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SENATE BILL 5931

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators Murray, Delvin, and Kline

Read first time 02/09/09. Referred to Committee on Judiciary.

1            AN ACT Relating to mental health counselor privilege; and amending  
2 RCW 18.225.105 and 5.60.060.

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

4            **Sec. 1.** RCW 18.225.105 and 2005 c 504 s 707 are each amended to  
5 read as follows:

6            A person licensed under this chapter shall not disclose the written  
7 acknowledgment of the disclosure statement pursuant to RCW 18.225.100,  
8 (~~nor any information acquired from persons consulting the individual~~  
9 ~~in a professional capacity when the information was necessary to enable~~  
10 ~~the individual to render professional services to those persons~~))  
11 except:

12            (1) With the written authorization of that person or, in the case  
13 of death or disability, the person's personal representative;

14            (2) If the person waives the privilege by bringing charges against  
15 the person licensed under this chapter;

16            (3) In response to a subpoena from the secretary. The secretary  
17 may subpoena only records related to a complaint or report under RCW  
18 18.130.050;

1 (4) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.360  
2 (8) and (9); or

3 (5) To any individual if the person licensed under this chapter  
4 reasonably believes that disclosure will avoid or minimize an imminent  
5 danger to the health or safety of the individual or any other  
6 individual; however, there is no obligation on the part of the provider  
7 to so disclose.

8 **Sec. 2.** RCW 5.60.060 and 2008 c 6 s 402 are each amended to read  
9 as follows:

10 (1) A spouse or domestic partner shall not be examined for or  
11 against his or her spouse or domestic partner, without the consent of  
12 the spouse or domestic partner; nor can either during marriage or  
13 during the domestic partnership or afterward, be without the consent of  
14 the other, examined as to any communication made by one to the other  
15 during the marriage or the domestic partnership. But this exception  
16 shall not apply to a civil action or proceeding by one against the  
17 other, nor to a criminal action or proceeding for a crime committed by  
18 one against the other, nor to a criminal action or proceeding against  
19 a spouse or domestic partner if the marriage or the domestic  
20 partnership occurred subsequent to the filing of formal charges against  
21 the defendant, nor to a criminal action or proceeding for a crime  
22 committed by said spouse or domestic partner against any child of whom  
23 said spouse or domestic partner is the parent or guardian, nor to a  
24 proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW:  
25 PROVIDED, That the spouse or the domestic partner of a person sought to  
26 be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not  
27 be compelled to testify and shall be so informed by the court prior to  
28 being called as a witness.

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

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

1 (3) A member of the clergy, a Christian Science practitioner listed  
2 in the Christian Science Journal, or a priest shall not, without the  
3 consent of a person making the confession or sacred confidence, be  
4 examined as to any confession or sacred confidence made to him or her  
5 in his or her professional character, in the course of discipline  
6 enjoined by the church to which he or she belongs.

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

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

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

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

24 (6)(a) A peer support group counselor shall not, without consent of  
25 the law enforcement officer or firefighter making the communication, be  
26 compelled to testify about any communication made to the counselor by  
27 the officer or firefighter while receiving counseling. The counselor  
28 must be designated as such by the sheriff, police chief, fire chief, or  
29 chief of the Washington state patrol, prior to the incident that  
30 results in counseling. The privilege only applies when the  
31 communication was made to the counselor while acting in his or her  
32 capacity as a peer support group counselor. The privilege does not  
33 apply if the counselor was an initial responding officer or  
34 firefighter, a witness, or a party to the incident which prompted the  
35 delivery of peer support group counseling services to the law  
36 enforcement officer or firefighter.

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

1 (i) Law enforcement officer, firefighter, civilian employee of a  
2 law enforcement agency, or civilian employee of a fire department, who  
3 has received training to provide emotional and moral support and  
4 counseling to an officer or firefighter who needs those services as a  
5 result of an incident in which the officer or firefighter was involved  
6 while acting in his or her official capacity; or

7 (ii) Nonemployee counselor who has been designated by the sheriff,  
8 police chief, fire chief, or chief of the Washington state patrol to  
9 provide emotional and moral support and counseling to an officer or  
10 firefighter who needs those services as a result of an incident in  
11 which the officer or firefighter was involved while acting in his or  
12 her official capacity.

13 (7) A sexual assault advocate may not, without the consent of the  
14 victim, be examined as to any communication made between the victim and  
15 the sexual assault advocate.

16 (a) For purposes of this section, "sexual assault advocate" means  
17 the employee or volunteer from a rape crisis center, victim assistance  
18 unit, program, or association, that provides information, medical or  
19 legal advocacy, counseling, or support to victims of sexual assault,  
20 who is designated by the victim to accompany the victim to the hospital  
21 or other health care facility and to proceedings concerning the alleged  
22 assault, including police and prosecution interviews and court  
23 proceedings.

24 (b) A sexual assault advocate may disclose a confidential  
25 communication without the consent of the victim if failure to disclose  
26 is likely to result in a clear, imminent risk of serious physical  
27 injury or death of the victim or another person. Any sexual assault  
28 advocate participating in good faith in the disclosing of records and  
29 communications under this section shall have immunity from any  
30 liability, civil, criminal, or otherwise, that might result from the  
31 action. In any proceeding, civil or criminal, arising out of a  
32 disclosure under this section, the good faith of the sexual assault  
33 advocate who disclosed the confidential communication shall be  
34 presumed.

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

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

10 (b) A domestic violence advocate may disclose a confidential  
11 communication without the consent of the victim if failure to disclose  
12 is likely to result in a clear, imminent risk of serious physical  
13 injury or death of the victim or another person. This section does not  
14 relieve a domestic violence advocate from the requirement to report or  
15 cause to be reported an incident under RCW 26.44.030(1) or to disclose  
16 relevant records relating to a child as required by RCW 26.44.030(12).  
17 Any domestic violence advocate participating in good faith in the  
18 disclosing of communications under this subsection is immune from  
19 liability, civil, criminal, or otherwise, that might result from the  
20 action. In any proceeding, civil or criminal, arising out of a  
21 disclosure under this subsection, the good faith of the domestic  
22 violence advocate who disclosed the confidential communication shall be  
23 presumed.

24 (9) A mental health counselor licensed under chapter 18.225 RCW may  
25 not disclose, or be compelled to testify about, any information  
26 acquired from persons consulting the individual in a professional  
27 capacity when the information was necessary to enable the individual to  
28 render professional services to those persons except:

29 (a) With the written authorization of that person or, in the case  
30 of death or disability, the person's personal representative;

31 (b) If the person waives the privilege by bringing charges against  
32 the mental health counselor licensed under chapter 18.225 RCW;

33 (c) In response to a subpoena from the secretary of health. The  
34 secretary may subpoena only records related to a complaint or report  
35 under RCW 18.130.050;

36 (d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.360  
37 (8) and (9); or

1       (e) To any individual if the mental health counselor licensed under  
2 chapter 18.225 RCW reasonably believes that disclosure will avoid or  
3 minimize an imminent danger to the health or safety of the individual  
4 or any other individual; however, there is no obligation on the part of  
5 the provider to so disclose.

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