



Judicial Impact Statement

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HB 337, SB 196 – Testimonial Privilege – Qualified Victim Advocate

HB 337, SB 196

Reps. Galonski, Stein
Sen. Eklund

Title Information

To amend sections 2151.421, 2317.02, and 2921.22 of the Revised Code to provide generally a testimonial privilege for communications between a qualified advocate rendering advocacy services and a victim of domestic violence, human trafficking, menacing by stalking, or sexual violence, to exempt the nondisclosure of that privileged communication from the offense of failure to report a crime, to require a qualified advocate to report knowledge or reasonable suspicion of child abuse or neglect of the victim except for privileged communications, and to specify circumstances in which the victim is considered to have waived the privilege.

Background

The bills establish a testimonial privilege for communications between “qualified victim advocates” and a victim of domestic violence, human trafficking, menacing by stalking, or sexual violence.

Judicial Impact

The bills, as introduced, do not provide adequate means for verification of an advocate’s qualification. The definition of “qualified victim advocate” in the bills is “any person who has completed at least forty hours of training in advocacy and...is under the supervision of a qualified victim services program.” There is no means by which a court can verify that an advocate has met this threshold, or what types of training have been completed. Most of the other privileged communications recognized in existing law involve licensed recipients of the communication, recognized by some type of educational qualification standard, and whose profession is regulated by a professional association or governing body. There are a large number of community organizations made up of well-intentioned individuals that engage in victim outreach and advocacy training, and their standards of professional competence and ethical duty to the client/victim is simply not regulated. Additionally, what constitutes permissible advocacy training is either absent from the legislation or potentially too encompassing.

Further, the bill only extends the privilege to victims of certain offenses (domestic violence, human trafficking, menacing by stalking, or “sexual violence”). It should be noted that the privilege applies based on certain *conduct* rather than actual charges filed. In order to establish that the privilege applies, it would have to be established that the conduct occurred in the first place. The bill is silent as to how, or when, the court determines whether the particular conduct occurred, as opposed to merely alleging that it occurred. Should the privilege attach if a victim alleges menacing by stalking, but the facts later establish that menacing by stalking did not actually occur? And are the same

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio’s court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

factual elements necessary to prove the *offense* of menacing by stalking the same as would be necessary to establish the conduct that gives rise to the privilege? This could result in the defendant being subject to two different adjudicatory hearings.

Conclusion

Though well intended, HB 337 and SB 196 could result in further confusion and unintended consequences for courts to resolve. By limiting the privilege to only apply when certain conduct is alleged, courts will need to hold hearings, tantamount to trials, to determine whether the facts presented give rise to the type of conduct that would invoke the victim-advocate privilege. Additionally, the bills require clarification on what constitutes adequate training for advocates, sufficient to meet the 40-hour requirement, and a means by which that training can be verified.