

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 643

Short Title: Testimonial Privilege for Violence Victims. (Public)

Sponsors: Representatives Hackney; Alexander, Insko, Jarrell, Jeffus, McLawhorn, Underhill, Warren, and Weiss.

Referred to: Judiciary I.

March 15, 2001

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR
3 COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELORS, RAPE
4 CRISIS CENTERS, AND DOMESTIC VIOLENCE PROGRAMS.

5 The General Assembly of North Carolina enacts:

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

8 **"§ 8-53.12. Communications with sexual assault counselors, rape crisis centers,**
9 **and domestic violence programs privileged.**

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

11 (1) Center. – A domestic violence program or rape crisis center.

12 (2) Domestic violence program. – A nonprofit organization or program
13 whose primary purpose is to provide services to domestic violence
14 victims that include, but are not limited to, crisis hotlines; safe homes
15 or shelters; children of violence services; community education;
16 counseling systems, intervention and interface; transportation and
17 referral; and victim assistance.

18 (3) Domestic violence victim. – A person who consults or has consulted
19 any employee, agent, or volunteer of a domestic violence program for
20 the purpose of securing advice, counseling, or other assistance as a
21 result of mental, emotional, or physical injuries suffered as a result of
22 domestic violence as defined by G.S. 50B-1. The term shall also
23 include those persons who have a significant relationship with a victim
24 of domestic violence and who have sought advice, counseling, or
25 assistance concerning a mental, physical, or emotional condition
26 caused or reasonably believed to be caused by the domestic violence
27 against the victim.

1 (4) Rape crisis center. – Any publicly or privately funded agency,
2 institution, organization, or facility that offers counseling and other
3 assistance to victims of sexual assault and their families.

4 (5) Sexual assault victim. – A person who consults or has consulted any
5 employee, agent, or volunteer of a rape crisis center for the purpose of
6 securing advice, counseling, or other assistance as a result of injuries
7 suffered from sexual assault as defined by G.S. 14-27.2, G.S. 14-27.3,
8 G.S. 14-27.4, G.S. 14-27.5, G.S. 14-27.7, and G.S. 14-27.7A. The
9 term shall also include those persons who have a significant
10 relationship with a victim of sexual assault and who have sought
11 advice, counseling, or assistance concerning a mental, physical, or
12 emotional condition caused or reasonably believed to be caused by
13 sexual assault of a victim.

14 (6) Victim. – A sexual assault victim or a domestic violence victim.

15 (b) Privileged Communications. – A victim has an absolute privilege not to
16 disclose, and to prevent any other person from disclosing, oral or written
17 communications, information, or materials (i) made by, for, or about the victim or (ii)
18 made, given to, or prepared by or for any agent, employee, or volunteer of a center.

19 (c) No Disclosure Without Victim's Consent. – Without the express written
20 consent of the victim, no agent, employee, or volunteer of a center may disclose,
21 divulge, produce, or testify concerning any communication or information, or records
22 thereof, disclosed by any victim to them or to the center. Nothing disclosed in violation
23 of this subsection shall be admissible as evidence in any judicial or quasi-judicial
24 proceeding, including, but not limited to, civil, criminal, and juvenile proceedings. No
25 agent, employee, or volunteer of a center may be examined in any proceeding as to any
26 communication made or information disclosed by a victim, and no subpoena requiring
27 their testimony concerning privileged information or any record thereof, may be issued
28 or granted in any proceeding except as provided by subsection (e) of this section.

29 (d) The consent of a victim as to the direct examination of any agent, employee,
30 or volunteer counselor of a center regarding communications made by the victim to that
31 witness, or the offer at trial with the consent of the victim of any other evidence of any
32 communication by or on behalf of the victim to a center or its agent, employee, or
33 volunteer, shall be deemed consent for the cross-examination of the employee or
34 volunteer, or the introduction of any other parts of the records of the center with respect
35 to such communication, by the adverse party to the proceeding.

36 (e) Initial Court Review. – The privilege provided in this section may be
37 superseded only by written judicial order of a district or superior court judge entered
38 after compliance with the requirements of this section. The party seeking the
39 information must file a written motion specifying the documents or testimony requested,
40 and a copy of the motion and all supporting documents and briefs must be served on the
41 victim and the center. The court must conduct a hearing at which the court has afforded
42 the victim and the rape crisis center or domestic violence program and the applicant
43 reasonable opportunity to be heard. At the hearing, the party seeking to obtain access to
44 a communication or the production of documents otherwise made privileged by this

1 section must establish each of the following by clear and convincing evidence a good
2 faith, specific, and reasonable basis for believing:

3 (1) The records or testimony sought are likely to contain specific, clearly
4 identified information relevant and material to the factual issues to be
5 determined in the civil proceeding, or exculpatory evidence which is
6 relevant and material to the issue of the defendant's guilt in a criminal
7 proceeding, and are not sought merely for impeachment purposes. This
8 provision shall not be used to provide for general discovery, or for the
9 purpose of determining whether any nonspecified information exists
10 therein.

11 (2) The specific, clearly identified information is not otherwise available
12 to the party seeking to offer the privileged evidence, or to obtain the
13 order to compel production.

14 (3) The evidence sought is not merely cumulative of other evidence or
15 information available or already obtained by the party or the party's
16 counsel.

17 (f) Motion for Production or Subpoena to Be Denied. – Upon the failure of any
18 applicant to establish the circumstances and basis required by subsection (e) of this
19 section, the motion for production or other request shall be denied.

20 (g) In Camera Inspection. – In the event the court finds the circumstances and
21 basis required in subsection (d) of this section have been established, the court shall
22 require production, under seal, of the records or testimony sought and the records shall
23 be received and reviewed by the court in camera. The court may not order disclosure
24 unless it determines by clear and convincing evidence after in camera inspection that:

25 (1) The records or testimony contain information not otherwise available
26 to the applicant;

27 (2) The information is relevant and material to factual issues to be
28 determined in a civil proceeding, or is relevant, material, and
29 exculpatory upon the issue of guilt in a criminal proceeding, and is not
30 sought solely for impeachment purposes; and,

31 (3) Disclosure of all or a portion of the information sought is essential to
32 the proper administration of justice.

33 (h) Limited Disclosure. – The court may order disclosure of only such portions of
34 the records or communications sought as are relevant and material to the factual issues
35 in a civil case, or as are directly material and exculpatory on the ultimate issue of guilt
36 in a criminal case, or of adjudication in a juvenile case.

37 (i) Copies Furnished to Counsel, Prosecutor. – Copies of records or testimony
38 ordered disclosed under this section to counsel for an accused in a criminal case shall
39 also be furnished to the prosecutor. Materials ordered disclosed in any matter shall be
40 furnished to counsel for all parties appearing. No person receiving the material shall use
41 or disclose any information contained therein except in the prosecution or the
42 proceeding on which the order was based.

43 (j) Duty of Center to Assert Privilege. – Absent written consent to disclosure
44 from the person or persons to whom the records or communications pertain, any person,

1 center, or agency that has or is alleged to have possession of records privileged under
2 this section, shall have a duty not to disclose privileged materials or communications,
3 and the person, center, or agency, or any guardian or conservator of a victim who is a
4 minor or otherwise incapacitated, shall assert the privilege provided herein for and on
5 behalf of persons to whom any records sought pertain. No person, center, or agency
6 shall produce or divulge the contents of any privileged record until a final judicial order
7 is entered directing the production or disclosure as provided in subsections (g) and (h)
8 of this section. Any person, center, or agency producing records pursuant to a final
9 judicial order shall be immune from any claim related to or alleging their improper
10 production.

11 (k) Duty to Report Abuse or Neglect. – Nothing in the section shall be construed
12 to relieve any person of any duty pertaining to reporting abuse or neglect as required by
13 law."

14 **SECTION 2.** This act becomes effective December 1, 2001, and applies to
15 all actions and proceedings pending in the courts of this State on or after that date.