

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 643
Committee Substitute Favorable 4/18/01
Senate Judiciary I Committee Substitute Adopted 6/13/01

Short Title: Testimonial Privilege for Violence Victims.

(Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR
COMMUNICATIONS WITH AGENTS OF RAPE CRISIS CENTERS AND
DOMESTIC VIOLENCE PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 8 of the General Statutes is amended by
adding a new section to read:

**"§ 8-53.12. Communications with agents of rape crisis centers and domestic
violence programs privileged.**

(a) Definitions. – The following definitions apply in this section:

- (1) Agent. – An employee or agent of a center who has completed a minimum of 20 hours of training as required by the center, or a volunteer, under the direct supervision of a center supervisor, who has completed a minimum of 20 hours of training as required by the center.
- (2) Center. – A domestic violence program or rape crisis center.
- (3) Domestic violence program. – A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims.
- (4) Domestic violence victim. – Any person alleging domestic violence as defined by G.S. 50B-1, who consults an agent of a domestic violence program for the purpose of obtaining, for himself or herself, advice, counseling, or other services concerning mental, emotional, or physical injuries suffered as a result of the domestic violence. The term shall also include those persons who have a significant relationship with a victim of domestic violence and who have sought, for themselves, advice, counseling, or other services concerning a mental, physical, or

- 1 emotional condition caused or reasonably believed to be caused by the
2 domestic violence against the victim.
- 3 (5) Rape crisis center. – Any publicly or privately funded agency,
4 institution, organization, or facility that offers counseling and other
5 services to victims of sexual assault and their families.
- 6 (6) Services. – Includes, but is not limited to, crisis hotlines; safe homes
7 and shelters; assessment and intake; children of violence services;
8 community education; individual, peer, and group counseling; support
9 in medical, administrative, and judicial systems; transportation,
10 relocation, and crisis intervention. The term does not include
11 investigation of physical or sexual assault of children under the age of
12 16.
- 13 (7) Sexual assault. – Any alleged violation of G.S. 14-27.2, 14-27.3, 14-
14 27.4, 14-27.5, 14-27.7, 14-27.7A, or 14-202.1, whether or not a civil or
15 criminal action arises as a result of the alleged violation.
- 16 (8) Sexual assault victim. – Any person alleging sexual assault, who
17 consults an agent of a rape crisis center for the purpose of obtaining,
18 for themselves, advice, counseling, or other services concerning
19 mental, physical, or emotional injuries suffered as a result of sexual
20 assault. The term shall also include those persons who have a
21 significant relationship with a victim of sexual assault and who have
22 sought, for themselves, advice, counseling, or other services
23 concerning a mental, physical, or emotional condition caused or
24 reasonably believed to be caused by sexual assault of a victim.
- 25 (9) Victim. – A sexual assault victim or a domestic violence victim.
- 26 (b) Privileged Communications. – No agent of a center shall be required to
27 disclose any information which the agent acquired during the provision of services to a
28 victim and which information was necessary to enable the agent to render the services;
29 provided, however, that this subsection shall not apply where the victim waives the
30 privilege conferred. Any resident or presiding judge in the district in which the action is
31 pending shall compel disclosure, either at the trial or prior thereto, if the court finds, by
32 clear and convincing evidence, a good faith, specific, and reasonable basis for believing
33 that (i) the records or testimony sought contain information that is relevant and material
34 to factual issues to be determined in a civil proceeding, or is relevant, material, and
35 exculpatory upon the issue of guilt, degree of guilt, or sentencing in a criminal
36 proceeding for the offense charged or any lesser included offense, (ii) the evidence is
37 not sought merely for character impeachment purposes, and (iii) the evidence sought is
38 not merely cumulative of other evidence or information available or already obtained by
39 the party seeking the disclosure or the party's counsel. If the case is in district court, the
40 judge shall be a district court judge, and if the case is in superior court, the judge shall
41 be a superior court judge.

1 Before requiring production of records, the court must find that the party seeking
2 disclosure has made a sufficient showing that the records are likely to contain
3 information subject to disclosure under this subsection. If the court finds a sufficient
4 showing has been made, the court shall order that the records be produced for the court
5 under seal, shall examine the records in camera, and may allow disclosure of those
6 portions of the records which the court finds contain information subject to disclosure
7 under this subsection. After all appeals in the action have been exhausted, any records
8 received by the court under seal shall be returned to the center, unless otherwise ordered
9 by the court. The privilege afforded under this subsection terminates upon the death of
10 the victim.

11 (c) Duty in Case of Abuse or Neglect. – Nothing in this section shall be
12 construed to relieve any person of any duty pertaining to abuse or neglect of a child or
13 disabled adult as required by law."

14 **SECTION 2.** This act becomes effective December 1, 2001, and applies to
15 all communications made on or after that date.