

SENATE BILL REPORT

SB 5931

As Reported by Senate Committee On:
Judiciary, February 20, 2009

Title: An act relating to mental health counselor privilege.

Brief Description: Regarding mental health counselor privilege.

Sponsors: Senators Murray, Delvin and Kline.

Brief History:

Committee Activity: Judiciary: 2/17/09, 2/20/09 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5931 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; Carrell, Hargrove, Kohl-Welles, Roach and Tom.

Staff: Kim Johnson (786-7472)

Background: The judiciary has the power to compel witnesses to appear before the court and testify in judicial proceedings. However, the common law and statutory law recognize exceptions to compelled testimony in some circumstances, including testimonial privileges. Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such societal importance that they should be protected.

The Washington Legislature has established a number of testimonial privileges in statute, including communications between the following persons: (1) spouses or domestic partners; (2) attorney and client; (3) clergy and penitent; (4) physician and patient; (5) psychologist and client; (6) optometrist and client; (7) law enforcement peer support counselor and a law enforcement officer; and (8) sexual assault advocate and victim.

Licensed mental health counselors, marriage and family therapists and social workers currently are required to hold information received in the rendering of professional services as confidential, with some specified exceptions. However, mental health counselors', marriage and family therapists' and social workers' communications with their clients are not currently afforded testimonial privilege.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill (Recommended Substitute): Mental health counselors, independent clinical social workers, and marriage and family therapists licensed under chapter 18.225 RCW may not disclose, or be compelled to testify about, any information acquired from persons consulting the counselor in a professional capacity when the information was necessary to enable the counselor to render professional services to those persons.

Exceptions to the testimonial privilege include (1) the client provides written authorization to disclose the information or to testify; (2) the client brings charges against the mental health practitioner; (3) the Secretary of Health subpoenas information pursuant to a complaint or report under the Uniform Disciplinary Act; (4) the information is required to be disclosed under statutory mandatory reporting provisions; and (5) the practitioner reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of an individual, however there is no obligation to disclose in this situation.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): Licensed independent clinical social workers and licensed marriage and family therapists are also provided testimonial privilege.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The intent of the bill is to also include licensed independent clinical social workers and licensed marriage and family therapists. Licensed clinical psychotherapists have privilege in 47 other states. You should also note that we have privilege under federal law. This is an important issue for mental health counselors, marriage and family therapists, and independent clinical social workers to be able to really help their clients without the fear of any information they've disclosed being divulged in a court of law. Licensed psychotherapists have privilege in 48 other states. Privacy and privilege is a cornerstone of the work that we do. I've had people be shocked by the fact that we do not have privilege and subsequently refuse treatment.

Persons Testifying: PRO: Laura Groshong, Washington State Society for Clinical Social Work; Adrian R. Magnuson-Whyte, Washington Mental Health Counselors Association; Carey Morris, Marriage and Family Therapists.