

# House Bill 3476

Sponsored by Representative LININGER, Senator GELSER, Representatives SPRENGER, OLSON, Senators WINTERS, PROZANSKI; Representatives BARKER, GILLIAM, HUFFMAN, JOHNSON, PILUSO, READ, TAYLOR, VEGA PEDERSON, WILLIAMSON, Senators BOQUIST, DEVLIN, HANSELL, KRUSE, ROBLAN

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes privilege in civil, criminal, administrative and school proceedings for certain communications between persons seeking services related to domestic violence, sexual assault or stalking and victim services programs and advocates.

Prohibits disclosure of communications without consent of person seeking services.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to confidential communications; creating new provisions; amending ORS 40.252; and de-  
3 claring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 40.225 to 40.295.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Certified advocate" means a person who:**

8 (A) **Has completed at least 40 hours of training in advocacy for victims of domestic vi-**  
9 **olence, sexual assault or stalking, approved by the Attorney General by rule; and**

10 (B) **Is an employee or a volunteer of a qualified victim services program.**

11 (b) **"Confidential communication" means a written or oral communication that is not**  
12 **intended for further disclosure, except to:**

13 (A) **Persons present at the time the communication is made who are present to further**  
14 **the interests of the victim in the course of seeking safety planning, counseling, support or**  
15 **advocacy services;**

16 (B) **Persons reasonably necessary for the transmission of the communication; or**

17 (C) **Other persons, in the context of group counseling.**

18 (c) **"Qualified victim services program" means:**

19 (A) **A nongovernmental, nonprofit, community-based program receiving moneys admin-**  
20 **istered by the state Department of Human Services or the Oregon or United States Depart-**  
21 **ment of Justice that offers safety planning, counseling, support or advocacy services to**  
22 **victims of domestic violence, sexual assault or stalking; or**

23 (B) **A sexual assault center, victim advocacy office, women's center, student affairs**  
24 **center, health center or other program providing safety planning, counseling, support or**  
25 **advocacy services to victims that is on the campus of or affiliated with a two- or four-year**  
26 **post-secondary institution that enrolls one or more students who receive an Oregon Oppor-**  
27 **tunity Grant.**

28 (d) **"Victim" means a person seeking safety planning, counseling, support or advocacy**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **services related to domestic violence, sexual assault or stalking at a qualified victims ser-**  
2 **vices program.**

3 **(2) Except as provided in subsection (3) of this section, a victim has a privilege to refuse**  
4 **to disclose and to prevent any other person from disclosing:**

5 **(a) Confidential communications made by the victim to a certified advocate in the course**  
6 **of safety planning, counseling, support, or advocacy services.**

7 **(b) Records that are created or maintained in the course of providing services regarding**  
8 **the victim.**

9 **(3) The privilege established by this section does not apply to the disclosure of confiden-**  
10 **tial communications, only to the extent disclosure is necessary for defense, in any civil,**  
11 **criminal or administrative action that is brought against the certified advocate, or against**  
12 **the qualified victim services program, by or on behalf of the victim.**

13 **(4) The privilege established in this section is not waived by disclosure of the communi-**  
14 **cations by the certified advocate to another person if the disclosure is reasonably necessary**  
15 **to accomplish the purpose for which the certified advocate is consulted.**

16 **(5) This section does not prohibit the disclosure of aggregate, non-personally identifying**  
17 **data.**

18 **(6) This section applies to civil, criminal and administrative proceedings and to institu-**  
19 **tional disciplinary proceedings at a two-year or four-year post-secondary institution that**  
20 **enrolls one or more students who receive an Oregon Opportunity Grant.**

21 **SECTION 3.** ORS 40.252 is amended to read:

22 40.252. (1) In addition to any other limitations on privilege that may be imposed by law, there  
23 is no privilege under ORS 40.225, 40.230 or 40.250 **or section 2 of this 2015 Act** for communications  
24 if:

25 (a) In the professional judgment of the person receiving the communications, the communi-  
26 cations reveal that the declarant has a clear and serious intent at the time the communications are  
27 made to subsequently commit a crime involving physical injury, a threat to the physical safety of  
28 any person, sexual abuse or death or involving an act described in ORS 167.322;

29 (b) In the professional judgment of the person receiving the communications, the declarant poses  
30 a danger of committing the crime; and

31 (c) The person receiving the communications makes a report to another person based on the  
32 communications.

33 (2) The provisions of this section do not create a duty to report any communication to any  
34 person.

35 (3) A person who discloses a communication described in subsection (1) of this section, or fails  
36 to disclose a communication described in subsection (1) of this section, is not liable to any other  
37 person in a civil action for any damage or injury arising out of the disclosure or failure to disclose.

38 **SECTION 4.** (1) **As used in this section:**

39 **(a) "Certified advocate" means a person who:**

40 **(A) Has completed at least 40 hours of training in advocacy for victims of domestic vi-**  
41 **olence, sexual assault or stalking, approved by the Attorney General by rule; and**

42 **(B) Is an employee or a volunteer of a qualified victim services program.**

43 **(b) "Confidential communication" means a written or oral communication that is not**  
44 **intended for further disclosure to third persons except to:**

45 **(A) Persons present at the time the communication is made who are present to further**

1 the interests of the victim in the course of seeking safety planning, counseling, support or  
2 advocacy services;

3 (B) Persons reasonably necessary for the transmission of the communication; or

4 (C) Other persons, in the context of group counseling.

5 (c) "Qualified victim services program" means:

6 (A) A nongovernmental, nonprofit, community-based program receiving moneys admin-  
7 istered by the state Department of Human Services or the Oregon or United States Depart-  
8 ment of Justice that offers safety planning, counseling, support or advocacy services to  
9 victims of domestic violence, sexual assault or stalking; or

10 (B) A sexual assault center, victim advocacy office, women's center, student affairs  
11 center, health center or other program providing safety planning, counseling, support or  
12 advocacy services to victims that is on the campus of or affiliated with a two-year or four-  
13 year post-secondary institution that enrolls one or more students who receive an Oregon  
14 Opportunity Grant.

15 (d) "Victim" means a person seeking safety planning, counseling, support or advocacy  
16 services related to domestic violence, sexual assault or stalking at a qualified victims ser-  
17 vices program.

18 (2) Except as provided in ORS 40.252 and section 2 of this 2015 Act, without the written,  
19 informed consent of the victim that is reasonably limited in duration, a certified advocate  
20 or a qualified victim services program may not disclose:

21 (a) Confidential communications between a victim and the certified advocate or qualified  
22 victim services program made in course of safety planning, counseling, support or advocacy  
23 services.

24 (b) Records that are created or maintained in the course of providing services regarding  
25 the victim.

26 (3) Notwithstanding subsection (2) of this section, a certified advocate or a qualified vic-  
27 tim services program may disclose confidential communications or records without the  
28 victim's consent only:

29 (a) To the extent necessary for defense in any civil, criminal or administrative action  
30 that is brought against the certified advocate, or against the qualified victim services pro-  
31 gram, by or on behalf of the victim; and

32 (b) As otherwise required by law.

33 (4) This section does not prohibit the disclosure of aggregate, non-personally identifying  
34 data.

35 **SECTION 5.** (1) Sections 2 and 4 of this 2015 Act and the amendments to ORS 40.252 by  
36 section 3 of this 2015 Act become operative on October 1, 2015.

37 (2) The Attorney General may take any action before the operative date specified in  
38 subsection (1) of this section to enable the Attorney General, on or after the operative date  
39 specified in subsection (1) of this section, to exercise all the duties, powers and functions  
40 conferred on the Attorney General by sections 2 and 4 of this 2015 Act.

41 (3) Section 2 of this 2015 Act applies only to proceedings occurring on or after the oper-  
42 ative date specified in subsection (1) of this section.

43 (4) Sections 2 and 4 of this 2015 Act and the amendments to ORS 40.252 by section 3 of  
44 this 2015 Act apply to communications and records made before, on or after the operative  
45 date specified in subsection (1) of this section, unless the communications were disclosed to

1 a third party before the operative date specified in subsection (1) of this section.

2 **SECTION 6. This 2015 Act being necessary for the immediate preservation of the public**  
3 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
4 **on its passage.**

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