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**AB-1896 Sexual assault counselor-victim privilege.** (2017-2018)

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**Assembly Bill No. 1896**

**CHAPTER 123**

An act to amend Section 1035.2 of the Evidence Code, relating to evidence.

[ Approved by Governor July 18, 2018. Filed with Secretary of State July 18, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1896, Cervantes. Sexual assault counselor-victim privilege.

Existing law establishes a privilege for a victim of a sexual assault to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault counselor, if the privilege is claimed by the holder of the privilege, a person who is authorized to claim the privilege by the holder of the privilege, or the person who was the sexual assault counselor at the time of the confidential communication, except as specified. The definition of "sexual assault counselor" includes a person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who meets certain requirements.

This bill would specifically include within the definition of "sexual assault counselor" for these purposes a person who is engaged in a program on the campus of a public or private institution of higher education, with the same primary purpose of rendering advice or assistance to victims of sexual assault and the same qualifications.

The California Constitution requires that a statute that would exclude relevant evidence in any criminal proceeding be enacted by a  $\frac{2}{3}$  vote of each house of the Legislature.

Because this bill would exclude certain communications between a victim of sexual assault and a sexual assault counselor in criminal proceedings, the bill would require a  $\frac{2}{3}$  vote.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** The Legislature finds and declares all of the following:

(a) The incidents of sexual assault occurring on college campuses is a growing and pervasive problem in California and across the United States.

(b) According to the Rape, Abuse & Incest National Network, 11.2 percent of college students in the United States experience rape or other forms of sexual assault.

(c) There have been high-profile incidents of sexual assault at several universities in California.

(d) Enduring incidents of sexual assault can negatively affect the physical and mental health of a student survivor, as well as hamper academic outcomes.

(e) Sexual assault counselors are an invaluable resource to student survivors of sexual assault, and provide them with essential services and support.

(f) Existing law, specifically Section 1035.8 of the Evidence Code, provides a legal privilege for confidential communications between sexual assault counselors and survivors.

(g) However, there is uncertainty among practicing sexual assault counselors as to whether this privilege extends to counselors who provide these services and support to students on college campuses.

(h) The intent of this act is to remove that uncertainty, and declare that this privilege extends to sexual assault counselors who practice at college campuses and has done so since the creation of the privilege.

(i) Further, the intent of this act is to encourage college campuses to take all steps necessary to ensure that communications claimed as privileged under Section 1035.8 of the Evidence Code remain confidential, including by claiming the privilege in any case in which there is not a voluntary, written, and time-limited release of information from the survivor of sexual assault or the disclosure is not compelled by law, such as by a judicial order pursuant to Section 1035.4 of the Evidence Code.

(j) The amendments to Section 1035.2 of the Evidence Code made by this act do not establish or support in any way that the privilege was not conferred on sexual assault counselors who practiced on college campuses before the enactment of those amendments.

(k) This act is intended as a signal that the privilege existed previously and will continue to exist after its enactment.

**SEC. 2.** Section 1035.2 of the Evidence Code is amended to read:

**1035.2.** As used in this article, “sexual assault counselor” means any of the following:

(a) A person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master’s degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.

(2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

(A) Law.

(B) Medicine.

(C) Societal attitudes.

(D) Crisis intervention and counseling techniques.

(E) Role playing.

(F) Referral services.

(G) Sexuality.

(b) A person who is engaged in a program on the campus of a public or private institution of higher education, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master’s degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.

(2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

- (A) Law.
- (B) Medicine.
- (C) Societal attitudes.
- (D) Crisis intervention and counseling techniques.
- (E) Role playing.
- (F) Referral services.
- (G) Sexuality.

(c) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting sexual assault victims, and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling.

(2) Has the minimum training for sexual assault counseling required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

- (A) Law.
- (B) Victimology.
- (C) Counseling.
- (D) Client and system advocacy.
- (E) Referral services.