
HOUSE BILL 2937

State of Washington 55th Legislature 1998 Regular Session

By Representatives Dyer, Backlund, Skinner and Sherstad

Read first time 01/23/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to equal access to medical witnesses; amending RCW
2 5.60.060 and 70.02.050; and creating a new section.

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

4 **Sec. 1.** RCW 5.60.060 and 1997 c 338 s 1 are each amended to read
5 as follows:

6 (1) A husband shall not be examined for or against his wife,
7 without the consent of the wife, nor a wife for or against her husband
8 without the consent of the husband; nor can either during marriage or
9 afterward, be without the consent of the other, examined as to any
10 communication made by one to the other during marriage. But this
11 exception shall not apply to a civil action or proceeding by one
12 against the other, nor to a criminal action or proceeding for a crime
13 committed by one against the other, nor to a criminal action or
14 proceeding against a spouse if the marriage occurred subsequent to the
15 filing of formal charges against the defendant, nor to a criminal
16 action or proceeding for a crime committed by said husband or wife
17 against any child of whom said husband or wife is the parent or
18 guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW:
19 PROVIDED, That the spouse of a person sought to be detained under

1 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall
2 be so informed by the court prior to being called as a witness.

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

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

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

17 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,
18 a physician or surgeon or osteopathic physician or surgeon shall not,
19 without the consent of his or her patient, be examined in a civil
20 action as to any information acquired in attending such patient, which
21 was necessary to enable him or her to prescribe or act for the patient,
22 except as follows:

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

25 (b) Ninety days after filing an action for personal injuries or
26 wrongful death, the claimant shall be deemed to waive the physician-
27 patient privilege. Waiver of the physician-patient privilege for any
28 one physician or condition constitutes a waiver of the privilege as to
29 all physicians or conditions, subject to such limitations as a court
30 may impose pursuant to court rules. Where the privilege has been
31 waived under this section, ex parte interviews with such physicians may
32 be conducted in the same manner as with any other witness.

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

36 (6)(a) A peer support group counselor shall not, without consent of
37 the law enforcement officer making the communication, be compelled to
38 testify about any communication made to the counselor by the officer
39 while receiving counseling. The counselor must be designated as such

1 by the sheriff, police chief, or chief of the Washington state patrol,
2 prior to the incident that results in counseling. The privilege only
3 applies when the communication was made to the counselor while acting
4 in his or her capacity as a peer support group counselor. The
5 privilege does not apply if the counselor was an initial responding
6 officer, a witness, or a party to the incident which prompted the
7 delivery of peer support group counseling services to the law
8 enforcement officer.

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

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

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

21 (7) A sexual assault advocate may not, without the consent of the
22 victim, be examined as to any communication made by the victim to the
23 sexual assault advocate.

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

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

1 disclosure under this section, the good faith of the sexual assault
2 advocate who disclosed the confidential communication shall be
3 presumed.

4 **Sec. 2.** RCW 70.02.050 and 1993 c 448 s 4 are each amended to read
5 as follows:

6 (1) A health care provider may disclose health care information
7 about a patient without the patient's authorization to the extent a
8 recipient needs to know the information, if the disclosure is:

9 (a) To a person who the provider reasonably believes is providing
10 health care to the patient;

11 (b) To any other person who requires health care information for
12 health care education, or to provide planning, quality assurance, peer
13 review, or administrative, legal, financial, or actuarial services to
14 the health care provider; or for assisting the health care provider in
15 the delivery of health care and the health care provider reasonably
16 believes that the person:

17 (i) Will not use or disclose the health care information for any
18 other purpose; and

19 (ii) Will take appropriate steps to protect the health care
20 information;

21 (c) To any other health care provider reasonably believed to have
22 previously provided health care to the patient, to the extent necessary
23 to provide health care to the patient, unless the patient has
24 instructed the health care provider in writing not to make the
25 disclosure;

26 (d) To any person if the health care provider reasonably believes
27 that disclosure will avoid or minimize an imminent danger to the health
28 or safety of the patient or any other individual, however there is no
29 obligation under this chapter on the part of the provider to so
30 disclose;

31 (e) Oral, and made to immediate family members of the patient, or
32 any other individual with whom the patient is known to have a close
33 personal relationship, if made in accordance with good medical or other
34 professional practice, unless the patient has instructed the health
35 care provider in writing not to make the disclosure;

36 (f) To a health care provider who is the successor in interest to
37 the health care provider maintaining the health care information;

1 (g) For use in a research project that an institutional review
2 board has determined:

3 (i) Is of sufficient importance to outweigh the intrusion into the
4 privacy of the patient that would result from the disclosure;

5 (ii) Is impracticable without the use or disclosure of the health
6 care information in individually identifiable form;

7 (iii) Contains reasonable safeguards to protect the information
8 from redisclosure;

9 (iv) Contains reasonable safeguards to protect against identifying,
10 directly or indirectly, any patient in any report of the research
11 project; and

12 (v) Contains procedures to remove or destroy at the earliest
13 opportunity, consistent with the purposes of the project, information
14 that would enable the patient to be identified, unless an institutional
15 review board authorizes retention of identifying information for
16 purposes of another research project;

17 (h) To a person who obtains information for purposes of an audit,
18 if that person agrees in writing to:

19 (i) Remove or destroy, at the earliest opportunity consistent with
20 the purpose of the audit, information that would enable the patient to
21 be identified; and

22 (ii) Not to disclose the information further, except to accomplish
23 the audit or report unlawful or improper conduct involving fraud in
24 payment for health care by a health care provider or patient, or other
25 unlawful conduct by the health care provider;

26 (i) To an official of a penal or other custodial institution in
27 which the patient is detained;

28 (j) To provide directory information, unless the patient has
29 instructed the health care provider not to make the disclosure;

30 (k) In the case of a hospital or health care provider to provide,
31 in cases reported by fire, police, sheriff, or other public authority,
32 name, residence, sex, age, occupation, condition, diagnosis, or extent
33 and location of injuries as determined by a physician, and whether the
34 patient was conscious when admitted; or

35 (l) Made after a deemed waiver of the physician-patient privilege
36 under RCW 5.60.060(4)(b).

37 (2) A health care provider shall disclose health care information
38 about a patient without the patient's authorization if the disclosure
39 is:

1 (a) To federal, state, or local public health authorities, to the
2 extent the health care provider is required by law to report health
3 care information; when needed to determine compliance with state or
4 federal licensure, certification or registration rules or laws; or when
5 needed to protect the public health;

6 (b) To federal, state, or local law enforcement authorities to the
7 extent the health care provider is required by law;

8 (c) Pursuant to compulsory process in accordance with RCW
9 70.02.060.

10 (3) All state or local agencies obtaining patient health care
11 information pursuant to this section shall adopt rules establishing
12 their record acquisition, retention, and security policies that are
13 consistent with this chapter.

14 NEW SECTION. **Sec. 3.** RCW 5.60.060 and 70.02.050 do not apply to
15 claims, hearings, appeals, or any other proceedings under Title 51 RCW.

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