

**Introduced by Senator Morrow**

February 22, 2002

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An act to amend Sections 912, 917, and 952 of the Evidence Code, relating to electronic communications and evidentiary privileges.

LEGISLATIVE COUNSEL'S DIGEST

SB 2061, as introduced, Morrow. Privilege: electronic communication.

Existing law specifies that the right of a person to claim an evidentiary privilege is waived if the holder of the privilege discloses a significant part of the privileged communication or has consented to that disclosure, as specified.

This bill would add the domestic violence victim-counselor privilege to the list of evidentiary privileges to which this provision applies, and would require intentional disclosure of a significant part of the privileged communication or any consent to disclosure indicating intent to permit the disclosure. The bill would also add a communication made in the course of a sexual assault victim-counselor or domestic violence victim-counselor relationship to the list of communications presumed to have been made in confidence and therefore privileged.

Existing law provides that a communication between a client and his or her lawyer is not deemed lacking in confidentiality solely because the communication is transmitted by facsimile, cellular telephone, or other electronic means between the client and his or her lawyer.

This bill would delete that provision and add a provision specifying that a communication between persons in a privileged relationship does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the

delivery, facilitation, or storage of electronic communication may have access to the content of the communication.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 912 of the Evidence Code is amended  
2 to read:

3 912. (a) Except as otherwise provided in this section, the  
4 right of any person to claim a privilege provided by Section 954  
5 (lawyer-client privilege), 980 (privilege for confidential marital  
6 communications), 994 (physician-patient privilege), 1014  
7 (psychotherapist-patient privilege), 1033 (privilege of penitent),  
8 1034 (privilege of clergyman), ~~or~~ 1035.8 (sexual assault  
9 victim-counselor privilege), *or 1037.5 (domestic violence*  
10 *victim-counselor privilege)* is waived with respect to a  
11 communication protected by ~~such~~ *the* privilege if any holder of the  
12 privilege, without coercion, has *intentionally* disclosed a  
13 significant part of the communication or has consented to ~~such~~  
14 disclosure made by anyone. Consent to disclosure is manifested by  
15 any statement or other conduct of the holder of the privilege  
16 indicating ~~consent to~~ *intent to permit* the disclosure, including  
17 failure to claim the privilege in any proceeding in which the holder  
18 has the legal standing and opportunity to claim the privilege.

19 (b) Where two or more persons are joint holders of a privilege  
20 provided by Section 954 (lawyer-client privilege), 994  
21 (physician-patient privilege), 1014 (psychotherapist-patient  
22 privilege), ~~or~~ 1035.8 (sexual assault victim-counselor privilege),  
23 *or 1037.5 (domestic violence victim-counselor privilege)*, a waiver  
24 of the right of a particular joint holder of the privilege to claim the  
25 privilege does not affect the right of another joint holder to claim  
26 the privilege. In the case of the privilege provided by Section 980  
27 (privilege for confidential marital communications), a waiver of  
28 the right of one spouse to claim the privilege does not affect the  
29 right of the other spouse to claim the privilege.

30 (c) A disclosure that is itself privileged is not a waiver of any  
31 privilege.

32 (d) A disclosure in confidence of a communication that is  
33 protected by a privilege provided by Section 954 (lawyer-client



1 privilege), 994 (physician-patient privilege), 1014  
2 (psychotherapist-patient privilege), ~~or~~ 1035.8 (sexual assault  
3 victim-counselor privilege), *or* 1037.5 (*domestic violence*  
4 *victim-counselor privilege*), when ~~such~~ disclosure is reasonably  
5 necessary for the accomplishment of the purpose for which the  
6 lawyer, physician, psychotherapist, ~~or~~ sexual assault counselor, *or*  
7 *domestic violence counselor* was consulted, is not a waiver of the  
8 privilege.

9 SEC. 2. Section 917 of the Evidence Code is amended to read:

10 917. (a) Whenever a privilege is claimed on the ground that  
11 the matter sought to be disclosed is a communication made in  
12 confidence in the course of the lawyer-client, physician-patient,  
13 psychotherapist-patient, clergyman-penitent, ~~or~~ husband-wife,  
14 *sexual assault victim-counselor*, *or domestic violence*  
15 *victim-counselor* relationship, the communication is presumed to  
16 have been made in confidence and the opponent of the claim of  
17 privilege has the burden of proof to establish that the  
18 communication was not confidential.

19 (b) *A communication between persons in a relationship listed*  
20 *in subdivision (a) does not lose its privileged character for the sole*  
21 *reason that it is communicated by electronic means or because*  
22 *persons involved in the delivery, facilitation, or storage of*  
23 *electronic communication may have access to the content of the*  
24 *communication.*

25 (c) *For purposes of this section, “electronic” has the meaning*  
26 *provided in Section 1633.2 of the Civil Code.*

27 SEC. 3. Section 952 of the Evidence Code is amended to read:

28 952. As used in this article, “confidential communication  
29 between client and lawyer” means information transmitted  
30 between a client and his or her lawyer in the course of that  
31 relationship and in confidence by a means which, so far as the  
32 client is aware, discloses the information to no third persons other  
33 than those who are present to further the interest of the client in the  
34 consultation or those to whom disclosure is reasonably necessary  
35 for the transmission of the information or the accomplishment of  
36 the purpose for which the lawyer is consulted, and includes a legal  
37 opinion formed and the advice given by the lawyer in the course  
38 of that relationship. ~~A communication between a client and his or~~  
39 ~~her lawyer is not deemed lacking in confidentiality solely because~~



- 1 ~~the communication is transmitted by facsimile, cellular telephone,~~
- 2 ~~or other electronic means between the client and his or her lawyer.~~

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