

1 State of Arkansas

2 92nd General Assembly

3 Regular Session, 2019

# A Bill

HOUSE BILL 1380

5 By: Representatives C. Fite, McCullough

6 By: Senator Irvin

## 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.

## Subtitle

17 CREATING A PRIVILEGE OF COMMUNICATION  
18 BETWEEN A VICTIM OF DOMESTIC VIOLENCE AND  
19 THE PERSONNEL OF A DOMESTIC VIOLENCE  
20 SHELTER OR CENTER; AND TO MAKE  
21 CONFIDENTIAL COMMUNICATIONS BETWEEN A  
22 VICTIM AND A VICTIM ADVOCATE.

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

27 SECTION 1. Arkansas Code Title 16, Chapter 40, is amended to add an  
28 additional section to read as follows:

29 16-40-107. Privileged communications made by a 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;

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 an entity that provides services, including food, housing, advice,  
36 counseling, and assistance to victims of domestic violence and their minor

1 dependent children in this state; and

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

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

11 (2) A victim of domestic violence, an advocate for victims of  
12 domestic violence, or a member of a support group or a person present during  
13 group counseling in which the victim of domestic violence is a participant  
14 may not be compelled to testify or in any way disclose the contents of any  
15 communication made to the advocate for victims of domestic violence or a  
16 member of a support group or a person present during group counseling in  
17 which the victim of domestic violence is a participant by the victim of  
18 domestic violence.

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

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

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

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

31 (e) The privileged communication under this section may be disclosed  
32 if the communication is made to:

33 (1) Another person employed by or volunteering at a shelter or  
34 center for victims of domestic violence and the disclosure was for the  
35 purposes of furthering the advocacy process; or

36 (2) Two (2) or more persons in a support group or during group

1 counseling in which the victim of domestic violence is a participant.

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.