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AB-1735 Evidence: privileges: human trafficking caseworker-victim privilege. (2019-2020)

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Assembly Bill No. 1735

CHAPTER 197

An act to amend Sections 1038, 1038.1, and 1038.2 of, and to add Section 1038.3 to, the Evidence Code, relating to evidentiary privilege.

[Approved by Governor August 30, 2019. Filed with Secretary of State August 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1735, Bauer-Kahan. Evidence: privileges: human trafficking caseworker-victim privilege.

Existing law establishes the crime of trafficking of a person for forced labor or services or for effecting or maintaining other specified felonies, and the crime of trafficking of a minor for those purposes. Existing law establishes procedures governing the admissibility of evidence in civil and criminal actions in this state. Existing law recognizes various evidentiary privileges, including a victim-caseworker privilege, under which a human trafficking victim may refuse to disclose, or may prevent another's disclosure of, a confidential communication made to a human trafficking caseworker, as defined. Existing law also sets forth circumstances under which a court may compel the disclosure of information otherwise protected by this privilege, and defines various terms for these purposes.

This bill would allow a human trafficking victim's current caseworker to claim the privilege, even if that caseworker was not the victim's caseworker at the time the confidential communication was made, thereby expanding the scope of the privilege. This bill would adjust the definitions of "holder of the privilege" and "human trafficking caseworker" for these purposes, including by expanding the list of topics about which human trafficking caseworkers shall be trained.

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 human trafficking and a human trafficking caseworker 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. Section 1038 of the Evidence Code is amended to read:

1038. (a) A trafficking victim, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication, whether made orally, in writing, or otherwise conveyed, between the victim and a human trafficking caseworker if the privilege is claimed by any of the following persons:

(1) The holder of the privilege.

(2) A person who is authorized to claim the privilege by the holder of the privilege.

(3) The person who was the human trafficking caseworker at the time of the confidential communication or is presently the human trafficking caseworker for the victim. However, that person may not claim the privilege if there is no holder of the privilege in existence or if the person is otherwise instructed by the court or by another person authorized to permit disclosure.

(b) The human trafficking caseworker shall claim the privilege whenever the caseworker is present when the communication is sought to be disclosed and the caseworker is authorized to claim the privilege under this section.

(c) A human trafficking caseworker shall inform a trafficking victim of any applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally.

SEC. 2. Section 1038.1 of the Evidence Code is amended to read:

1038.1. (a) The court may compel disclosure of information received by a human trafficking caseworker that constitutes relevant evidence of the facts and circumstances involving a crime allegedly perpetrated against the victim and that is the subject of a criminal proceeding, if the court determines that the probative value of the information outweighs the effect of disclosure of the information on the victim, the counseling relationship, and the counseling services.

(b) When a court rules on a claim of privilege under this article, it may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and those other persons that the person authorized to claim the privilege consents to have present.

(c) If the judge determines that the information is privileged and shall not be disclosed, no person shall disclose, without the consent of a person authorized to permit disclosure, any information disclosed in the course of the proceedings in chambers. If the court determines that information shall be disclosed, the court shall so order and inform the defendant in the criminal action. If the court finds there is a reasonable likelihood that any information is subject to disclosure pursuant to the balancing test provided in this section, the procedure specified in paragraphs (1), (2), and (3) of Section 1035.4 shall be followed.

SEC. 3. Section 1038.2 of the Evidence Code is amended to read:

1038.2. As used in this article, the following terms have the following meanings:

(a) "Confidential communication" means all information, including but not limited to written and oral communication, transmitted between the victim and the human trafficking caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking caseworker is consulted and made with the victim's knowledge and consent. "Confidential communication" includes all information regarding the facts and circumstances relating to all incidences of human trafficking, as well as all information about the children of the victim and the relationship of the victim to the human trafficker.

(b) "Holder of the privilege" means:

(1) The victim if the victim has no guardian or conservator.

(2) A guardian or conservator of the victim if the victim has a guardian or conservator.

(3) The personal representative of the victim if the victim is deceased.

(c) "Human trafficking caseworker" means a person working for a human trafficking victim service organization, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of human trafficking, who meets the requirements of paragraph (1) or (2) and who also meets the requirements of paragraph (3), if applicable:

(1) Has an advanced degree or license, such as a master's degree in counseling, social work, or a related field and at least one year of experience in a caseworker role working directly with victims of human trafficking.

(2) Has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a human trafficking caseworker under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but need not be limited to, the following areas:

(A) History of human trafficking.

(B) Civil and criminal law relating to human trafficking.

(C) Systems of oppression.

(D) Peer counseling techniques.

(E) Resources available to victims of human trafficking.

(F) Crisis intervention and counseling techniques.

(G) Role playing.

(H) Intersections of human trafficking and other crimes.

(I) Client and system advocacy.

(J) Referral services.

(K) Connecting to local, regional, and national human trafficking coalitions.

(L) Explaining privileged communications.

(3) If the caseworker has been employed by a human trafficking service organization for a period of less than six months, that caseworker is supervised by another human trafficking caseworker who has at least one year of experience working with human trafficking victims.

(d) "Human trafficking victim service organization" means a nongovernmental organization or entity that provides shelter, program, or other support services to victims of human trafficking and their children and that does all of the following:

(1) Employs staff that meet the requirements of a human trafficking caseworker as set forth in this section.

(2) Operates a telephone hotline, advertised to the public, for survivor crisis calls.

(3) Offers psychological support and peer counseling provided in accordance with this section.

(4) Makes staff available during normal business hours to assist victims of human trafficking who need shelter, programs, or other support services.

(e) "Victim" means a person who consults a human trafficking caseworker for the purpose of securing advice or assistance concerning a mental, physical, emotional, or other condition related to their experience as a victim of human trafficking.

SEC. 4. Section 1038.3 is added to the Evidence Code, to read:

1038.3. Nothing in this article shall be construed as limiting any obligation to report instances of child abuse as required by Section 11166 of the Penal Code.