



SPONSOR: Rep. Griffith & Rep. Bennett & Rep. K. Williams &
Sen. Hansen
Reps. Baumbach, Dorsey Walker, Heffernan, D. Short,
Michael Smith, Viola; Sens. Cloutier, Delcollo, Lopez,
Wilson

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 215

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO EVIDENCE AND WITNESSES.

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

1 Section 1. Amend Chapter 43, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4319A. Advocate privilege.

4 (a) Unless a report is otherwise required by law, an advocate may not, without consent of the victim, reveal any
5 confidential communications made between the advocate and a victim. A communication is confidential if it is not intended
6 to be disclosed to third parties, except individuals present who are necessary or customarily present for the transmission of
7 the communication or to facilitate access to service. An advocate may not disclose the existence of or permit anyone to
8 review, copy, or read the contents of records kept during the course of providing shelter, advocacy, or crisis services.

9 (b) This privilege belongs to the victim and may not be waived, except through written consent. The privilege
10 continues even if the victim is unreachable. The privilege terminates upon the death of the victim.

11 (c) This privilege may yield in criminal proceedings upon either party filing a motion to compel the disclosure of
12 said communications for judicial in-camera review. Such motions must be accompanied by an affidavit that establishes by a
13 preponderance of the evidence that the communications sought contain evidence that is both material and relevant to the
14 alleged criminal act. Following the in-camera review, the Court may disseminate the communications in their entirety, or
15 redacted in the Court's discretion for relevance, to all parties where it has been determined by the Court by clear and
16 convincing evidence of all of the following:

17 (1) The primary purpose of the motion to compel disclosure and dissemination of the communications is not
18 to harass or annoy the victim or create undue delay of the proceedings.

19 (2) The communications contain relevant and material evidence of the facts and circumstances involved in the
20 alleged criminal act.

(3) The probative value of the communications outweighs the harmful effect of disclosure on the victim, the advocacy relationship, or the access to services.

(4) The communications cannot be obtained by reasonable means from any other source.

(d) This privilege does not apply if failure to disclose the communications is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another individual. Any advocate participating in good faith in disclosure under this paragraph is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this paragraph, the good faith of the advocate who made the disclosure shall be presumed.

(e) This privilege shall not apply if the services of the advocate were sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud.

(f) For purposes of this section, the following definitions apply:

(1) "Advocate" means an employee or volunteer of a community based or college campus program who has completed a minimum of 40 hours of training in advocacy for victims of domestic violence, sexual offenses including sexual assault, stalking, human trafficking, or other abuse who is providing shelter, hotline, or advocacy services. Advocacy services include assistance, support, accompaniment, and resource referral. "Advocate" shall not include a person employed by, or under the direct supervision of, a law enforcement agency, the Department of Justice, or any governmental agency or department while such employee or volunteer is performing duties on behalf of or acting in the course of employment of such governmental agency or department.

(2) "Crisis services" means an emergency and follow-up intervention, information, referral services, and medical, legal, and social services advocacy.

(3) "Victim" means an individual seeking assistance because of domestic violence, abuse, any sexual offense, abuse by a caregiver, human trafficking, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

(4) "Domestic violence" means as defined under § 1041 of this title.

(5) "Abuse" means as defined under § 1041 of this title.

(6) "Sexual offense" means any offense defined under §§ 763-780 and §§ 1108-1112A, 1352(2) and 1353(2) of Title 11.

(7) "Stalking" means as defined under § 1312 of Title 11.

(8) "Human trafficking" means as defined under § 787 of Title 11.

SYNOPSIS

This act states that advocates for victims of domestic violence, domestic abuse, sexual assault, abuse by a caregiver, human trafficking, or stalking may not disclose any communication made by a victim to the advocate without express written consent of the victim.