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HOUSE BILL 2122

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By Representatives Ericks, Santos, Hankins, Morrell, Lantz, Blake, Darneille, Ormsby, Wood, Chase, Linville, Kenney, Tom, McDermott and Hasegawa

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1 AN ACT Relating to protecting confidentiality of domestic violence  
2 information; amending RCW 5.60.060, 70.123.020, 70.123.030, 70.123.040,  
3 and 74.04.060; and adding a new section to chapter 70.123 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 5.60.060 and 2001 c 286 s 2 are each amended to read  
6 as follows:

7 (1) A husband shall not be examined for or against his wife,  
8 without the consent of the wife, nor a wife for or against her husband  
9 without the consent of the husband; nor can either during marriage or  
10 afterward, be without the consent of the other, examined as to any  
11 communication made by one to the other during marriage. But this  
12 exception shall not apply to a civil action or proceeding by one  
13 against the other, nor to a criminal action or proceeding for a crime  
14 committed by one against the other, nor to a criminal action or  
15 proceeding against a spouse if the marriage occurred subsequent to the  
16 filing of formal charges against the defendant, nor to a criminal  
17 action or proceeding for a crime committed by said husband or wife  
18 against any child of whom said husband or wife is the parent or  
19 guardian, nor to a proceeding under chapter 70.96A, 71.05, or 71.09

1 RCW: PROVIDED, That the spouse of a person sought to be detained under  
2 chapter 70.96A, 71.05, or 71.09 RCW may not be compelled to testify and  
3 shall be so informed by the court prior to being called as a witness.

4 (2)(a) An attorney or counselor shall not, without the consent of  
5 his or her client, be examined as to any communication made by the  
6 client to him or her, or his or her advice given thereon in the course  
7 of professional employment.

8 (b) A parent or guardian of a minor child arrested on a criminal  
9 charge may not be examined as to a communication between the child and  
10 his or her attorney if the communication was made in the presence of  
11 the parent or guardian. This privilege does not extend to  
12 communications made prior to the arrest.

13 (3) A member of the clergy or a priest shall not, without the  
14 consent of a person making the confession, be examined as to any  
15 confession made to him or her in his or her professional character, in  
16 the course of discipline enjoined by the church to which he or she  
17 belongs.

18 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,  
19 a physician or surgeon or osteopathic physician or surgeon or podiatric  
20 physician or surgeon shall not, without the consent of his or her  
21 patient, be examined in a civil action as to any information acquired  
22 in attending such patient, which was necessary to enable him or her to  
23 prescribe or act for the patient, except as follows:

24 (a) In any judicial proceedings regarding a child's injury,  
25 neglect, or sexual abuse or the cause thereof; and

26 (b) Ninety days after filing an action for personal injuries or  
27 wrongful death, the claimant shall be deemed to waive the physician-  
28 patient privilege. Waiver of the physician-patient privilege for any  
29 one physician or condition constitutes a waiver of the privilege as to  
30 all physicians or conditions, subject to such limitations as a court  
31 may impose pursuant to court rules.

32 (5) A public officer shall not be examined as a witness as to  
33 communications made to him or her in official confidence, when the  
34 public interest would suffer by the disclosure.

35 (6)(a) A peer support group counselor shall not, without consent of  
36 the law enforcement officer making the communication, be compelled to  
37 testify about any communication made to the counselor by the officer  
38 while receiving counseling. The counselor must be designated as such

1 by the sheriff, police chief, or chief of the Washington state patrol,  
2 prior to the incident that results in counseling. The privilege only  
3 applies when the communication was made to the counselor while acting  
4 in his or her capacity as a peer support group counselor. The  
5 privilege does not apply if the counselor was an initial responding  
6 officer, a witness, or a party to the incident which prompted the  
7 delivery of peer support group counseling services to the law  
8 enforcement officer.

9 (b) For purposes of this section, "peer support group counselor"  
10 means a:

11 (i) Law enforcement officer, or civilian employee of a law  
12 enforcement agency, who has received training to provide emotional and  
13 moral support and counseling to an officer who needs those services as  
14 a result of an incident in which the officer was involved while acting  
15 in his or her official capacity; or

16 (ii) Nonemployee counselor who has been designated by the sheriff,  
17 police chief, or chief of the Washington state patrol to provide  
18 emotional and moral support and counseling to an officer who needs  
19 those services as a result of an incident in which the officer was  
20 involved while acting in his or her official capacity.

21 (7) A sexual assault advocate may not, without the consent of the  
22 victim, be examined as to any communication made by the victim to the  
23 sexual assault advocate.

24 (a) For purposes of this section, "sexual assault advocate" means  
25 the employee or volunteer from a rape crisis center, victim assistance  
26 unit, program, or association, that provides information, medical or  
27 legal advocacy, counseling, or support to victims of sexual assault,  
28 who is designated by the victim to accompany the victim to the hospital  
29 or other health care facility and to proceedings concerning the alleged  
30 assault, including police and prosecution interviews and court  
31 proceedings.

32 (b) A sexual assault advocate may disclose a confidential  
33 communication without the consent of the victim if failure to disclose  
34 is likely to result in a clear, imminent risk of serious physical  
35 injury or death of the victim or another person. Any sexual assault  
36 advocate participating in good faith in the disclosing of records and  
37 communications under this section shall have immunity from any  
38 liability, civil, criminal, or otherwise, that might result from the

1 action. In any proceeding, civil or criminal, arising out of a  
2 disclosure under this section, the good faith of the sexual assault  
3 advocate who disclosed the confidential communication shall be  
4 presumed.

5 (8) A domestic violence advocate may not, without the consent of  
6 the victim, be examined as to any communication made by the victim to  
7 the domestic violence advocate.

8 (a) For purposes of this section, "domestic violence advocate"  
9 means the employee or volunteer from a domestic violence shelter,  
10 victim assistance unit, program, or association, that provides  
11 information, medical or legal advocacy, counseling, or support to  
12 victims of domestic violence, who is designated by the victim to  
13 accompany the victim to proceedings concerning the alleged acts of  
14 domestic violence, including police and prosecution interviews, court  
15 proceedings, and to the hospital or other health care facility.

16 (b) A domestic violence advocate may disclose a confidential  
17 communication without the consent of the victim if failure to disclose  
18 is likely to result in a clear, imminent risk of serious physical  
19 injury or death of the victim or another person. Any domestic violence  
20 advocate participating in good faith in the disclosing of records and  
21 communications under this section is immune from any liability, civil,  
22 criminal, or otherwise, that might result from the action. In any  
23 proceeding, civil or criminal, arising out of a disclosure under this  
24 section, the good faith of the domestic violence advocate who disclosed  
25 the confidential communication shall be presumed.

26 **Sec. 2.** RCW 70.123.020 and 1991 c 301 s 9 are each amended to read  
27 as follows:

28 Unless the context clearly requires otherwise, the definitions in  
29 this section apply throughout this chapter.

30 (1) "Shelter" means a place of temporary refuge, offered on a  
31 twenty-four hour, seven day per week basis to victims of domestic  
32 violence and their children.

33 (2) "Domestic violence" is a categorization of offenses, as defined  
34 in RCW 10.99.020, committed by one cohabitant against another.

35 (3) "Department" means the department of social and health  
36 services.

1 (4) "Victim" means a cohabitant who has been subjected to domestic  
2 violence.

3 (5) "Cohabitant" means a person who is married or who is cohabiting  
4 with a person of the opposite sex like husband and wife at the present  
5 or at sometime in the past. Any person who has one or more children in  
6 common with another person, regardless of whether they have been  
7 married or lived together at any time, shall be treated as a  
8 cohabitant.

9 (6) "Community advocate" means a person employed by a local  
10 domestic violence program to provide ongoing assistance to victims of  
11 domestic violence in assessing safety needs, documenting the incidents  
12 and the extent of violence for possible use in the legal system, making  
13 appropriate social service referrals, and developing protocols and  
14 maintaining ongoing contacts necessary for local systems coordination.

15 (7) "Domestic violence program" means an agency that provides  
16 shelter, advocacy, and counseling, or advocacy and counseling, for  
17 domestic violence victims in a supportive environment.

18 (8) "Legal advocate" means a person employed by a domestic violence  
19 program or court system to advocate for victims of domestic violence,  
20 within the criminal and civil justice systems, by attending court  
21 proceedings, assisting in document and case preparation, and ensuring  
22 linkage with the community advocate.

23 (9) "Secretary" means the secretary of the department of social and  
24 health services or the secretary's designee.

25 **Sec. 3.** RCW 70.123.030 and 1989 1st ex.s. c 9 s 235 are each  
26 amended to read as follows:

27 The department of social and health services, in consultation with  
28 the state department of health, and individuals or groups having  
29 experience and knowledge of the problems of victims of domestic  
30 violence, shall:

31 (1) Establish minimum standards for shelters applying for grants  
32 from the department under this chapter. Classifications may be made  
33 dependent upon size, geographic location, and population needs;

34 (2) Establish minimum standards for domestic violence programs that  
35 apply for grants under this chapter;

36 (3) Receive grant applications for the development and

1 establishment of (~~shelters~~) domestic violence programs for victims of  
2 domestic violence;  
3 (~~(3)~~) (4) Distribute funds, within forty-five days after  
4 approval, to those (~~shelters~~) domestic violence programs meeting  
5 departmental standards;  
6 (~~(4)~~) (5) Evaluate biennially each (~~shelter~~) domestic violence  
7 program receiving departmental funds for compliance with the  
8 established minimum standards; and  
9 (~~(5)~~) (6) Review the minimum standards each biennium to ensure  
10 applicability to community and client needs.

11 **Sec. 4.** RCW 70.123.040 and 1979 ex.s. c 245 s 4 are each amended  
12 to read as follows:

13 (1) Minimum standards established by the department under RCW  
14 70.123.030 shall ensure that shelters receiving grants under this  
15 chapter provide services meeting basic survival needs, where not  
16 provided by other means, such as, but not limited to, food, clothing,  
17 housing, safety, security, client advocacy, client confidentiality, and  
18 counseling. These services shall be problem-oriented and designed to  
19 provide necessary assistance to the victims of domestic violence and  
20 their children.

21 (2) Minimum standards established by the department under RCW  
22 70.123.030 regarding domestic violence programs shall ensure that  
23 domestic violence programs receiving grants under this chapter provide  
24 services designed to enhance safety and security by means such as, but  
25 not limited to, client advocacy, client confidentiality, and  
26 counseling.

27 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.123 RCW  
28 to read as follows:

29 (1) Except as authorized in subsections (2) and (3) of this  
30 section, a domestic violence program, an individual who assists a  
31 domestic violence program in the delivery of services, or an agent,  
32 employee, or volunteer of a domestic violence program may not disclose  
33 information about a recipient of shelter, advocacy, or counseling  
34 services without the informed authorization of the recipient. In the  
35 case of an unemancipated minor, the minor and the parent or guardian  
36 must provide the authorization.

1 (2)(a) A recipient of shelter, advocacy, or counseling services may  
2 authorize a domestic violence program to disclose information about the  
3 recipient. The authorization must be in writing, signed by the  
4 recipient, or if an unemancipated minor is the recipient, signed by the  
5 minor and the parent or guardian, and must contain a reasonable time  
6 limit on the duration of the recipient's authorization. If the  
7 authorization does not contain a date upon which the authorization to  
8 disclose information expires, the recipient's authorization will expire  
9 ninety days after the date it was signed.

10 (b) The domestic violence program's disclosure of information shall  
11 be only to the extent authorized by the recipient. The domestic  
12 violence program, if requested, shall provide a copy of the disclosed  
13 information to the recipient.

14 (c) Except as provided under this chapter, an authorization is not  
15 a waiver of the recipient's rights or privileges under other statutes,  
16 rules of evidence, or common law.

17 (3) If disclosure of a recipient's information is required by  
18 statute or court order, the domestic violence program shall make  
19 reasonable attempts to provide notice to the recipient affected by the  
20 disclosure of information. If personally identifying information is or  
21 will be disclosed, the domestic violence program shall take steps  
22 necessary to protect the privacy and safety of the persons affected by  
23 the disclosure of the information.

24 (4) To comply with tribal, federal, state, or territorial  
25 reporting, evaluation, or data collection requirements, domestic  
26 violence programs may share data in the aggregate that does not contain  
27 personal identifying information and that: (a) Pertains to services to  
28 their clients; or (b) is demographic information.

29 **Sec. 6.** RCW 74.04.060 and 1987 c 435 s 29 are each amended to read  
30 as follows:

31 (1)(a) For the protection of applicants and recipients, the  
32 department and the county offices and their respective officers and  
33 employees are prohibited, except as hereinafter provided, from  
34 disclosing the contents of any records, files, papers and  
35 communications, except for purposes directly connected with the  
36 administration of the programs of this title. In any judicial  
37 proceeding, except such proceeding as is directly concerned with the

1 administration of these programs, such records, files, papers and  
2 communications, and their contents, shall be deemed privileged  
3 communications and except for the right of any individual to inquire of  
4 the office whether a named individual is a recipient of welfare  
5 assistance and such person shall be entitled to an affirmative or  
6 negative answer, unless such answer is likely to impair the safety of  
7 past or current victims of domestic violence or stalking. The  
8 secretary shall adopt rules to establish procedures to protect the  
9 confidentiality and prevent the disclosure of information that may  
10 impair the safety of past and current victims of domestic violence and  
11 stalking. At a minimum, the rules shall address the sharing of  
12 information among state agencies and other partners and modifying or  
13 improving existing data bases to protect from unauthorized information  
14 sharing and disclosure.

15 ((However,)) (b) Upon written request of a parent who has been  
16 awarded visitation rights in an action for divorce or separation or any  
17 parent with legal custody of the child, the department shall disclose  
18 to him or her the last known address and location of his or her natural  
19 or adopted children. The secretary shall adopt rules which establish  
20 procedures for disclosing the address of the children and providing,  
21 when appropriate, for prior notice to the custodian of the children.  
22 The notice shall state that a request for disclosure has been received  
23 and will be complied with by the department unless the department  
24 receives a copy of a court order which enjoins the disclosure of the  
25 information or restricts or limits the requesting party's right to  
26 contact or visit the other party or the child. Information supplied to  
27 a parent by the department shall be used only for purposes directly  
28 related to the enforcement of the visitation and custody provisions of  
29 the court order of separation or decree of divorce. No parent shall  
30 disclose such information to any other person except for the purpose of  
31 enforcing visitation provisions of the said order or decree.

32 (2) The county offices shall maintain monthly at their offices a  
33 report showing the names and addresses of all recipients in the county  
34 receiving public assistance under this title, together with the amount  
35 paid to each during the preceding month.

36 (3) The provisions of this section shall not apply to duly  
37 designated representatives of approved private welfare agencies, public  
38 officials, members of legislative interim committees and advisory

1 committees when performing duties directly connected with the  
2 administration of this title, such as regulation and investigation  
3 directly connected therewith: PROVIDED, HOWEVER, That any information  
4 so obtained by such persons or groups shall be treated with such degree  
5 of confidentiality as is required by the federal social security law.  
6 (4) It shall be unlawful, except as provided in this section, for  
7 any person, body, association, firm, corporation or other agency to  
8 solicit, publish, disclose, receive, make use of, or to authorize,  
9 knowingly permit, participate in or acquiesce in the use of any lists  
10 or names for commercial or political purposes of any nature. The  
11 violation of this section shall be a gross misdemeanor.

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