
SUBSTITUTE HOUSE BILL 1356

State of Washington

66th Legislature

2019 Regular Session

By House Civil Rights & Judiciary (originally sponsored by Representatives Lovick, Maycumber, Tarleton, Pettigrew, Doglio, Stonier, Morgan, Orwall, Gregerson, Kilduff, Mead, Kloba, Valdez, Ortiz-Self, Thai, Lekanoff, Cody, Stanford, Chapman, Walen, Sells, Kirby, Appleton, Blake, Ryu, Reeves, Bergquist, Jinkins, Goodman, Pollet, Leavitt, and Ormsby)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to privileged communication with peer support
2 group counselors; and amending RCW 5.60.060.

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

4 **Sec. 1.** RCW 5.60.060 and 2018 c 165 s 1 are each amended to read
5 as follows:

6 (1) A spouse or domestic partner shall not be examined for or
7 against his or her spouse or domestic partner, without the consent of
8 the spouse or domestic partner; nor can either during marriage or
9 during the domestic partnership or afterward, be without the consent
10 of the other, examined as to any communication made by one to the
11 other during the marriage or the domestic partnership. 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 or domestic partner if the marriage or
16 the domestic partnership occurred subsequent to the filing of formal
17 charges against the defendant, nor to a criminal action or proceeding
18 for a crime committed by said spouse or domestic partner against any
19 child of whom said spouse or domestic partner is the parent or
20 guardian, nor to a proceeding under chapter 71.05 or 71.09 RCW:
21 PROVIDED, That the spouse or the domestic partner of a person sought

1 to be detained under chapter 71.05 or 71.09 RCW may not be compelled
2 to testify and shall be so informed by the court prior to being
3 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
7 course 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
10 and his or her attorney if the communication was made in the presence
11 of the parent or guardian. This privilege does not extend to
12 communications made prior to the arrest.

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

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

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

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

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

37 (6) (a) A peer support group counselor shall not, without consent
38 of the (~~law enforcement officer, limited authority law enforcement~~
39 ~~officer, or firefighter~~) first responder or jail staff person making
40 the communication, be compelled to testify about any communication

1 made to the counselor by the (~~officer or firefighter~~) first
2 responder or jail staff person while receiving counseling. The
3 counselor must be designated as such by the agency employing the
4 (~~officer or firefighter~~) first responder or jail staff person prior
5 to the incident that results in counseling. The privilege only
6 applies when the communication was made to the counselor while acting
7 in his or her capacity as a peer support group counselor. The
8 privilege does not apply if the counselor was an initial responding
9 (~~officer or firefighter~~) first responder or jail staff person, a
10 witness, or a party to the incident which prompted the delivery of
11 peer support group counseling services to the (~~law enforcement~~
12 ~~officer, limited authority law enforcement officer, or firefighter~~)
13 first responder or jail staff person.

14 (b) For purposes of this section:

15 (i) "First responder" means:

16 (A) A law enforcement officer;

17 (B) A limited authority law enforcement officer;

18 (C) A firefighter;

19 (D) An emergency services dispatcher or recordkeeper;

20 (E) Emergency medical personnel, as licensed or certified by this
21 state; or

22 (F) A member or former member of the Washington national guard
23 acting in an emergency response capacity pursuant to chapter 38.52
24 RCW.

25 (ii) "Law enforcement officer" means a general authority
26 Washington peace officer as defined in RCW 10.93.020;

27 (~~(iii)~~) (iii) "Limited authority law enforcement officer" means
28 a limited authority Washington peace officer as defined in RCW
29 10.93.020 who is employed by the department of corrections, state
30 parks and recreation commission, department of natural resources,
31 liquor and cannabis board, or Washington state gambling commission;
32 and

33 (~~(iii)~~) (iv) "Peer support group counselor" means ((a)):

34 (A) (~~Law enforcement officer, limited authority law enforcement~~
35 ~~officer, firefighter,~~) A first responder or jail staff person or a
36 civilian employee of ((a law enforcement agency, fire department,)) a
37 first responder entity or agency, local jail, or state agency who has
38 received training to provide emotional and moral support and
39 counseling to ((an officer or firefighter)) a first responder or jail
40 staff person who needs those services as a result of an incident in

1 which the (~~officer or firefighter~~) first responder or jail staff
2 person was involved while acting in his or her official capacity; or

3 (B) A nonemployee counselor who has been designated by the (~~law~~)
4 ~~enforcement agency, fire department~~) first responder entity or
5 agency, local jail, or state agency to provide emotional and moral
6 support and counseling to (~~an officer or firefighter~~) a first
7 responder or jail staff person who needs those services as a result
8 of an incident in which the (~~officer or firefighter~~) first
9 responder or jail staff person was involved while acting in his or
10 her official capacity.

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

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

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

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

37 (a) For purposes of this section, "domestic violence advocate"
38 means an employee or supervised volunteer from a community-based
39 domestic violence program or human services program that provides
40 information, advocacy, counseling, crisis intervention, emergency

1 shelter, or support to victims of domestic violence and who is not
2 employed by, or under the direct supervision of, a law enforcement
3 agency, a prosecutor's office, or the child protective services
4 section of the department of social and health services as defined in
5 RCW 26.44.020.

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

20 (9) A mental health counselor, independent clinical social
21 worker, or marriage and family therapist licensed under chapter
22 18.225 RCW may not disclose, or be compelled to testify about, any
23 information acquired from persons consulting the individual in a
24 professional capacity when the information was necessary to enable
25 the individual to render professional services to those persons
26 except:

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

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

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

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

37 (e) To any individual if the mental health counselor, independent
38 clinical social worker, or marriage and family therapist licensed
39 under chapter 18.225 RCW reasonably believes that disclosure will
40 avoid or minimize an imminent danger to the health or safety of the

1 individual or any other individual; however, there is no obligation
2 on the part of the provider to so disclose.

3 (10) An individual who acts as a sponsor providing guidance,
4 emotional support, and counseling in an individualized manner to a
5 person participating in an alcohol or drug addiction recovery
6 fellowship may not testify in any civil action or proceeding about
7 any communication made by the person participating in the addiction
8 recovery fellowship to the individual who acts as a sponsor except
9 with the written authorization of that person or, in the case of
10 death or disability, the person's personal representative.

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