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DATE: February 12, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1163
RELATING TO: Sexual Assault Counselors
SPONSOR(S): Representative(s) Fiorentino, Harrell and others
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) JUDICIAL OVERSIGHT
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

Current law provides that any communication between a sexual assault counselor and a victim of sexual assault or battery is confidential, including any advice given to the victim by the counselor. Such communication may be disclosed to specific persons: those present to further the interest of the victim in the consultation, examination, or interview; those necessary for the transmission of the communication; and those to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor is consulted. Accordingly, a victim has a privilege to refuse to disclose a confidential communication. This victim privilege may also be claimed by the sexual assault counselor.

Current law also provides that a public employee or officer may not disclose identifying information regarding a victim of sexual assault or battery unless such information is being provided to persons assisting in the investigation or prosecution of the alleged offense, the defendant, the defendant's attorney, a person specified in an order entered by the court, or to organizations authorized to receive criminal intelligence information.

HB 1163 provides "trained volunteers" with the same confidentiality and privilege rights as sexual assault counselors in regards to their communications with victims of sexual assault or battery. A "trained volunteer" is defined as a "person who volunteers at a rape crisis center, has completed 30 hours of training in assisting victims of sexual violence and related topics provided by the rape crisis center, is supervised by members of the staff of the rape crisis center, and is included on a list of volunteers that is maintained by the rape crisis center." In addition, HB 1163 provides that a public employee or officer may disclose identifying information on alleged victims of sexual assault or battery to any rape crisis center or any sexual assault counselor. The intent was to provide victim information to a center or counselor who would be offering treatment. The sponsor has filed an amendment clarifying this point.

This bill does not appear to have a fiscal impact on state or local governments.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Government is providing "trained volunteers" with the same confidentiality and privilege rights as sexual assault counselors as well as allowing rape crisis centers and sexual assault counselors to receive from public employees and officers identifying information on sexual assault victims.

B. PRESENT SITUATION:

Chapter 90, F.S., Florida Evidence Code

Chapter 90, F.S., is known as the Florida Evidence Code. This chapter provides that, with exception, no person in a legal proceeding has a privilege to refuse to be a witness, refuse to disclose any matter, refuse to produce any object or writing, or to prevent another person from being a witness, from disclosing any matter, or from producing any object or writing.¹ Accordingly, this chapter provides for those instances in which a person may claim privilege in legal proceedings. For example, there is a journalist, lawyer-client, psychotherapist-patient, husband-wife privilege, and sexual assault counselor-victim privilege.

The Florida Evidence Code provides for a sexual assault counselor-victim privilege², and defines various terms relating to this privilege, including "rape crisis center,"³ "sexual assault counselor,"⁴ and "victim."⁵ Any communication between a sexual assault counselor and a victim is "confidential" if it is not intended to be disclosed to third persons. Such communication may be disclosed to those persons present to further the interest of the victim in the consultation, examination, or interview; those persons necessary for the transmission of the communication; and those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor is consulted. A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication between the victim and a sexual assault counselor, or any record made in the course of advising, counseling, or assisting the victim. Any confidential communication or record may only be disclosed with the prior written consent of the

¹ Section 90.502(2), F.S.

² Section 90.5035, F.S.

³ A "rape crisis center" is defined as any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.

⁴ A "sexual assault counselor" is any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims or sexual assault or sexual battery.

⁵ A "victim" is a person who consults a sexual assault counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or battery, or an alleged or attempted sexual assault or battery.

victim. Any advice given by the sexual assault counselor to the victim is also confidential. This victim privilege may also be claimed by the victim's attorney, a guardian or conservator of the victim, the personal representative of a deceased victim, or the sexual assault counselor. However, the sexual assault counselor may claim such a privilege only on behalf of the victim.⁶

Chapter 794, F.S., Sexual Battery

Chapter 794, F.S., pertains to sexual battery. A public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of a sexual battery offense⁷ may not willfully and knowingly disclose such identifying information to a person who is not assisting in the investigation or prosecution of the alleged offense, or to any person other than the defendant, the defendant's attorney, a person specified in an order entered by the court, or to organizations authorized to receive such information pursuant to s. 119.07(3)(f), F.S.⁸ This chapter further provides that any violation of this provision is a misdemeanor of the second degree.⁹

C. EFFECT OF PROPOSED CHANGES:

HB 1163 provides "trained volunteers" with the same confidentiality and privilege rights as sexual assault counselors in regards to their communications with victims of sexual assault or battery. Current law already provides that any communication between a victim and a sexual assault counselor is confidential, and a sexual assault counselor has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication between himself or herself and the victim. HB 1163 further provides that any advice given by a "trained volunteer" to a victim is also confidential, which is currently the case for advice given by a sexual assault counselor.

HB 1163 defines "trained volunteer" as a person who:

- Volunteers at a rape crisis center;
- Has completed 30 hours of training in assisting victims of sexual violence and related topics Provided by the rape crisis center;
- Is supervised by members of the staff of the rape crisis center; and
- Is included on a list of volunteers that is maintained by the rape crisis center.

HB 1163 additionally provides that a public employee or officer may disclose identifying information regarding an alleged victim of a sexual assault or battery to any rape crisis center or any sexual assault counselor. Current law prohibits a public employee or officer from disclosing identifying information regarding an individual who is alleged to be the victim of a sexual offense unless such information is being disclosed to a person assisting in the investigation or prosecution of the alleged offense, the

⁶ Section 90.5035, F.S.

⁷ Section 794.024(1), F.S., also provides that a public employee or officer may not disclose identifying information on any alleged victim of a crime involving unnatural and lascivious acts, child abuse, contributing to the delinquency of dependency of a child, or sexual performance by a child.

⁸ Section 119.07(3)(f), F.S., provides that any "criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery as defined in chapter 794; the identity of the victim of a lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age, as defined in chapter 800; or the identity of the victim of the crime of child abuse as defined by chapter 827 and any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 794, chapter 800, or chapter 827, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution."

⁹ Section 794.024, F.S.

defendant, the defendant's attorney, a person specified in an order entered by the court, or to organizations authorized to receive criminal intelligence information. This bill provides that any rape crisis center and any sexual assault counselor may receive such information from a public employee or officer. The intent was to provide victim information to a center or counselor who would be offering treatment. The sponsor has filed an amendment clarifying this point.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes" section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

According to the Florida Council Against Sexual Violence (FCASV), "many rape crisis centers cannot afford to hire paid advocates to respond to rape crisis emergencies 24 hours a day, so many of them use trained volunteers. The privilege statute does not now allow trained volunteers to claim privilege, leaving a loophole in which a trained volunteer might be subpoenaed by the rapist's defense attorney and compelled to testify."¹⁰

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 12, 2002, the Committee on State Administration adopted an amendment which clarifies that identifying information on victims may be provided by public employees or officers to only those rape crisis centers or sexual assault counselors that provide treatment.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Lauren Cyran, M.S.

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¹⁰ FCASV 2002 Legislative Priority; Florida Council Against Sexual Violence, January 2002.