

Senate Bill 227

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes privilege for communications between victim of domestic violence, stalking or sexual assault and advocate employed by victim services program.

A BILL FOR AN ACT

Relating to privileged communications; creating new provisions; and amending ORS 40.252.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 40.225 to 40.295.

SECTION 2. (1) As used in this section:

(a) **"Advocate" means a person who provides direct services to victims as an employee or a volunteer of a victim services program.**

(b) **"Domestic violence" means abuse as defined in ORS 107.705.**

(c) **"Sexual assault" means a sexual offense described in ORS 163.305 to 163.467.**

(d) **"Stalking" has the meaning given that term in ORS 163.732.**

(e) **"Victim" means a person who has experienced, or claims to have experienced, domestic violence, stalking or sexual assault.**

(f) **"Victim services program" means a nongovernmental office, agency, center, shelter or program, the primary purpose of which is to provide services to victims of domestic violence, stalking or sexual assault.**

(2) **A victim has a privilege to refuse to disclose and to prevent an advocate or victim services program from disclosing:**

(a) **Written or oral communications between the victim and the advocate that are made in the course of the advocate providing information, advice, counseling, advocacy services or other assistance related to the alleged incident of domestic violence, stalking or sexual assault; and**

(b) **Records concerning the victim and the services provided to the victim that are created by the advocate, or by the victim services program that employs the advocate, in the course of providing services to the victim.**

(3) **The privilege established by this section applies only to communications made with an advocate who has received a certificate by reason of having undergone a minimum of 30 hours of training in advocacy for victims of domestic violence or sexual assault, in crisis intervention or in related areas. At least two hours of the training must have been devoted to issues related to privileged and confidential communications.**

(4) **Any victim who is at least 15 years of age may waive the privilege established by this**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 section by giving informed consent in writing.

2 (5) Except as provided in subsection (7) of this section, the parent or guardian of a victim
3 who is under 15 years of age may waive the privilege established by this section on behalf
4 of the victim. Except as provided in subsection (7) of this section, the parent or guardian of
5 a victim who is at least 15 years of age and under 18 years of age may waive the privilege
6 established by this section on behalf of the victim if a court has determined that the victim
7 is not capable of making an informed waiver.

8 (6) Except as provided in subsection (7) of this section, the personal representative for
9 the estate of a deceased victim or the guardian of a victim who has been judicially deter-
10 mined to be incompetent may waive the privilege established by this section on behalf of the
11 victim.

12 (7) A waiver may not be made under subsection (5) or (6) of this section if the parent or
13 guardian of the victim, or the personal representative for the estate of the deceased victim,
14 has ever been charged with a crime against the victim that caused physical injury to the
15 victim, has ever been restrained from contact with the victim by a restraining order or has
16 an interest adverse to that of the victim with respect to the waiver of the privilege. An at-
17 torney representing the interests of a victim described in subsections (5) and (6) of this
18 section may waive the privilege established by this section on behalf of the victim.

19 (8) An advocate or victim services program may not disclose communications that are
20 privileged under this section without prior written consent, except in the following circum-
21 stances:

22 (a) To the extent necessary for defense in any civil action that is brought against the
23 advocate, or against the victim services program, by or on behalf of the victim;

24 (b) For the purpose of making reports of child abuse, elder abuse or abuse of a disabled
25 person; or

26 (c) When there is a clear and imminent risk that the victim will suffer death or physical
27 injury if the disclosure is not made.

28 (9) The privilege established in this section is not waived by:

29 (a) The presence of another person at the time the communications are made, including
30 but not limited to a person present for group counseling; or

31 (b) Disclosure of the communications by the advocate to another person if the victim has
32 consented to the disclosure and the disclosure is made to assist the advocate in providing
33 services.

34 **SECTION 3.** ORS 40.252 is amended to read:

35 40.252. (1) In addition to any other limitations on privilege that may be imposed by law, there
36 is no privilege under ORS 40.225, 40.230 or 40.250 **or section 2 of this 2005 Act** for communications
37 if:

38 (a) In the professional judgment of the person receiving the communications, the communi-
39 cations reveal that the declarant has a clear and serious intent at the time the communications are
40 made to subsequently commit a crime involving physical injury, a threat to the physical safety of
41 any person, sexual abuse or death;

42 (b) In the professional judgment of the person receiving the communications, the declarant poses
43 a danger of committing the crime; and

44 (c) The person receiving the communications makes a report to another person based on the
45 communications.

1 (2) The provisions of this section do not create a duty to report any communication to any
2 person.

3 (3) A person who discloses a communication described in subsection (1) of this section, or fails
4 to disclose a communication described in subsection (1) of this section, is not liable to any other
5 person in a civil action for any damage or injury arising out of the disclosure or failure to disclose.

6 **SECTION 4. (1) Except as provided in subsection (2) of this section, section 2 of this 2005**
7 **Act and the amendments to ORS 40.252 by section 3 of this 2005 Act apply to all communi-**
8 **cations and records, whether made before, on or after the effective date of this 2005 Act.**

9 (2) The limitations on the privilege established by section 2 of this 2005 Act and the
10 amendments to ORS 40.252 by section 3 of this 2005 Act apply only to trials or proceedings
11 commenced on or after the effective date of this 2005 Act.

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