
HOUSE BILL 2637

State of Washington 65th Legislature 2018 Regular Session

By Representatives Holy, Pollet, and Van Werven

Read first time 01/11/18. Referred to Committee on Judiciary.

1 AN ACT Relating to the treatment and handling of communications
2 and records held by campus-affiliated advocates at institutions of
3 higher education; amending RCW 28B.112.030; reenacting and amending
4 RCW 5.60.060; adding a new section to chapter 28B.112 RCW; and
5 creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes that the
8 state's public institutions of higher education play an important
9 role in preventing campus sexual assaults and in providing support
10 and assistance to students who have experienced campus sexual
11 assault. The legislature recognizes that students are more likely to
12 report sexual assault and seek assistance and advocacy if they trust
13 that the institution will manage the survivor's reports and
14 communications appropriately. In 2017, Substitute Senate Bill No.
15 5764 was enacted to ensure that sexual assault survivor
16 communications and records maintained by campus-affiliated advocates
17 remain confidential and not subject to public inspection, except
18 under limited circumstances. The legislature intends to strengthen
19 protections for sexual assault survivors on campus by: (1) Granting
20 privilege to survivor communications made to campus-affiliated
21 advocates, to the same extent communications are privileged when made

1 to sexual assault advocates under current law; and (2) ensuring
2 campus-affiliated advocates are trained on the confidentiality and
3 privileged nature of communications.

4 **Sec. 2.** RCW 28B.112.030 and 2017 c 72 s 2 are each amended to
5 read as follows:

6 (1) Survivor communications with, and records maintained by,
7 campus-affiliated advocates, shall be confidential.

8 (2) Records maintained by a campus-affiliated advocate are not
9 subject to public inspection and copying and are not subject to
10 inspection or copying by an institution of higher education unless:

11 (a) The survivor consents to inspection or copying;

12 (b) There is a clear, imminent risk of serious physical injury or
13 death of the survivor or another person;

14 (c) Inspection or copying is required by federal law; or

15 (d) A court of competent jurisdiction mandates that the record be
16 available for inspection or copying.

17 (3) Communications made between a campus-affiliated advocate and
18 a survivor are privileged to the extent provided under RCW 5.60.060.

19 (4) The definitions in this subsection apply throughout this
20 section, section 3 of this act, and RCW 42.56.240(16) unless the
21 context clearly requires otherwise.

22 (a) "Campus-affiliated advocate" means a "sexual assault
23 advocate" or "domestic violence advocate" as defined in RCW 5.60.060
24 or a victim advocate, employed by or volunteering for an institution
25 of higher education.

26 (b) "Survivor" means any student, faculty, staff, or
27 administrator at an institution of higher education that believes
28 they were a victim of a sexual assault, dating or domestic violence,
29 or stalking.

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.112
31 RCW to read as follows:

32 (1) Before a campus-affiliated advocate may provide advocacy to a
33 survivor, the institution of higher education must ensure that the
34 campus-affiliated advocate has received training regarding the
35 provisions on confidentiality and privilege under RCW 28B.112.030.

36 (2) Training must include the proper handling of communications
37 and records received and maintained by the campus-affiliated
38 advocates.

1 (3)(a) Campus-affiliated advocates must sign a form, created by
2 the institutions of higher education, indicating that the advocate
3 has received training, understands the circumstances and extent under
4 which records and communications may be confidential or privileged,
5 and is able to convey that information to survivors.

6 (b) Notwithstanding any other statute or policy governing an
7 institution of higher education's records retention, an institution
8 of higher education must retain a campus-affiliated advocate's signed
9 form for a period of no less than sixty months after the signatory no
10 longer serves in their capacity as a campus-affiliated advocate.

11 (c) The institutions of higher education, in consultation with
12 the attorney general's office, must create a uniform form to be used
13 statewide.

14 (4) "Campus-affiliated advocate" and "survivor" have the
15 definitions in RCW 28B.112.030.

16 **Sec. 4.** RCW 5.60.060 and 2016 sp.s. c 29 s 402 and 2016 sp.s. c
17 24 s 1 are each reenacted and amended to read as follows:

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

37 (2)(a) An attorney or counselor shall not, without the consent of
38 his or her client, be examined as to any communication made by the

1 client to him or her, or his or her advice given thereon in the
2 course of professional employment.

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

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

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

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

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

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

32 (6)(a) A peer support group counselor shall not, without consent
33 of the law enforcement officer or firefighter making the
34 communication, be compelled to testify about any communication made
35 to the counselor by the officer or firefighter while receiving
36 counseling. The counselor must be designated as such by the sheriff,
37 police chief, fire chief, or chief of the Washington state patrol,
38 prior to the incident that results in counseling. The privilege only
39 applies when the communication was made to the counselor while acting
40 in his or her capacity as a peer support group counselor. The

1 privilege does not apply if the counselor was an initial responding
2 officer or firefighter, a witness, or a party to the incident which
3 prompted the delivery of peer support group counseling services to
4 the law enforcement officer or firefighter.

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

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

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

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

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

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

1 advocate who disclosed the confidential communication shall be
2 presumed.

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

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

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

29 (9) A mental health counselor, independent clinical social
30 worker, or marriage and family therapist licensed under chapter
31 18.225 RCW may not disclose, or be compelled to testify about, any
32 information acquired from persons consulting the individual in a
33 professional capacity when the information was necessary to enable
34 the individual to render professional services to those persons
35 except:

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

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

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

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

6 (e) To any individual if the mental health counselor, independent
7 clinical social worker, or marriage and family therapist licensed
8 under chapter 18.225 RCW reasonably believes that disclosure will
9 avoid or minimize an imminent danger to the health or safety of the
10 individual or any other individual; however, there is no obligation
11 on the part of the provider to so disclose.

12 (10) An individual who acts as a sponsor providing guidance,
13 emotional support, and counseling in an individualized manner to a
14 person participating in an alcohol or drug addiction recovery
15 fellowship may not testify in any civil action or proceeding about
16 any communication made by the person participating in the addiction
17 recovery fellowship to the individual who acts as a sponsor except
18 with the written authorization of that person or, in the case of
19 death or disability, the person's personal representative.

20 (11)(a) A campus-affiliated advocate may not, without the consent
21 of the survivor, be examined as to any communication made between the
22 survivor and the campus-affiliated advocate.

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

34 (c) For purposes of this subsection (11), "campus-affiliated
35 advocate" and "survivor" have the same meaning as defined in RCW
36 28B.112.030.

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