

House Bill 711 (AS PASSED HOUSE AND SENATE)

By: Representatives Lindsey of the 54th, Atwood of the 179th, Houston of the 170th, Benfield of the 85th, and Jacobs of the 80th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 24 of the Official Code of Georgia Annotated, relating to
2 privileges, so as to change provisions relating to spousal privilege in criminal proceedings;
3 to provide certain exceptions to the general rule of privilege; to provide for confidentiality
4 of communications between a family violence or sexual assault victim and agents providing
5 services to such victims at family violence shelters and rape crisis centers; to provide for
6 definitions; to provide for a waiver of confidentiality; to provide for admissibility of certain
7 evidence; to provide for exceptions; to provide for procedure; to provide for related matters;
8 to provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Chapter 5 of Title 24 of the Official Code of Georgia Annotated, relating to privileges, is
12 amended by revising Code Section 24-5-503, relating to husband and wife as witnesses for
13 and against each other in criminal proceedings, as follows:

14 "24-5-503.

15 (a) A husband and wife shall be competent but shall not be compellable to give evidence
16 in any criminal proceeding for or against each other.

17 (b) The privilege created by subsection (a) of this Code section or by corresponding
18 privileges in paragraph (1) of subsection (a) of Code Section 24-5-501 or subsection (a) of
19 Code Section 24-5-505 shall not apply in proceedings in which:

20 (1) The husband or wife is charged with a crime against the person of a child under
21 the age of 18, but such husband or wife shall be compellable to give evidence only on the
22 specific act for which the accused is charged;

23 (2) The husband or wife is charged with a crime against his or her spouse;

24 (3) The husband or wife is charged with causing physical damage to property belonging
25 to the husband and wife or to their separate property; or

26 (4) The alleged crime against his or her current spouse occurred prior to the lawful
27 marriage of the husband and wife."

SECTION 2.

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Said chapter is further amended by adding a new Code section to read as follows:

"24-5-509.

(a) As used in this Code section, the term:

(1) 'Agent' means a current or former employee or volunteer of a program who has successfully completed a minimum of 20 hours of training in family violence and sexual assault intervention and prevention at a Criminal Justice Coordinating Council certified victim assistance program.

(2) 'Family violence' shall have the same meaning as provided in Code Section 19-13-1.

(3) 'Family violence shelter' means a program whose primary purpose is to provide services to family violence victims and their families that is not under the direct supervision of a law enforcement agency, prosecuting attorney's office, or a government agency.

(4) 'Family violence victim' means a person who consults a family violence shelter for the purpose of securing advice or other services concerning an act of family violence, an alleged act of family violence, or an attempted act of family violence.

(5) 'Government agency' means any agency of the executive, legislative, or judicial branch of government or political subdivision or authority thereof of this state, any other state, the District of Columbia, the United States and its territories and possessions, or any foreign government or international governmental or quasi-governmental agency recognized by the United States or by any of the several states.

(6) 'Negative effect of the disclosure of the evidence on the victim' shall include the impact of the disclosure on the relationship between the victim and the agent and the delivery and accessibility of services.

(7) 'Program' means a family violence shelter or rape crisis center.

(8) 'Rape crisis center' means a program whose primary purpose is to provide services to sexual assault victims and their families that is not under the direct supervision of a law enforcement agency, prosecuting attorney's office, or a government agency.

(9) 'Services' means any services provided to a victim by a program including but not limited to crisis hot lines, safe homes and shelters, assessment and intake, counseling, services for children who are victims of family violence or sexual assault, support in medical, administrative, and judicial systems, transportation, relocation, and crisis intervention. Such term shall not include mandatory reporting as required by Code Section 19-7-5 or 30-5-4.

(10) 'Sexual assault' shall have the same meaning as provided in Code Section 17-5-70.

63 (11) 'Sexual assault victim' means a person who consults a rape crisis center for the
 64 purpose of securing advice or other services concerning a sexual assault, an alleged
 65 sexual assault, or an attempted sexual assault.

66 (12) 'Victim' means a family violence victim or sexual assault victim.

67 (b) No agent of a program shall be compelled to disclose any evidence in a judicial
 68 proceeding that the agent acquired while providing services to a victim, provided that such
 69 evidence was necessary to enable the agent to render services, unless the privilege has been
 70 waived by the victim or, upon motion by a party, the court finds by a preponderance of the
 71 evidence at a pretrial hearing or hearing outside the presence of the jury that:

72 (1) In a civil proceeding:

73 (A) The evidence sought is material and relevant to factual issues to be determined;

74 (B) The evidence is not sought solely for the purpose of referring to the victim's
 75 character for truthfulness or untruthfulness; provided, however, that this subparagraph
 76 shall not apply to evidence of the victim's prior inconsistent statements;

77 (C) The evidence sought is not available or already obtained by the party seeking
 78 disclosure; and

79 (D) The probative value of the evidence sought substantially outweighs the negative
 80 effect of the disclosure of the evidence on the victim; or

81 (2) In a criminal proceeding:

82 (A) The evidence sought is material and relevant to the issue of guilt, degree of guilt,
 83 or sentencing for the offense charged or a lesser included offense;

84 (B) The evidence is not sought solely for the purpose of referring to the victim's
 85 character for truthfulness or untruthfulness; provided, however, that this subparagraph
 86 shall not apply to evidence of the victim's prior inconsistent statements;

87 (C) The evidence sought is not available or already obtained by the party seeking
 88 disclosure; and

89 (D) The probative value of the evidence sought substantially outweighs the negative
 90 effect of the disclosure of the evidence on the victim.

91 (c) If the court finds that the evidence sought may be subject to disclosure pursuant to
 92 subsection (b) of this Code section, the court shall order that such evidence be produced
 93 for the court under seal, shall examine the evidence in camera, and may allow disclosure
 94 of those portions of the evidence that the court finds are subject to disclosure under this
 95 Code section.

96 (d) The privilege afforded under this Code section shall terminate upon the death of the
 97 victim.

98 (e) The privilege granted by this Code section shall not apply if the agent was a witness
99 or party to the family violence or sexual assault or other crime that occurred in the agent's
100 presence.

101 (f) The mere presence of a third person during communications between an agent and a
102 victim shall not void the privilege granted by this Code section, provided that the
103 communication occurred in a setting when or where the victim had a reasonable
104 expectation of privacy.

105 (g) If the victim is or has been judicially determined to be incompetent, the victim's
106 guardian may waive the victim's privilege.

107 (h) In criminal proceedings, if either party intends to compel evidence based on this Code
108 section, the party shall file and serve notice of his or her intention on the opposing party
109 at least ten days prior to trial, or as otherwise directed by the court. The court shall hold
110 a pretrial hearing in accordance with subsection (b) of this Code section and determine the
111 issue prior to trial."

112 **SECTION 3.**

113 This Act shall become effective on January 1, 2013.

114 **SECTION 4.**

115 All laws and parts of laws in conflict with this Act are repealed.