
HOUSE BILL 2762

State of Washington

66th Legislature

2020 Regular Session

By Representatives Rude, Irwin, and Lovick

Read first time 01/21/20. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to extending the peer support group testimonial
2 privilege to include staff persons of the department of corrections;
3 and amending RCW 5.60.060.

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

5 **Sec. 1.** RCW 5.60.060 and 2019 c 98 s 1 are each amended to read
6 as follows:

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

1 PROVIDED, That the spouse or the domestic partner of a person sought
2 to be detained under chapter 71.05 or 71.09 RCW may not be compelled
3 to testify and shall be so informed by the court prior to being
4 called 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
8 course 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
11 and his or her attorney if the communication was made in the presence
12 of the parent or guardian. This privilege does not extend to
13 communications made prior to the arrest.

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

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

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

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

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

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

1 communication made to the counselor by the (~~first responder or jail~~
2 ~~staff person~~) peer support group client while receiving counseling.
3 The counselor must be designated as such by the agency employing the
4 (~~first responder or jail staff person~~) peer support group client
5 prior 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 first responder, department of corrections staff person, or jail
10 staff person(~~(r)~~); a witness(~~(r)~~); or a party to the incident which
11 prompted the delivery of peer support group counseling services to
12 the (~~first responder or jail staff person~~) peer support group
13 client.

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(~~(r)~~).

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

32 (iv) "Peer support group client" means:

33 (A) A first responder;

34 (B) A department of corrections staff person; or

35 (C) A jail staff person.

36 (v) "Peer support group counselor" means:

37 (A) A first responder, department of corrections staff person, or
38 jail staff person or a civilian employee of a first responder entity
39 or agency, local jail, or state agency who has received training to
40 provide emotional and moral support and counseling to a (~~first~~

1 ~~responder or jail staff person~~) peer support group client who needs
2 those services as a result of an incident in which the (~~first
3 responder or jail staff person~~) peer support group client was
4 involved while acting in his or her official capacity; or

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

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

15 (a) For purposes of this section, "sexual assault advocate" means
16 the employee or volunteer from a community sexual assault program or
17 underserved populations provider, victim assistance unit, program, or
18 association, that provides information, medical or legal advocacy,
19 counseling, or support to victims of sexual assault, who is
20 designated by the victim to accompany the victim to the hospital or
21 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
26 disclose is likely to result in a clear, imminent risk of serious
27 physical injury or death of the victim or another person. Any sexual
28 assault advocate participating in good faith in the disclosing of
29 records and communications under this section shall have immunity
30 from any liability, civil, criminal, or otherwise, that might result
31 from the action. In any proceeding, civil or criminal, arising out of
32 a 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
37 and the domestic violence advocate.

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

1 information, advocacy, counseling, crisis intervention, emergency
2 shelter, or support to victims of domestic violence and who is not
3 employed by, or under the direct supervision of, a law enforcement
4 agency, a prosecutor's office, or the child protective services
5 section of the department of (~~social and health services~~) children,
6 youth, and families as defined in RCW 26.44.020.

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

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

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

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

38 (e) To any individual if the mental health counselor, independent
39 clinical social worker, or marriage and family therapist licensed
40 under chapter 18.225 RCW reasonably believes that disclosure will

1 avoid or minimize an imminent danger to the health or safety of the
2 individual or any other individual; however, there is no obligation
3 on the part of the provider to so disclose.

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

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