

AMENDED IN SENATE APRIL 30, 2007

AMENDED IN SENATE APRIL 17, 2007

AMENDED IN SENATE MARCH 29, 2007

SENATE BILL

No. 407

Introduced by Senator Romero

(~~Coauthor: Assembly Member Dymally~~ *Coauthors: Assembly Members
Beall, Dymally, and Horton*)

February 21, 2007

An act to amend Sections 1037, 1037.1, 1037.2, 1037.4, and 1037.5 of the Evidence Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 407, as amended, Romero. Domestic violence.

Existing law generally provides that no person has a privilege to refuse to be a witness or to refuse to disclose any matter or produce any writing, object, or other thing. However, a victim of domestic violence has a privilege to refuse to disclose and to prevent another from disclosing, a confidential communication, as defined, between the victim and a domestic violence counselor, as specified.

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

This bill would, among other things, expand the scope of the privilege by expanding the definition of a domestic violence counselor, ~~and would provide that the privilege terminates upon the death of the victim.~~ The bill would also make related findings and declarations.

Because this bill would exclude relevant evidence in criminal proceedings, the bill would require a $\frac{2}{3}$ vote.

Vote: 2/3. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. (a) The Legislature hereby finds and declares
2 all of the following:

3 (1) It is the intent of the Legislature in enacting this act to clarify
4 and strengthen the applicable statutory definitions associated with
5 the domestic violence victim-counselor privilege. These
6 clarifications are designed to give all parties detailed information
7 about the privilege in accordance with emerging changes in
8 domestic violence programs and services.

9 (2) These provisions have played a critically important role in
10 protecting the lives and safety of domestic violence victims by
11 allowing them to access shelter programs and supportive services
12 that enable those victims and their children to escape their abusive
13 home environment and achieve independence from their abusers.

14 (3) However, since its enactment, the domestic violence
15 victim-counselor privilege provisions have not been amended to
16 reflect the growth in the types of comprehensive domestic violence
17 programs. Consequently, the current statutory definitions relating
18 to this privilege have caused some confusion within the domestic
19 violence community as to persons eligible to invoke the privilege
20 and the types of communications that shall be deemed confidential
21 and privileged.

22 (b) Finally, the Legislature hereby finds and declares that the
23 amendments to those provisions are intended to be declaratory of
24 existing law and constitute clarifications, rather than an expansion,
25 of the domestic violence victim-counselor privilege.

26 SEC. 2. Section 1037 of the Evidence Code is amended to read:

27 1037. As used in this article, “victim” means any adult or minor
28 who experiences a mental, physical, or emotional condition caused
29 by domestic violence, as defined in Section 1037.7.

30 SEC. 3. Section 1037.1 of the Evidence Code is amended to
31 read:

32 1037.1. (a) As used in this article, “domestic violence
33 counselor” means a person who is employed by a domestic violence
34 victim service organization, as defined in this article, whether
35 financially compensated or not, for the purpose of rendering advice

1 or assistance to victims of domestic violence and who meets one
2 of the following requirements:

- 3 (1) Is a psychotherapist, as defined in Section 1010.
- 4 (2) Has a master’s degree in counseling or a related field.
- 5 (3) Has one year of counseling experience, at least six months
6 of which is in the counseling of domestic violence victims.
- 7 (4) Has at least 40 hours of training as specified in this paragraph
8 and is supervised by an individual who qualifies as a counselor
9 under paragraph (1), (2), or (3). The training, supervised by an
10 individual who qualifies as a counselor under paragraph (1), (2),
11 or (3), shall include, but need not be limited to, the following areas:
12 history of domestic violence, civil and criminal law as it relates to
13 domestic violence, the domestic violence victim-counselor
14 privilege and other laws that protect the confidentiality of victim
15 records and information, societal attitudes towards domestic
16 violence, peer counseling techniques, housing, public assistance
17 and other financial resources available to meet the financial needs
18 of domestic violence victims, and referral services available to
19 domestic violence victims.

20 (b) As used in this article, “domestic violence victim service
21 organization” means a nongovernmental organization or entity
22 that provides shelter, programs, or services to victims of domestic
23 violence and their children, including, but not limited to, domestic
24 violence shelter-based programs, as described in Section 18294
25 of the Welfare and Institutions Code, and other programs with the
26 primary mission to provide services to victims of domestic violence
27 whether or not that program exists in an agency that provides
28 additional services.

29 SEC. 4. Section 1037.2 of the Evidence Code is amended to
30 read:

31 1037.2. (a) As used in this article, “confidential
32 communication” means any information, whether written or oral,
33 transmitted between the victim and the counselor in the course of
34 their relationship and in confidence by a means which, so far as
35 the victim is aware, discloses the information to no third persons
36 other than those who are present to further the interests of the
37 victim in the consultation or those to whom disclosures are
38 reasonably necessary for the transmission of the information or an
39 accomplishment of the purposes for which the domestic violence
40 counselor is consulted. The term includes all information regarding

1 the facts and circumstances involving all incidences of domestic
2 violence, as well as all information about the children of the victim
3 or abuser and the relationship of the victim with the abuser.

4 (b) The court may compel disclosure of information received
5 by a domestic violence counselor which constitutes relevant
6 evidence of the facts and circumstances involving a crime allegedly
7 perpetrated against the victim or another household member and
8 which is the subject of a criminal proceeding, if the court
9 determines that the probative value of the information outweighs
10 the effect of disclosure of the information on the victim, the
11 counseling relationship, and the counseling services. The court
12 may compel disclosure if the victim is either dead or not the
13 complaining witness in a criminal action against the perpetrator.
14 The court may also compel disclosure in proceedings related to
15 child abuse if the court determines that the probative value of the
16 evidence outweighs the effect of the disclosure on the victim, the
17 counseling relationship, and the counseling services.

18 (c) When a court rules on a claim of privilege under this article,
19 it may require the person from whom disclosure is sought or the
20 person authorized to claim the privilege, or both, to disclose the
21 information in chambers out of the presence and hearing of all
22 persons except the person authorized to claim the privilege and
23 such other persons as the person authorized to claim the privilege
24 consents to have present. If the judge determines that the
25 information is privileged and shall not be disclosed, neither he nor
26 she nor any other person may disclose, without the consent of a
27 person authorized to permit disclosure, any information disclosed
28 in the course of the proceedings in chambers.

29 (d) If the court determines that information shall be disclosed,
30 the court shall so order and inform the defendant in the criminal
31 action. If the court finds there is a reasonable likelihood that any
32 information is subject to disclosure pursuant to the balancing test
33 provided in this section, the procedure specified in subdivisions
34 (1), (2), and (3) of Section 1035.4 shall be followed.

35 SEC. 5. Section 1037.4 of the Evidence Code is amended to
36 read:

37 1037.4. As used in this article, “holder of the privilege” means:

38 (a) The victim when he or she has no guardian or conservator.

1 (b) A guardian or conservator of the victim when the victim has
2 a guardian or conservator, unless the guardian or conservator is
3 accused of perpetrating domestic violence against the victim.

4 SEC. 6. Section 1037.5 of the Evidence Code is amended to
5 read:

6 1037.5. ~~(a)~~—A victim of domestic violence, whether or not a
7 party to the action, has a privilege to refuse to disclose, and to
8 prevent another from disclosing, a confidential communication
9 between the victim and a domestic violence counselor in any
10 proceeding specified in Section 901 if the privilege is claimed by
11 any of the following persons:

12 ~~(1)~~

13 (a) The holder of the privilege.

14 ~~(2)~~

15 (b) A person who is authorized to claim the privilege by the
16 holder of the privilege.

17 ~~(3)~~

18 (c) The person who was the domestic violence counselor at the
19 time of the confidential communication. However, that person
20 may not claim the privilege if there is no holder of the privilege
21 in existence or if he or she is otherwise instructed by a person
22 authorized to permit disclosure.

23 ~~(b) The privilege afforded by this article terminates upon the~~
24 ~~death of the victim.~~