent if failure to do so is likely to result in a clear, imminent risk of serious physical injury or death. The privilege does not relieve a domestic violence advocate from the mandatory reporting requirements for child abuse. Domestic violence advocates are immune from liability for good faith disclosure. In an action arising out of disclosure, the advocate's good faith is presumed.

Unless required by court order, a domestic violence program and those assisting in delivering services, or any agent, employee, or volunteer of a domestic violence program, must not disclose information about a recipient of domestic violence services without the recipient's signed authorization. If disclosure is required by statute or court order, the domestic violence program shall make reasonable attempts to notify the recipient of the disclosure. If personal identifying information is to be disclosed, the domestic violence program must take steps necessary to protect the privacy and safety of the persons affected by the disclosure.

For nonshelter community-based programs receiving funding from DSHS, the department must establish minimum standards to enhance safety and security by means such as, but not limited to, client advocacy, client confidentiality, and counseling.

DSHS must review methods to improve and protect the confidentiality of information about recipients of public assistance who have disclosed to the department that they are victims of domestic violence or stalking.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill has been extensively worked in order to meet the concerns of all the parties. The bill is crucial to those who provide services to these victims. For these vulnerable people, trust and confidentiality is everything to them. They are under a constant fear of disclosure of information. The bill is now in excellent form. The most dangerous period of time for victims of domestic abuse is when they leave the relationship. They are terrified to provide necessary information to us. Right now, we can't give them complete assurance the information will not get out. The bill only addresses the community-based programs; not the advocates in the prosecutor's office. We will be working with the department over the interim to solve the problem of accidental release of information during the course of business. We will help them come up with rules.

Testimony Against: None.

Who Testified: PRO: Representative Lantz, Sponsor; Karin Taufest, YWCA Pierce County; Debbie Brockman, YWCA Kitsap County; Grace Huang, Washington State Coalition Against Domestic Violence.