

BILL ANALYSIS

C.S.H.B. 3649
By: Herrero
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that communication between family violence survivors and family violence advocates is unnecessarily subject to disclosure that leaves survivors susceptible to danger from their abusers. C.S.H.B. 3649 seeks to protect the confidential communication of victims of certain family violence offenses.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3649 amends the Family Code to make a written or oral communication between a victim of family violence and an advocate who has at least 20 hours of training in assisting victims of family violence and is an employee or volunteer of a family violence center made in the course of advising, advocating for, counseling, or assisting the victim confidential and to prohibit such a communication from being disclosed. The bill grants a victim of family violence the privilege to refuse to disclose and to prevent another from disclosing such a confidential communication and establishes that the privilege may be claimed by a victim or a victim's attorney on a victim's behalf; a parent, guardian, or conservator of a victim under 18 years of age; or an advocate or a family violence center on a victim's behalf.

C.S.H.B. 3649 limits the circumstances under which such a confidential communication may be disclosed to disclosure to another individual employed by or volunteering for a family violence center for the purpose of furthering the advocacy process; to other persons in the context of a support group or group counseling in which a victim is a participant; or for the purposes of making a report under statutory provisions relating to an investigation of a report of child abuse or neglect or Human Resources Code provisions relating to a report of abuse, neglect, or exploitation of elderly persons, persons with disabilities, or persons receiving services from certain providers. The bill establishes that the Texas Rules of Evidence govern the disclosure of such a confidential communication in a criminal or civil proceeding by an expert witness who relies on facts or data from the communication to form the basis of the expert's opinion.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3649 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. The heading to Subtitle C, Title 4, Family Code, is amended.

SECTION 2. Subtitle C, Title 4, Family Code, is amended by adding Chapter 93 to read as follows:

CHAPTER 93. CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Advocate" means a person who has at least 20 hours of training in assisting victims of family violence and is an employee or volunteer of a family violence center.

(2) "Family violence center" means a public or private nonprofit organization that provides, as its primary purpose, services to victims of family violence, including the services described by Section 51.005(b)(3), Human Resources Code.

(3) "Victim" has the meaning assigned to "victim of family violence" by Section 51.002, Human Resources Code.

Sec. 93.002. CONFIDENTIAL COMMUNICATIONS. A written or oral communication between an advocate and a victim made in the course of advising, advocating for, counseling, or assisting the victim is confidential and may not be disclosed.

Sec. 93.003. PRIVILEGED COMMUNICATIONS. (a) A victim has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication described by Section 93.002.

(b) The privilege may be claimed by:

(1) a victim or a victim's attorney on a victim's behalf;

(2) a parent, guardian, or conservator of a victim under 18 years of age; or

(3) an advocate or a family violence center on a victim's behalf.

Sec. 93.004. EXCEPTIONS. A communication that is confidential under this chapter may be disclosed only:

(1) to another individual employed by or

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Subtitle C, Title 4, Family Code, is amended by adding Chapter 93 to read as follows:

CHAPTER 93. CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Advocate" means a person who has at least 20 hours of training in assisting victims of family violence and is an employee or volunteer of a family violence center.

(2) "Family violence center" means a public or private nonprofit organization that provides, as its primary purpose, services to victims of family violence, including the services described by Section 51.005(b)(3), Human Resources Code.

(3) "Victim" has the meaning assigned to "victim of family violence" by Section 51.002, Human Resources Code.

Sec. 93.002. CONFIDENTIAL COMMUNICATIONS. A written or oral communication between an advocate and a victim made in the course of advising, advocating for, counseling, or assisting the victim is confidential and may not be disclosed.

Sec. 93.003. PRIVILEGED COMMUNICATIONS. (a) A victim has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication described by Section 93.002.

(b) The privilege may be claimed by:

(1) a victim or a victim's attorney on a victim's behalf;

(2) a parent, guardian, or conservator of a victim under 18 years of age; or

(3) an advocate or a family violence center on a victim's behalf.

Sec. 93.004. EXCEPTIONS. (a) A communication that is confidential under this chapter may be disclosed only:

(1) to another individual employed by or

volunteering for a family violence center for the purpose of furthering the advocacy process;

(2) to other persons in the context of a support group or group counseling in which a victim is a participant; or

(3) for the purposes of making a report under Chapter 261 of this code or Section 48.051, Human Resources Code.

SECTION 3. This Act takes effect September 1, 2017.

volunteering for a family violence center for the purpose of furthering the advocacy process;

(2) to other persons in the context of a support group or group counseling in which a victim is a participant; or

(3) for the purposes of making a report under Chapter 261 of this code or Section 48.051, Human Resources Code.

(b) Notwithstanding Subsection (a), the Texas Rules of Evidence govern the disclosure of a communication that is confidential under this chapter in a criminal or civil proceeding by an expert witness who relies on facts or data from the communication to form the basis of the expert's opinion.

SECTION 3. Same as introduced version.