

# OREGON LAW CENTER

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**Testimony in Support of HB 3476**  
**Senate Judiciary Committee**  
**Submitted By: Sybil Hebb**  
**May 13th, 2015**

Chair Prozanski, Vice-Chair Kruse, and Members of the Committee,

On behalf of the Oregon Law Center (OLC), thank you for the opportunity to testify this morning in support of HB 3476, which would protect the privacy and confidentiality of sexual assault and domestic violence victims seeking safety and support services.

OLC's mission is to achieve justice for low-income vulnerable populations. A significant number of our clients come to us for help as they are struggling to escape or recover from domestic violence. Domestic and sexual violence are serious public health and safety issues in our state. Victims suffer great psychological, emotional, and physical trauma, which have long term impact on their lives. College-age women are at heightened risk of assault and abuse. At a time in their lives when the trajectory should be soaring, the ramifications of assault can send victims plummeting into a spiral. Domestic and sexual violence greatly contribute to the vulnerability of our clients, and further trap them in poverty and crisis. OLC is committed to supporting the coordinated community response necessary to help prevent this violence, and to helping victims in crisis move towards the safety and stability they need for recovery.

**Victims need confidential support services:** Confidentiality between a victim and a domestic or sexual violence advocate is critical to effective access to services and options for safety. Victims of domestic and sexual violence crimes suffer a wide range of emotional and psychological trauma. Often this trauma is debilitating, and can last for years. The shame and stigma that attach to these crimes is a significant part of this trauma. Often, in the aftermath of assault, victims withdraw from friends and family, and isolate themselves for fear of the embarrassment of disclosure. Isolation further exacerbates the depression and trauma.

Without assurances of confidentiality, victims may never seek help from support services. If they do seek help, they may not disclose the true nature of abuse or assault, compromising their safety and undermining effective interventions. Worst of all, without assurances of confidentiality, victims may stay in unsafe situations and suffer more abuse or assault. The right to privacy is particularly critical for victims in small communities or on college campuses.

**Studies indicate that the primary reason survivors do not come forward to make reports, or to access the help they need, is that they fear disclosure without their consent.** All too often, especially on campuses, this is a justified fear. Federal Title IX provisions applicable to colleges and universities require investigation of all disclosures of campus assault made to "responsible employees" regardless of the victim's consent. This can mean that a student seeking support after an assault, if she seeks help from anyone designated a "responsible employee", can suddenly be thrown into an intrusive administrative accusation process before she has even had a chance to get support, much less process the events, consider her options, or make decisions.

Even outside the campus context, where Title IX does not apply, this kind of disclosure without consent can happen to victims seeking services from a community-based shelter or advocacy program, because there is no law protecting against it. The violation of trust when this happens to any victim is a traumatic re-victimization of the survivor.

Title IX does not require the making of administrative reports without the victim's consent if there are state laws protecting victim privacy and confidentiality (such as those that protect communications with counselors and therapists). But Oregon, unlike most other states, does not have statutory confidentiality protections for communications with domestic or sexual violence victim advocates. Some colleges and universities have felt comfortable creating policies by which certain victim advocates are designated confidential advocates, and treated as such. Other universities have not felt comfortable taking that step without specific statutory guidance. It is clear that without statutory protection, there is no reliable protection for the confidentiality and privacy of victims seeking services on campus.

**Confidentiality concerns arise in community-based settings as well.** Even where Title IX does not apply, the risk of disclosure without consent is a great barrier to accessing services. Without statutory confidentiality and privacy protections, victims risk exposure without consent through court proceedings, subpoenas, and more. Victims need assurances of confidentiality in order to access the support they need and deserve, whether on-campus or off.

**Federal law acknowledges the importance of state confidentiality laws that provide greater coverage than is available under federal law.** The Federal government is encouraging campuses to provide access to confidential services.<sup>1</sup> HB 3476 will provide the state statutory structure necessary to allow campuses to designate domestic violence and sexual assault advocates as "confidential", thus allowing victims access to the services and support they need and deserve to heal from and survive the impact of assault.

### **Summary of HB 3476:**

- Adds a statutory privilege to Oregon's evidence code, preventing the disclosure of confidential communications and records in administrative, civil, or criminal proceedings without the victim's permission. *Section 1 and 2 of the bill*
- Creates a stand-alone duty of confidentiality, requiring non-disclosure of communications and records without the victim's permission. *Section 4 of the bill*

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<sup>1</sup> UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS *Questions and Answers on Title IX and Sexual Violence*

- Protects victims of domestic violence, sexual assault, and stalking.
- Requires confidentiality and protects against disclosure without the victim's permission of confidential communications made to advocates who:
  - Have a minimum level of training in victim service provision as certified by the Attorney General by rule; and
  - Are employed by or volunteer with a non-governmental, non-profit community-based victim services program or with a campus-based victim services program.
- Protection would apply to communications and records made in the course of providing counseling, advocacy, support, and safety services to victims.
- Narrow exceptions apply.

**Oregon currently falls short in meeting the confidentiality needs of survivors.** Survivor services at community-based programs are confidential in 40 other states, 8 of which provide absolute protections similar to the proposal before the committee. Access to confidential services means victims can come forward for help and support without fear of retribution or embarrassment. Confidentiality allows victims to take the time they need to consider their options and make the reporting or other choices that are right for them.

**HB 3476 is based on best practice models providing complete protection, to ensure that victims can come forward to see the help they need and deserve, without fear.** We urge your support of this bill, for survivor safety. Thank you for the opportunity to testify.