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**HOUSE BILL 2637**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Holy, Pollet, and Van Werven

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

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

NEW SECTION. **Sec.**  The legislature recognizes that the state's public institutions of higher education play an important role in preventing campus sexual assaults and in providing support and assistance to students who have experienced campus sexual assault. The legislature recognizes that students are more likely to report sexual assault and seek assistance and advocacy if they trust that the institution will manage the survivor's reports and communications appropriately. In 2017, Substitute Senate Bill No. 5764 was enacted to ensure that sexual assault survivor communications and records maintained by campus-affiliated advocates remain confidential and not subject to public inspection, except under limited circumstances. The legislature intends to strengthen protections for sexual assault survivors on campus by: (1) Granting privilege to survivor communications made to campus-affiliated advocates, to the same extent communications are privileged when made to sexual assault advocates under current law; and (2) ensuring campus-affiliated advocates are trained on the confidentiality and privileged nature of communications.

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

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

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

(a) The survivor consents to inspection or copying;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer or firefighter making the communication, be compelled to testify about any communication made to the counselor by the officer or firefighter while receiving counseling. The counselor must be designated as such by the sheriff, police chief, fire chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer or firefighter, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer or firefighter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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