

1 State of Arkansas As Engrossed: H2/21/19 H2/25/19

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

HOUSE BILL 1380

4

5 By: Representatives C. Fite, McCullough

6 By: Senator Irvin

7

8

## For An Act To Be Entitled

9 AN ACT CREATING A PRIVILEGE OF COMMUNICATION BETWEEN  
10 A VICTIM OF DOMESTIC VIOLENCE AND THE PERSONNEL OF A  
11 DOMESTIC VIOLENCE SHELTER OR CENTER; TO MAKE  
12 CONFIDENTIAL COMMUNICATIONS BETWEEN A VICTIM AND A  
13 VICTIM ADVOCATE; AND FOR OTHER PURPOSES.

14

15

16

### Subtitle

17

18

19

20

21

22

23

24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26

27 SECTION 1. Arkansas Code Title 9, Chapter 6, is amended to add an  
28 additional section to read as follows:

29 9-6-112. Privileged communications made by victim of domestic  
30 violence.

31 (a) As used in this section:

32 (1) "Advocate for victims of domestic violence" means an  
33 employee, supervisor, administrator, or volunteer of a shelter or center for  
34 victims of domestic violence authorized and regulated under this chapter;

35 (2) "Communication" means verbal, written, or electronic  
36 communications of any kind;



1           (3) "Deviate sexual activity" means the same as defined in § 5-  
2 14-101;

3           (4) "Domestic violence" means:

4                 (A) Physical harm, bodily harm causing injury, or an  
5 assault against a person caused by:

6                         (i) A family or household member; or

7                         (ii) Another person with whom a person is in a  
8 dating relationship;

9                 (B) Mental or emotional harm to a person caused by:

10                        (i) A family or household member; or

11                        (ii) Another person with whom a person is in a  
12 dating relationship; or

13                 (C) Sexual abuse against a person by another person;

14           (5) "Mentally defective" means the same as defined in § 5-14-  
15 101;

16           (6) "Mentally incapacitated" means the same as defined in § 5-  
17 14-101;

18           (7) "Physically helpless" means the same as defined in § 5-14-  
19 101;

20           (8) "Sexual abuse" means:

21                 (A) Sexual intercourse, deviate sexual activity, or sexual  
22 contact by means of forcible compulsion; or

23                 (B) Sexual intercourse, deviate sexual activity, or sexual  
24 contact with a person who is:

25                         (i) Physically helpless;

26                         (ii) Mentally incapacitated;

27                         (iii) Mentally defective; or

28                         (iv) Less than sixteen (16) years of age, if the age  
29 of the other person committing the sexual intercourse, deviate sexual  
30 activity, or sexual contact is twenty (20) years of age or older;

31           (9) "Sexual contact" means the same as defined in § 5-14-101;

32           (10) "Sexual intercourse" means the same as defined in § 5-14-  
33 101;

34           (11) "Shelter or center for victims of domestic violence" means  
35 a domestic violence shelter that is authorized and regulated under this  
36 chapter; and

1           (12) "Victim of domestic violence" means a person who has been  
2 subjected to domestic violence by another person and who has sought out an  
3 advocate for victims of domestic violence or a shelter or center for victims  
4 of domestic violence.

5           (b)(1) Except as provided under subsection (e) of this section,  
6 communication between a victim of domestic violence and an advocate for  
7 victims of domestic violence is privileged and shall not be disclosed by the  
8 advocate for victims of domestic violence without the consent of the victim  
9 of domestic violence.

10           (2) A victim of domestic violence or an advocate for victims of  
11 domestic violence may not be compelled to disclose the contents of any  
12 communication made to the advocate for victims of domestic violence by the  
13 victim of domestic violence.

14           (c) The privilege under this section only applies when the  
15 communication was made to the advocate for victims of domestic violence while  
16 the victim of domestic violence was seeking or in the course of advocacy,  
17 help, refuge, treatment, housing, support, therapy, legal advice, counseling,  
18 medical advice, or any other assistance related to the domestic violence to  
19 which the victim of domestic violence was subjected.

20           (d) The privilege under this section may be claimed by:

21           (1) The victim of domestic violence, his or her attorney, or his  
22 or her parent or guardian if the victim of domestic violence is less than  
23 eighteen (18) years of age; and

24           (2) An advocate for victims of domestic violence on behalf of  
25 the victim of domestic violence.

26           (e) A communication privileged under this section may be  
27 disclosed if:

28           (1) The communication is made to another person employed by or  
29 volunteering at a shelter or center for victims of domestic violence and the  
30 disclosure is for the purposes of furthering the advocacy process; or

31           (2) A court compels disclosure after an in-camera hearing when  
32 the probative value of the evidence outweighs the effect on:

33           (A) The victim of domestic violence;

34           (B) The treatment relationship between the victim of  
35 domestic violence and the advocate for victims of domestic violence; and

36           (C) Treatment services provided by a shelter or center for

1 victims of domestic violence.

2 (f) The privilege under this section is waived if:

3 (1) The advocate for victims of domestic violence was a witness  
4 or a party to the incident that prompted the providing of assistance by the  
5 advocate for victims of domestic violence and the communication is required  
6 by law enforcement to investigate the incident;

7 (2) The communication reveals the intended commission of a crime  
8 or harmful act and the disclosure is determined to be necessary by the  
9 advocate for victims of domestic violence to protect any person from a clear,  
10 imminent risk of serious mental or physical harm or injury or to forestall a  
11 serious threat to the public safety; or

12 (3) The victim of domestic violence waives the privilege created  
13 under this section by voluntarily disclosing or consenting to disclosure of  
14 any significant part of the privileged communication.

15 (g) A claim of privilege under this section is not defeated by a  
16 disclosure that was erroneously, unlawfully, or improperly compelled or made  
17 without opportunity to claim the privilege.

18  
19 /s/C. Fite  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36