

HOUSE BILL REPORT

SSB 5056

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to health care professionals reporting violent injuries.

Brief Description: Requiring health care professionals to report patient information in cases of violent injury.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Brandland, Regala, Keiser and McAuliffe).

Brief History:

Committee Activity:

Health Care & Wellness: 3/12/09, 3/26/09 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Requires hospitals to report information, and certain emergency responders to provide information on request, to law enforcement authorities about patients who are treated for certain wounds and injuries.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 13 members: Representatives Cody, Chair; Driscoll, Vice Chair; Ericksen, Ranking Minority Member; Bailey, Campbell, Clibborn, Green, Herrera, Hinkle, Kelley, Moeller, Morrell and Pedersen.

Staff: Chris Cordes (786-7103)

Background:

Disclosure of Health Care Information.

With certain exceptions, both the federal Health Insurance Portability and Accountability Act (HIPAA) and state law prohibit disclosure by a health care provider, or its agents, employees, or assistants, of a patient's health care information unless the patient has authorized

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disclosure. State law defines health care information to include any information that can readily be associated with the patient's identity and that directly relates to the patient's health care.

The HIPPA allows certain disclosures, including disclosures to a law enforcement official for law enforcement purposes, when a law requires the reporting of certain wounds or other physical injuries.

One exception in Washington's health care privacy law allows disclosure if the information is given to fire, law enforcement, or other public authorities that brought the patient to the facility or provider. Another state law exception requires disclosure, on request, to federal, state, or local law enforcement authorities when the patient is being treated for:

- a bullet wound or other injury caused by a firearm;
- a knife injury or other sharp instrument injury that law enforcement authorities reasonably believe was intentionally inflicted; or
- a blunt force injury that law enforcement authorities reasonably believe resulted from a criminal act.

Under both exceptions, the information to be disclosed is limited to specified information, including personal information about the patient (name, age, etc.), condition and diagnosis, and whether the patient was conscious when admitted.

Duty to Report Assaults.

Under abuse or neglect statutes, certain mandatory reporters must, among other things, report to the Department of Social and Health Services when suspecting that a child or vulnerable adult has been physically assaulted. These reporters include licensed health care practitioners and various other persons. Persons making the report in good faith or testifying about the abuse in a judicial proceeding are immune from liability resulting from the report or testimony.

Physician-Patient Testimonial Privilege.

The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings. The common law and statutory law, however, recognize exceptions to compelled testimony for certain relationships. One statutory exception protects a physician or registered nurse from being examined about information acquired in attending a patient (unless the information relates to certain events such as neglect or abuse of a child or vulnerable adult).

Summary of Amended Bill:

Reporting requirements for acute care hospitals, and requirements to respond to requests for information in the case of certain emergency responders, are specified when patients with certain wounds or injuries are treated.

Hospital Reporting Requirement.

Information to be Reported. An acute care hospital must report the following information, if known, to a local law enforcement authority as soon as reasonably possible when the hospital provides an unconscious patient with treatment for a bullet wound, gunshot wound, or stab wound:

- the patient's name, residence, sex, and age;
- the type of wound; and
- the name of the health care provider providing treatment.

Preservation of Objects and Clothing. The hospital must also preserve the bullets, clothing, or other foreign objects removed from the patient in a manner that reasonably maintains their identity and integrity until taken into custody by a law enforcement authority or until expiration of the hospital's normal retention period, whichever occurs first.

Relationship to Other Requirements. These reporting and preservation requirements are secondary to patient care needs and may be delayed or compromised without penalty to the person, hospital, or entity. However, the reporting and preservation requirements do not limit a person's duty to report abuse or neglect of children or vulnerable adults.

Use of the Report in a Criminal Proceeding. Health care provider-patient testimonial privileges recognized by law are not a basis for excluding the report, or information contained in the report, as evidence in a criminal proceeding.

Emergency Responder Disclosure Requirement.

Unless treatment is provided in a hospital, disclosure of certain health care information is required by a paramedic, emergency medical technician, or first responder when requested by a federal, state, or local law enforcement authority. The disclosure requirement applies if treatment is provided to a patient for:

- a bullet wound or other injury caused by a firearm;
- a knife injury or other sharp instrument injury that law enforcement authorities reasonably believe was intentionally inflicted;
- a blunt force injury that law enforcement authorities reasonably believe resulted from a criminal act; or
- auto collision injuries.

The information to be disclosed is:

- the patient's name, residence, sex, and age;
- the patient's condition or extent and location of injuries, and whether the patient was conscious when contacted;
- whether the patient appears to have consumed alcohol or to be under the influence of alcohol or drugs;
- the name of the emergency responder providing care; and
- the facility to which the patient is being transported for additional treatment.

The disclosure requirement is secondary to patient care needs; information must be provided as soon as reasonably possible taking into consideration a patient's emergency care needs.

Immunity from Liability.

With respect to the hospital report and related actions, a hospital or person is provided civil and criminal liability immunity and professional licensure action immunity if the hospital or person acts in good faith, without gross negligence or willful or wanton misconduct, in making the hospital report, cooperating in a related investigation or judicial proceeding, or maintaining or providing the preserved objects or clothing to law enforcement.

Similar immunity from liability is provided for emergency responders and others who disclose requested information in good faith, without gross negligence or willful or wanton misconduct.

Amended Bill Compared to Original Bill:

The amended bill: (1) adds that a hospital must have a written policy to identify the person responsible for making the report to the local law enforcement authority; and (2) makes technical changes, including making language more consistent throughout the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Hospitals are very concerned about liability from releasing patient information because of the HIPPA. The HIPPA allows states to adopt exceptions to its privacy protections for law enforcement purposes and provides immunity to providers who act under these exceptions. Washington adopted a statute in 2005 to address the HIPPA and law enforcement needs. There are, however, three gaps in this statute that are of concern to health care providers and law enforcement. First, paramedics/first responders are not specifically allowed to provide information to law enforcement upon request, which can delay the collection of evidence and the determination of the severity of the injury to the victim. Second, hospitals are currently not required to notify law enforcement when a victim is unconscious, which can delay the initiation of an investigation. Third, hospitals have been reluctant to transfer certain evidence to law enforcement because of the HIPPA. It is important to ensure that evidence does not get contaminated or co-mingled with other types of evidence; law enforcement officers are more qualified to gather and preserve evidence than hospitals. This bill puts patient care first and will not deter patients from seeking care because it only covers unconscious patients.

(Opposed) None.

Persons Testifying: Senator Brandlund, prime sponsor; and Pam Loginsky, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.