

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2001**

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**SENATE BILL 711**

Short Title: Testimonial Privilege for Violence Victims. (Public)

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Sponsors: Senators Rand; Ballance, Carter, Clodfelter, Cunningham, Dalton, Foxx, Garrou, Gulley, Hagan, Martin of Guilford, Metcalf, Miller, Reeves, Thomas, and Wellons.

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Referred to: Judiciary I.

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March 28, 2001

1 A BILL TO BE ENTITLED  
2 AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR  
3 COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELORS, RAPE  
4 CRISIS CENTERS, AND DOMESTIC VIOLENCE PROGRAMS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 7 of Chapter 8 of the General Statutes is amended by  
7 adding a new section to read:

8 "**§ 8-53.12. Communications with sexual assault counselors, rape crisis centers,**  
9 **and domestic violence programs privileged.**

10 (a) Definitions. – The following definitions apply in this section:

11 (1) Center. – A domestic violence program or rape crisis center.

12 (2) Domestic violence program. – A nonprofit organization or program  
13 whose primary purpose is to provide services to domestic violence  
14 victims that include, but are not limited to, crisis hotlines; safe homes  
15 or shelters; children of violence services; community education;  
16 counseling systems, intervention and interface; transportation and  
17 referral; and victim assistance.

18 (3) Domestic violence victim. – A person who consults or has consulted  
19 any employee, agent, or volunteer of a domestic violence program for  
20 the purpose of securing advice, counseling, or other assistance as a  
21 result of mental, emotional, or physical injuries suffered as a result of  
22 domestic violence as defined by G.S. 50B-1. The term shall also  
23 include those persons who have a significant relationship with a victim  
24 of domestic violence and who have sought advice, counseling, or  
25 assistance concerning a mental, physical, or emotional condition

1 caused or reasonably believed to be caused by the domestic violence  
2 against the victim.

3 (4) Rape crisis center. – Any publicly or privately funded agency,  
4 institution, organization, or facility that offers counseling and other  
5 assistance to victims of sexual assault and their families.

6 (5) Sexual assault victim. – A person who consults or has consulted any  
7 employee, agent, or volunteer of a rape crisis center for the purpose of  
8 securing advice, counseling, or other assistance as a result of injuries  
9 suffered from sexual assault as defined by G.S. 14-27.2, G.S. 14-27.3,  
10 G.S. 14-27.4, G.S. 14-27.5, G.S. 14-27.7, and G.S. 14-27.7A. The  
11 term shall also include those persons who have a significant  
12 relationship with a victim of sexual assault and who have sought  
13 advice, counseling, or assistance concerning a mental, physical, or  
14 emotional condition caused or reasonably believed to be caused by  
15 sexual assault of a victim.

16 (6) Victim. – A sexual assault victim or a domestic violence victim.

17 (b) Privileged Communications. – A victim has a qualified privilege not to  
18 disclose, and to prevent any other person from disclosing, oral or written  
19 communications, information, or materials (i) made by, for, or about the victim or (ii)  
20 made, given to, or prepared by or for any agent, employee, or volunteer of a center.

21 (c) No Disclosure Without Victim's Consent. – Without the express written  
22 consent of the victim, no agent, employee, or volunteer of a center may disclose,  
23 divulge, produce, or testify concerning any communication or information, or records  
24 thereof, disclosed by any victim to them or to the center. Nothing disclosed in violation  
25 of this subsection shall be admissible as evidence in any judicial or quasi-judicial  
26 proceeding, including, but not limited to, civil, criminal, and juvenile proceedings. No  
27 agent, employee, or volunteer of a center may be examined in any proceeding as to any  
28 communication made or information disclosed by a victim, and no subpoena requiring  
29 their testimony concerning privileged information or any record thereof, may be issued  
30 or granted in any proceeding except as provided by subsection (e) of this section.

31 (d) The consent of a victim as to the direct examination of any agent, employee,  
32 or volunteer counselor of a center regarding communications made by the victim to that  
33 witness, or the offer at trial with the consent of the victim of any other evidence of any  
34 communication by or on behalf of the victim to a center or its agent, employee, or  
35 volunteer, shall be deemed consent for the cross-examination of the employee or  
36 volunteer, or the introduction of any other parts of the records of the center with respect  
37 to such communication, by the adverse party to the proceeding.

38 (e) Initial Court Review. – The privilege provided in this section may be  
39 superseded only by written judicial order of a district or superior court judge entered  
40 after compliance with the requirements of this section. The party seeking the  
41 information must file a written motion specifying the documents or testimony requested,  
42 and a copy of the motion and all supporting documents and briefs must be served on the  
43 victim and the center. The court must conduct a hearing at which the court has afforded  
44 the victim and the rape crisis center or domestic violence program and the applicant

1 reasonable opportunity to be heard. At the hearing, the party seeking to obtain access to  
2 a communication or the production of documents otherwise made privileged by this  
3 section must establish each of the following by clear and convincing evidence a good  
4 faith, specific, and reasonable basis for believing:

5 (1) The records or testimony sought are likely to contain specific, clearly  
6 identified information relevant and material to the factual issues to be  
7 determined in the civil proceeding, or exculpatory evidence which is  
8 relevant and material to the issue of the defendant's guilt in a criminal  
9 proceeding, and are not sought merely for impeachment purposes. This  
10 provision shall not be used to provide for general discovery, or for the  
11 purpose of determining whether any nonspecified information exists  
12 therein.

13 (2) The specific, clearly identified information is not otherwise available  
14 to the party seeking to offer the privileged evidence, or to obtain the  
15 order to compel production.

16 (3) The evidence sought is not merely cumulative of other evidence or  
17 information available or already obtained by the party or the party's  
18 counsel.

19 (f) Motion for Production or Subpoena to Be Denied. – Upon the failure of any  
20 applicant to establish the circumstances and basis required by subsection (e) of this  
21 section, the motion for production or other request shall be denied.

22 (g) In Camera Inspection. – In the event the court finds the circumstances and  
23 basis required in subsection (d) of this section have been established, the court shall  
24 require production, under seal, of the records or testimony sought and the records shall  
25 be received and reviewed by the court in camera. The court may not order disclosure  
26 unless it determines by clear and convincing evidence after in camera inspection that:

27 (1) The records or testimony contain information not otherwise available  
28 to the applicant;

29 (2) The information is relevant and material to factual issues to be  
30 determined in a civil proceeding, or is relevant, material, and  
31 exculpatory upon the issue of guilt in a criminal proceeding, and is not  
32 sought solely for impeachment purposes; and,

33 (3) Disclosure of all or a portion of the information sought is essential to  
34 the proper administration of justice.

35 (h) Limited Disclosure. – The court may order disclosure of only such portions of  
36 the records or communications sought as are relevant and material to the factual issues  
37 in a civil case, or as are directly material and exculpatory on the ultimate issue of guilt  
38 in a criminal case, or of adjudication in a juvenile case.

39 (i) Copies Furnished to Counsel, Prosecutor. – Copies of records or testimony  
40 ordered disclosed under this section to counsel for an accused in a criminal case shall  
41 also be furnished to the prosecutor. Materials ordered disclosed in any matter shall be  
42 furnished to counsel for all parties appearing. No person receiving the material shall use  
43 or disclose any information contained therein except in the prosecution or the  
44 proceeding on which the order was based.

1       (j) Duty of Center to Assert Privilege. – Absent written consent to disclosure  
2 from the person or persons to whom the records or communications pertain, any person,  
3 center, or agency that has or is alleged to have possession of records privileged under  
4 this section, shall have a duty not to disclose privileged materials or communications,  
5 and the person, center, or agency, or any guardian or conservator of a victim who is a  
6 minor or otherwise incapacitated, shall assert the privilege provided herein for and on  
7 behalf of persons to whom any records sought pertain. No person, center, or agency  
8 shall produce or divulge the contents of any privileged record until a final judicial order  
9 is entered directing the production or disclosure as provided in subsections (g) and (h)  
10 of this section. Any person, center, or agency producing records pursuant to a final  
11 judicial order shall be immune from any claim related to or alleging their improper  
12 production.

13       (k) Duty to Report Abuse or Neglect. – Nothing in the section shall be construed  
14 to relieve any person of any duty pertaining to reporting abuse or neglect as required by  
15 law."

16               **SECTION 2.** This act becomes effective December 1, 2001, and applies to  
17 all actions and proceedings pending in the courts of this State on or after that date.