
HOUSE BILL 2848

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By Representatives Lantz, Ericks, Santos, Williams, Rodne, Priest, Hudgins, Darneille, Morrell, Kessler, McDonald, Roberts, McCoy, Kenney, Campbell, P. Sullivan, Wallace, Hasegawa, Kilmer, Green, Simpson, Wood, Ormsby and Springer

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1 AN ACT Relating to protecting confidentiality of domestic violence
2 information; amending RCW 5.60.060, 70.123.040, and 74.04.060; and
3 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 2005 c 504 s 705 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, 70.96B, 71.05, or

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

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

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

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

19 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.360
20 (8) and (9), a physician or surgeon or osteopathic physician or surgeon
21 or podiatric physician or surgeon shall not, without the consent of his
22 or her patient, be examined in a civil action as to any information
23 acquired in attending such patient, which was necessary to enable him
24 or her to prescribe or act for the patient, except as follows:

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

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

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

36 (6)(a) A peer support group counselor shall not, without consent of
37 the law enforcement officer making the communication, be compelled to
38 testify about any communication made to the counselor by the officer

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

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

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

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

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

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

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

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

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

9 (a) For purposes of this section, "domestic violence advocate"
10 means an employee or supervised volunteer from a community-based
11 domestic violence program or human services program that provides
12 information, advocacy, counseling, crisis intervention, emergency
13 shelter, or support to victims of domestic violence and who is not
14 employed by, or under the direct supervision of, a law enforcement
15 agency, a prosecutor's office, or the child protective services section
16 of the department of social and health services as defined in RCW
17 26.44.020.

18 (b) A domestic violence advocate may disclose a confidential
19 communication without the consent of the victim if failure to disclose
20 is likely to result in a clear, imminent risk of serious physical
21 injury or death of the victim or another person, or pursuant to RCW
22 26.44.030(1). Any domestic violence advocate participating in good
23 faith in the disclosing of communications under this subsection is
24 immune from liability, civil, criminal, or otherwise, that might result
25 from the action. In any proceeding, civil or criminal, arising out of
26 a disclosure under this subsection, the good faith of the domestic
27 violence advocate who disclosed the confidential communication shall be
28 presumed.

29 **Sec. 2.** RCW 70.123.040 and 1979 ex.s. c 245 s 4 are each amended
30 to read as follows:

31 (1) Minimum standards established by the department under RCW
32 70.123.030 shall ensure that shelters receiving grants under this
33 chapter provide services meeting basic survival needs, where not
34 provided by other means, such as, but not limited to, food, clothing,
35 housing, safety, security, client advocacy, client confidentiality, and
36 counseling. These services shall be problem-oriented and designed to

1 provide necessary assistance to the victims of domestic violence and
2 their children.

3 (2) The department shall establish minimum standards that ensure
4 that nonshelter community-based services for victims of domestic
5 violence funded under RCW 70.123.150 provide services designed to
6 enhance safety and security by means such as, but not limited to,
7 client advocacy, client confidentiality, and counseling.

8 NEW SECTION. Sec. 3. A new section is added to chapter 70.123 RCW
9 to read as follows:

10 (1) Except as authorized in subsections (2) and (3) of this
11 section, or pursuant to court order under RCW 70.123.075, a domestic
12 violence program, an individual who assists a domestic violence program
13 in the delivery of services, or an agent, employee, or volunteer of a
14 domestic violence program shall not disclose information about a
15 recipient of shelter, advocacy, or counseling services without the
16 informed authorization of the recipient. In the case of an
17 unemancipated minor, the minor and the parent or guardian must provide
18 the authorization. For the purposes of this section, a "domestic
19 violence program" means an agency that provides shelter, advocacy, or
20 counseling for domestic violence victims in a supportive environment.

21 (2)(a) A recipient of shelter, advocacy, or counseling services may
22 authorize a domestic violence program to disclose information about the
23 recipient. The authorization must be in writing, signed by the
24 recipient, or if an unemancipated minor is the recipient, signed by the
25 minor and the parent or guardian, and must contain a reasonable time
26 limit on the duration of the recipient's authorization. If the
27 authorization does not contain a date upon which the authorization to
28 disclose information expires, the recipient's authorization expires
29 ninety days after the date it was signed.

30 (b) The domestic violence program's disclosure of information shall
31 be only to the extent authorized by the recipient. The domestic
32 violence program, if requested, shall provide a copy of the disclosed
33 information to the recipient.

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

1 (3) If disclosure of a recipient's information is required by
2 statute or court order, the domestic violence program shall make
3 reasonable attempts to provide notice to the recipient affected by the
4 disclosure of information. If personally identifying information is or
5 will be disclosed, the domestic violence program shall take steps
6 necessary to protect the privacy and safety of the persons affected by
7 the disclosure of the information.

8 (4) To comply with tribal, federal, state, or territorial
9 reporting, evaluation, or data collection requirements, domestic
10 violence programs may share data in the aggregate that does not contain
11 personally identifying information and that: (a) Pertains to services
12 to their clients; or (b) is demographic information.

13 **Sec. 4.** RCW 74.04.060 and 1987 c 435 s 29 are each amended to read
14 as follows:

15 (1)(a) For the protection of applicants and recipients, the
16 department and the county offices and their respective officers and
17 employees are prohibited, except as hereinafter provided, from
18 disclosing the contents of any records, files, papers and
19 communications, except for purposes directly connected with the
20 administration of the programs of this title. In any judicial
21 proceeding, except such proceeding as is directly concerned with the
22 administration of these programs, such records, files, papers and
23 communications, and their contents, shall be deemed privileged
24 communications and except for the right of any individual to inquire of
25 the office whether a named individual is a recipient of welfare
26 assistance and such person shall be entitled to an affirmative or
27 negative answer, unless such answer is likely to impair the safety of
28 past or current victims of domestic violence or stalking. The
29 secretary shall adopt rules to establish procedures to protect the
30 confidentiality and prevent the disclosure of information that may
31 impair the safety of past and current victims of domestic violence and
32 stalking. At a minimum, the rules shall address the sharing of
33 information among state agencies and other partners and modifying or
34 improving existing data bases to protect from unauthorized information
35 sharing and disclosure. ((However,))

36 (b) Upon written request of a parent who has been awarded
37 visitation rights in an action for divorce or separation or any parent

1 with legal custody of the child, the department shall disclose to him
2 or her the last known address and location of his or her natural or
3 adopted children. The secretary shall adopt rules which establish
4 procedures for disclosing the address of the children and providing,
5 when appropriate, for prior notice to the custodian of the children.
6 The notice shall state that a request for disclosure has been received
7 and will be complied with by the department unless the department
8 receives a copy of a court order which enjoins the disclosure of the
9 information or restricts or limits the requesting party's right to
10 contact or visit the other party or the child. Information supplied to
11 a parent by the department shall be used only for purposes directly
12 related to the enforcement of the visitation and custody provisions of
13 the court order of separation or decree of divorce. No parent shall
14 disclose such information to any other person except for the purpose of
15 enforcing visitation provisions of the said order or decree.

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

20 (3) The provisions of this section shall not apply to duly
21 designated representatives of approved private welfare agencies, public
22 officials, members of legislative interim committees and advisory
23 committees when performing duties directly connected with the
24 administration of this title, such as regulation and investigation
25 directly connected therewith: PROVIDED, HOWEVER, That any information
26 so obtained by such persons or groups shall be treated with such degree
27 of confidentiality as is required by the federal social security law.

28 (4) It shall be unlawful, except as provided in this section, for
29 any person, body, association, firm, corporation or other agency to
30 solicit, publish, disclose, receive, make use of, or to authorize,
31 knowingly permit, participate in or acquiesce in the use of any lists
32 or names for commercial or political purposes of any nature. The
33 violation of this section shall be a gross misdemeanor.

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