STATE OF NEW YORK

4649--A

2017-2018 Regular Sessions

IN SENATE

February 23, 2017

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to establishing that domestic violence advocates may not disclose any communication made by a client to the advocate except in certain circumstances

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 4510 of the civil practice law and rules, as added by chapter 432 of the laws of 1993 and subdivision (d) as amended by section 49 of part A-1 of chapter 56 of the laws of 2010, is amended to read as follows:

§ 4510. Rape crisis counselor **or domestic violence advocate**. (a) Definitions. When used in this section, the following terms shall have the following meanings:

1. "Rape crisis program" means any office, institution or center which has been approved pursuant to subdivision fifteen of section two hundred six of the public health law, offering counseling and assistance to clients concerning sexual offenses, sexual abuses or incest.

2. "Rape crisis counselor" means any person who has been certified by an approved rape crisis program as having satisfied the training standards specified in subdivision fifteen of section two hundred six of the public health law, and who, regardless of compensation, is acting under the direction and supervision of an approved rape crisis program.

3. "Client" means **(i)** any person who is seeking or receiving the services of a rape crisis counselor for the purpose of securing counseling or assistance concerning any sexual offenses, sexual abuse,

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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incest or attempts to commit sexual offenses, sexual abuse, or incest, as defined in the penal law; or

(ii) any person who is seeking or receiving assistance from a domestic violence advocate for the purpose of securing services concerning any acts of domestic violence, which shall include acts that would constitute a violent felony offense as enumerated in section 70.02 of the penal law or a family offense as enumerated in subdivision one of section eight hundred twelve of the family court act that is alleged to have been committed by a member of the same family or household, as defined in subdivision one of section eight hundred twelve of the family court act, whether or not the victim seeks or receives services within the criminal justice system.

4. "Domestic violence program" means a residential program for victims of domestic violence or a non-residential program for victims of domestic violence as defined in section four hundred fifty-nine-a of the social services law.

5. "Domestic violence advocate" means an employee or volunteer of a domestic violence program. "Domestic violence advocate" shall not include a person employed by, or under the direct supervision of, a law enforcement agency, the department of law, or any governmental agency or department while such employee or volunteer is performing duties on behalf of or acting in the course of employment of such governmental agency or department.

(b) Confidential information privileged. A rape crisis counselor or domestic violence advocate shall not be required to disclose a communication made by his or her client to him or her, or advice given thereon, in the course of his or her services nor shall any clerk, stenographer or other person working for the same program as the rape crisis counselor or domestic violence advocate or for the rape crisis counselor or domestic violence advocate be allowed to disclose any such communication or advice given thereon nor shall any records made in the course of the services given to the client or recording of any communications made by or to a client be required to be disclosed, nor shall the client be compelled to disclose such communication or records, except:

1. that a rape crisis counselor or domestic violence advocate may disclose such otherwise confidential communication to the extent authorized by the client;

2. that a rape crisis counselor or domestic violence advocate shall not be required to treat as confidential a communication by a client which reveals the intent to commit a crime or harmful act;

3. in a case in which the client waives the privilege by instituting charges against the rape crisis counselor or domestic violence advocate or the rape crisis program or domestic violence program and such action or proceeding involves confidential communications between the client and the rape crisis counselor or domestic violence advocate.

(c) Who may waive the privilege. The privilege may only be waived by the client, the personal representative of a deceased client, or, in the case of a client who has been adjudicated incompetent or for whom a conservator has been appointed, the committee or conservator.

(d) Limitation on waiver. A client who, for the purposes of obtaining compensation under article twenty-two of the executive law or insurance benefits, authorizes the disclosure of any privileged communication to an employee of the office of victim services or an insurance representative shall not be deemed to have waived the privilege created by this section.

§ 2. This act shall take effect immediately.