



Ohio Sub. S.B. 41: Provide Testimonial Privilege to Qualified Advocates

Overview of Ohio S.B. 41: Introduced by Senator John Eklund on February 8, 2017, Senate Judiciary Committee, Proponent Testimony on March 13, 2018

Under Current Law:

- Conversations between professionals in certain specified categories and their clients are barred from testifying about specific issues in a legal proceeding by a construct known as “testimonial privilege.”
- Currently, there is no testimonial privilege for communications between qualified advocates and survivors of certain sex, stalking, trafficking or domestic violence crimes. Thus, an advocate could be required to testify about their conversations with a victim in criminal, civil, or administrative proceedings.

This Bill Would: Provide a testimonial privilege for confidential communications between a qualified advocate and a victim of specified offenses. Specifically, Sub. S.B. 41 would:

- Define a **qualified advocate** as an employees or volunteer of a community-based, qualified victim services program who completed at least 40 hours of training in advocacy for victims of certain sexually-based crimes. Sub. S.B. 41 **does not apply to prosecutor-based advocates** because that violate the Ohio and United States constitutions.
- Apply to both written and oral confidential communications (1) made to further the victim’s interest in the course of services and not intended for further disclosure; and (2) made in the context of group counseling or in front of a third party present to further the victim’s interest (subject to qualifications), as long as the communications remain confidential after disclosure.
- Apply the privilege to **“record[s] created or maintained in the course of the qualified advocate providing the specified services regarding the victim and related to the violent conduct.”**
- Create conformity between federal Violence Against Women Act (VAWA) funding, which requires confidentiality unless a state statute requires submitting to subpoena, and Ohio law. Rape crisis centers receiving VAWA funding are required to expend resources moving to quash subpoenas that would risk survivor information. This bill would remove the conflict between Ohio law and federal regulations.

Caveats to Privilege:

- Victims may waive the privilege if they **“voluntarily reveal the substance of any qualified advocate-victim communication in a nonprivileged context.”**
- In **disputes** between victims and advocates or their organizations, the advocate/organization is exempt from maintaining privilege if the communications are relevant to their defense.

Why This Bill Is Important:

- Privilege creates true confidentiality between advocates and survivors, providing a safe space for survivors and encouraging them to provide complete information, which allows advocates to provide better support.
- Survivors face continued victimization when they relive the incident throughout legal proceedings, often with little to no control over the situation. When advocates may be forced to testify, survivors lose yet more control and autonomy in their own case, increasing the experience of victimization.
- Data demonstrates that enhancing confidentiality increases reporting to law enforcement, aligning with the overall goal of holding more offenders accountable.
- Ohio is one of only 14 states with no privilege for communications between victims and advocates.