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

A Bill

HOUSE BILL 1380

For An Act To Be Entitled

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

Subtitle

CREATING A PRIVILEGE OF COMMUNICATION
BETWEEN A VICTIM OF DOMESTIC VIOLENCE AND
THE PERSONNEL OF A DOMESTIC VIOLENCE
SHELTER OR CENTER; AND TO MAKE
CONFIDENTIAL COMMUNICATIONS BETWEEN A
VICTIM AND A VICTIM ADVOCATE.

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

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

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

(a) As used in this section:

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

(2) "Communication" means verbal, written, or electronic
communications of any kind;
(3) "Deviate sexual activity" means the same as defined in § 5-14-101;

(4) "Domestic violence" means:
   (A) Physical harm, bodily harm causing injury, or an assault against a person caused by:
      (i) A family or household member; or
      (ii) Another person with whom a person is in a dating relationship;
   (B) Mental or emotional harm to a person caused by:
      (i) A family or household member; or
      (ii) Another person with whom a person is in a dating relationship; or
   (C) Sexual abuse against a person by another person;

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

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

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

(8) "Sexual abuse" means:
   (A) Sexual intercourse, deviate sexual activity, or sexual contact by means of forcible compulsion; or
   (B) Sexual intercourse, deviate sexual activity, or sexual contact with a person who is:
      (i) Physically helpless;
      (ii) Mentally incapacitated;
      (iii) Mentally defective; or
      (iv) Less than sixteen (16) years of age, if the age of the other person committing the sexual intercourse, deviate sexual activity, or sexual contact is twenty (20) years of age or older;

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

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

(11) "Shelter or center for victims of domestic violence" means a domestic violence shelter that is authorized and regulated under this chapter; and
(12) "Victim of domestic violence" means a person who has been
subjected to domestic violence by another person and who has sought out an
advocate for victims of domestic violence or a shelter or center for victims
of domestic violence.

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

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

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

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

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

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

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

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

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

(A) The victim of domestic violence;

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

(C) Treatment services provided by a shelter or center for
victims of domestic violence.

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

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

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

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

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

/s/C. Fite

APPROVED: 3/18/19