

STORAGE NAME: h1163s1.sgc.doc
DATE: February 27, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 1163
RELATING TO: Sexual Assault Counselors
SPONSOR(S): Council for Smarter Government and Representatives Fiorentino, Harrell, and others
TIED BILL(S): none

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) JUDICIAL OVERSIGHT YEAS 10 NAYS 0S
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 13 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Current law defines confidential communications between a victim of sexual abuse or battery and a sexual assault counselor, and provides that such communications, records made in the course of such communications, and any advice by a sexual assault counselor to a victim in the course of their relationship, are privileged.

CS/HB 1163 provides sexual assault victims the same privilege with respect to "trained volunteers" as they currently enjoy with respect to sexual assault counselors, and defines "trained volunteers."

Current law specifies that a public employee or officer may not disclose identifying information or materials regarding a victim of certain statutorily specified sex crimes unless such information or materials are being provided to persons assisting in the investigation or prosecution of the alleged offense, the defendant, the defendant's attorney, a person specified in a court order, or organizations authorized to receive criminal intelligence information.

CS/HB 1163 provides that a public employee or officer may disclose identifying information or materials pertaining concerning alleged victims of sexual assault or battery to a rape crisis center or sexual assault counselor who will be offering services to the victim.

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

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: This council substitute expands an evidentiary privilege.

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 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

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, 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:

CS/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. CS/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.

CS/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.

CS/HB 1163 also amends the current statutory definition of "victim" to include that a victim is a person who consults a sexual assault counselor *or the trained volunteer*. CS/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 who will be offering services to the victim. 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

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.

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. This council substitute provides that any rape crisis center and any sexual assault counselor who will be offering services to the victim may receive such information from a public employee or officer.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

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 council substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The Fourteenth Amendment to the United States Constitution provides that a state may not “deprive any person of life, liberty, or property, without due process of law[.]” In *Brady v. Maryland*,¹⁰ the Supreme Court of the United States ruled that due process requires a state to turn over evidence in its possession to a criminal defendant that is both favorable to the defendant and material to the defendant’s guilt or punishment (so-called “*Brady* material”). Hence, as with other privileged information, if communications between a “trained volunteer” and a victim of sexual assault or battery are already in state custody, the privilege may have to yield. However, the Court has also suggested that absolute privileges, and specifically absolute sexual assault counselor-victim privileges analogous to that in s. 90.5035, F.S., are more likely to withstand *Brady* scrutiny than privileges that allow for exceptions.¹¹

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

This council substitute excludes from the definition of “trained volunteer” someone with 30 or more hours of training in assisting victims of sexual violence, if less than 30 hours of that person’s training was provided by the rape crisis center where he or she currently volunteers.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 12, 2002, the Committee on State Administration adopted an amendment clarifying that identifying information or materials on victims of specified sex crimes may be provided by public employees or officers to only those rape crisis centers or sexual assault counselors that provide “treatment to the victim.”

On February 21, 2002, the Committee on Judicial Oversight adopted an amendment to the Committee on State Administration’s traveling amendment. This amendment changes “treatment to the victim” to “services to the victim.”

On February 26, 2002, the Council for Smarter Government heard HB 1163 and adopted three amendments. All three amendments were technical in nature and conform the bill to its Senate version, CS/SB 1656. The bill, as amended, was reported favorably as a council substitute.

¹⁰ 373 U.S. 83 (1963).

¹¹ See *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) (citing 42 Pa. Cons. Stat. § 5945.1(b), Pennsylvania’s absolute sexual assault counselor-victim privilege) (dicta).

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VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Lauren Cyran, M.S.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

David L. Jaroslav, J.D.

Staff Director:

Nathan L. Bond, J.D.

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Lauren Cyran, M.S.

Council Director:

Don Rubottom