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# JUDICIARY

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## STATE OF MAINE

### SENATE

#### 132ND LEGISLATURE

#### FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to S.P. 191, L.D. 458, “An Act to Improve Court Procedure and Update Family Law”

Amend the bill by striking out the title and substituting the following:

#### **'An Act Regarding the Domestic Violence Advocate Privilege'**

Amend the bill by striking out everything after the enacting clause and inserting the following:

**'Sec. 1. 14 MRSA §6001, sub-§6, ¶H,** as amended by PL 2017, c. 455, §3, is further amended by amending subparagraph (1) to read:

(1) A statement signed by a Maine-based sexual assault counselor as defined in Title 16, section 53-A, subsection 1, paragraph B, ~~an a domestic violence~~ advocate as defined in Title 16, section 53-B, subsection 1, paragraph A ~~A-4~~ or a victim witness advocate as defined in Title 16, section 53-C, subsection 1, paragraph C;

**Sec. 2. 16 MRSA §53-B,** as amended by PL 2013, c. 478, §§3 to 6 and c. 588, Pt. E, §10, is further amended by amending the section headnote to read:

**§53-B. Privileged communications to ~~victim~~ domestic violence advocate; ~~family violence~~**

**Sec. 3. 16 MRSA §53-B, sub-§1,** as amended by PL 2013, c. 478, §§3 to 5, is further amended to read:

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

~~A. "Advocate" means an employee of or volunteer for a nongovernmental or Maine tribal program for victims of domestic or family violence who:~~

~~(1) Has undergone at least 30 hours of training; and~~

(2) ~~As a primary function with the program gives advice to, counsels or assists victims, supervises employees or volunteers who perform that function or administers the program.~~

A-1. "Confidential communications" means all information, whether written or oral, transmitted between a victim and a domestic violence advocate in the course of the working relationship. "Confidential communications" includes, but is not limited to, information received or given by the domestic violence advocate in the course of the working relationship, advice, records, reports, notes, memoranda, working papers, electronic communications, case files, history and statistical data, including name, date of birth and social security number, that personally identify the victim.

A-2. "Confidential criminal history record information" has the same meaning as in section 703, subsection 2.

A-3. "Criminal justice agency" has the same meaning as in section 703, subsection 4.

A-4. "Domestic violence advocate" means an employee of or volunteer for a domestic violence services provider who has undergone at least 40 hours of training from a domestic violence services provider that, at a minimum, includes:

(1) State and federal laws, rules and regulations on confidentiality and other protections for victims of domestic violence;

(2) Mandated reporting;

(3) Civil and criminal legal processes in the State;

(4) Advocacy skills; and

(5) Local resources available for victims of domestic violence.

A-5. "Domestic violence services provider" means a private, nonprofit or tribal organization that has as a primary function to provide services for and assistance to victims of domestic violence through crisis intervention, safety planning, legal information and educational information pertaining to domestic violence.

B. "Victim" means a victim of domestic or family violence.

**Sec. 4. 16 MRSA §53-B, sub-§1-A**, as amended by PL 2013, c. 588, Pt. E, §10, is further amended to read:

**1-A. Confidential criminal history record information.** A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information to ~~an~~ a domestic violence advocate for the purpose of planning for the safety of a victim of domestic violence. ~~An~~ A domestic violence advocate who receives confidential criminal history record information pursuant to this subsection shall use it solely for the purpose authorized by this subsection and may not further disseminate the information.

**Sec. 5. 16 MRSA §53-B, sub-§2**, as enacted by PL 1995, c. 128, §1, is amended to read:

**2. Privileged communication.** Communications are privileged from disclosure as follows.

1 A. A victim may refuse to disclose and may deny permission to ~~an~~ a domestic violence  
2 advocate to disclose confidential written or oral communications between the victim  
3 and the domestic violence advocate and written records, notes, memoranda or reports  
4 concerning the victim.

5 B. Except as provided in subsection 3, a victim, domestic violence advocate or  
6 domestic violence advocate's agency may not be required through oral or written  
7 testimony or through production of documents to disclose to a court in criminal or civil  
8 proceedings or to any other agency or person confidential communications between  
9 the victim and the domestic violence advocate.

10 **Sec. 6. 16 MRSA §806, sub-§4**, as enacted by PL 2015, c. 411, §2, is amended to  
11 read:

12 **4. A counselor or advocate.** A sexual assault counselor, as defined in section 53-A,  
13 subsection 1, paragraph B, or ~~an~~ a domestic violence advocate, as defined in section 53-B,  
14 subsection 1, paragraph A A-4. A person to whom intelligence and investigative record  
15 information is disclosed pursuant to this subsection:

16 A. May use the information only for planning for the safety of the victim of a sexual  
17 assault or domestic or family violence incident to which the information relates;

18 B. May not further disseminate the information;

19 C. Shall ensure that physical copies of the information are securely stored and remain  
20 confidential;

21 D. Shall destroy all physical copies of the information within 30 days after their  
22 receipt;

23 E. Shall permit criminal justice agencies providing such information to perform  
24 reasonable and appropriate audits to ensure that all physical copies of information  
25 obtained pursuant to this subsection are maintained in accordance with this subsection;  
26 and

27 F. Shall indemnify and hold harmless criminal justice agencies providing information  
28 pursuant to this subsection with respect to any litigation that may result from the  
29 provision of the information to the person.

30 **Sec. 7. 17-A MRSA §2109, sub-§2**, as enacted by PL 2019, c. 113, Pt. A, §2, is  
31 amended to read:

32 **2. To domestic violence advocate.** Communications by a victim, as defined in Title  
33 16, section 53-B, subsection 1, paragraph B, to ~~an~~ a domestic violence advocate, as defined  
34 in Title 16, section 53-B, subsection 1, paragraph A A-4, are privileged from disclosure as  
35 provided in Title 16, section 53-B, subsection 2, subject to exceptions in Title 16, section  
36 53-B, subsection 3.'

37 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
38 number to read consecutively.

## 39 SUMMARY

40 This amendment replaces the bill, which is a concept draft, and changes the title. The  
41 amendment modifies the statute governing privileged communications between victims of

1 domestic violence and domestic violence advocates by extending the privilege to an  
2 employee of or volunteer for a domestic violence services provider who has received a  
3 minimum of 40 hours of training on state and federal laws, rules and regulations governing  
4 confidentiality for victims of domestic violence, mandated reporting, civil and criminal  
5 legal processes, advocacy skills and local resources for victims of domestic violence.