

HOUSE BILL REPORT

HB 2454

As Passed Legislature

Title: An act relating to the privilege for sexual assault advocates.

Brief Description: Revising the privilege for sexual assault advocates.

Sponsors: By Representatives Williams, Lantz, Darneille, Morrell, O'Brien and Green.

Brief History:

Committee Activity:

Judiciary: 1/18/06, 1/25/06 [DP].

Floor Activity:

Passed House: 2/10/06, 96-2.

Passed Senate: 2/28/06, 48-0.

Passed Legislature.

Brief Summary of Bill

- Makes communications "made between" a sexual assault victim and sexual assault advocate privileged, as opposed to communications "made by" the victim to the advocate.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Lantz, Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben and Springer.

Minority Report: Without recommendation. Signed by 2 members: Representatives Flannigan, Vice Chair and Wood.

Staff: Trudes Tango (786-7384).

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. However, the common law and statutory law recognize exceptions to compelled testimony in some circumstances, including "testimonial privileges." Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such importance that they should be protected.

Washington's privilege statute lists a number of privileges, including: (a) communications made between attorney and client; (b) confessions made to clergy; (c) information acquired by a doctor attending a patient; (d) communications made to a public officer in his or her official confidence when the public interest would suffer by disclosure; (e) communications made to a peer support group counselor by a law enforcement officer; and (f) communications made by a sexual assault victim to a sexual assault advocate.

A sexual assault advocate is an employee or volunteer of a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, and who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings, including police and prosecution interviews, concerning the alleged assault.

Summary of Bill:

The language in the privilege statute applicable to sexual assault victims and advocates is changed. The privilege applies to communications *made between* the victim and advocate, instead of communications made *by* the victim *to* the advocate.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This is a common sense change and honors the intent of the privilege statute. Privileges are not designed to protect monologues. Privileges should protect what the advocate says in response to the victim's statements. When this privilege was originally created, the intent was to protect the conversation. An advocate's function is to support and comfort the victim. They are not fact-finders or investigators. Their advocacy is compromised if their portion of the conversation is not privileged.

Testimony Against: Privileges limit the truth-seeking function of the court. Issues of advocates coaching or influencing victims often arise in child sex abuse cases. Finding out the truth is too important. The privilege as it is written without this bill provides a necessary check on the system. The term "advocate" is broadly defined and not all of them are well trained. There is concern that advocates say something to child victims that influences or changes that child's testimony. The victim's statements are still protected.

Persons Testifying: (In support) Representative Brendan Williams, prime sponsor; Suzanne Brown-McBride, Washington Coalition of Sexual Assault Programs; and Martha Wescott, Kitsap Sexual Assault Center.

(With concerns) Amy Muth, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.