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**SUBSTITUTE HOUSE BILL 2848**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Lantz, Ericks, Santos, Williams, Rodne, Priest, Hudgins, Darneille, Morrell, Kessler, McDonald, Roberts, McCoy, Kenney, Campbell, P. Sullivan, Wallace, Hasegawa, Kilmer, Green, Simpson, Wood, Ormsby and Springer)

READ FIRST TIME 1/31/06.

1 AN ACT Relating to protecting confidentiality of domestic violence  
2 information; amending RCW 5.60.060, 70.123.040, and 74.04.060; adding  
3 a new section to chapter 70.123 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature intends, by amending RCW  
6 5.60.060, to recognize that advocates help domestic violence victims by  
7 giving them the support and counseling they need to recover from their  
8 abuse, and by providing resources to achieve protection from further  
9 abuse. Without assurance that communications made with a domestic  
10 violence advocate will be confidential and protected from disclosure,  
11 victims will be deterred from confiding openly or seeking information  
12 and counseling, resulting in a failure to receive vital advocacy and  
13 support needed for recovery and protection from abuse. But  
14 investigative or prosecutorial functions performed by individuals who  
15 assist victims in the criminal legal system and in other state agencies  
16 are different from the advocacy and counseling functions performed by  
17 advocates who work under the auspices or supervision of a community  
18 victim services program. The legislature recognizes the important role  
19 played by individuals who assist victims in the criminal legal system

1 and in other state agencies, but intends that the testimonial privilege  
2 not be extended to individuals who perform an investigative or  
3 prosecutorial function.

4 **Sec. 2.** RCW 5.60.060 and 2005 c 504 s 705 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, 70.96B, 71.05, or  
19 71.09 RCW: PROVIDED, That the spouse of a person sought to be detained  
20 under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled  
21 to testify and shall be so informed by the court prior to being called  
22 as a witness.

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

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

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

1 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.360  
2 (8) and (9), a physician or surgeon or osteopathic physician or surgeon  
3 or podiatric physician or surgeon shall not, without the consent of his  
4 or her patient, be examined in a civil action as to any information  
5 acquired in attending such patient, which was necessary to enable him  
6 or her to prescribe or act for the patient, except as follows:

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

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

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

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

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

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

37 (ii) Nonemployee counselor who has been designated by the sheriff,  
38 police chief, or chief of the Washington state patrol to provide

1 emotional and moral support and counseling to an officer who needs  
2 those services as a result of an incident in which the officer was  
3 involved while acting in his or her official capacity.

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

7 (a) For purposes of this section, "sexual assault advocate" means  
8 the employee or volunteer from a rape crisis center, victim assistance  
9 unit, program, or association, that provides information, medical or  
10 legal advocacy, counseling, or support to victims of sexual assault,  
11 who is designated by the victim to accompany the victim to the hospital  
12 or other health care facility and to proceedings concerning the alleged  
13 assault, including police and prosecution interviews and court  
14 proceedings.

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

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

29 (a) For purposes of this section, "domestic violence advocate"  
30 means an employee or supervised volunteer from a community-based  
31 domestic violence program or human services program that provides  
32 information, advocacy, counseling, crisis intervention, emergency  
33 shelter, or support to victims of domestic violence and who is not  
34 employed by, or under the direct supervision of, a law enforcement  
35 agency, a prosecutor's office, or the child protective services section  
36 of the department of social and health services as defined in RCW  
37 26.44.020.

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

15       **Sec. 3.** RCW 70.123.040 and 1979 ex.s. c 245 s 4 are each amended  
16 to read as follows:

17       (1) Minimum standards established by the department under RCW  
18 70.123.030 shall ensure that shelters receiving grants under this  
19 chapter provide services meeting basic survival needs, where not  
20 provided by other means, such as, but not limited to, food, clothing,  
21 housing, safety, security, client advocacy, client confidentiality, and  
22 counseling. These services shall be problem-oriented and designed to  
23 provide necessary assistance to the victims of domestic violence and  
24 their children.

25       (2) The department shall establish minimum standards that ensure  
26 that nonshelter community-based services for victims of domestic  
27 violence funded under RCW 70.123.150 provide services designed to  
28 enhance safety and security by means such as, but not limited to,  
29 client advocacy, client confidentiality, and counseling.

30       NEW SECTION. **Sec. 4.** A new section is added to chapter 70.123 RCW  
31 to read as follows:

32       (1) Except as authorized in subsections (2) and (3) of this  
33 section, or pursuant to court order under RCW 70.123.075, a domestic  
34 violence program, an individual who assists a domestic violence program  
35 in the delivery of services, or an agent, employee, or volunteer of a  
36 domestic violence program shall not disclose information about a

1 recipient of shelter, advocacy, or counseling services without the  
2 informed authorization of the recipient. In the case of an  
3 unemancipated minor, the minor and the parent or guardian must provide  
4 the authorization. For the purposes of this section, a "domestic  
5 violence program" means an agency that provides shelter, advocacy, or  
6 counseling for domestic violence victims in a supportive environment.

7 (2)(a) A recipient of shelter, advocacy, or counseling services may  
8 authorize a domestic violence program to disclose information about the  
9 recipient. The authorization must be in writing, signed by the  
10 recipient, or if an unemancipated minor is the recipient, signed by the  
11 minor and the parent or guardian, and must contain a reasonable time  
12 limit on the duration of the recipient's authorization. If the  
13 authorization does not contain a date upon which the authorization to  
14 disclose information expires, the recipient's authorization expires  
15 ninety days after the date it was signed.

16 (b) The domestic violence program's disclosure of information shall  
17 be only to the extent authorized by the recipient. The domestic  
18 violence program, if requested, shall provide a copy of the disclosed  
19 information to the recipient.

20 (c) Except as provided under this chapter, an authorization is not  
21 a waiver of the recipient's rights or privileges under other statutes,  
22 rules of evidence, or common law.

23 (3) If disclosure of a recipient's information is required by  
24 statute or court order, the domestic violence program shall make  
25 reasonable attempts to provide notice to the recipient affected by the  
26 disclosure of information. If personally identifying information is or  
27 will be disclosed, the domestic violence program shall take steps  
28 necessary to protect the privacy and safety of the persons affected by  
29 the disclosure of the information.

30 (4) To comply with tribal, federal, state, or territorial  
31 reporting, evaluation, or data collection requirements, domestic  
32 violence programs may share data in the aggregate that does not contain  
33 personally identifying information and that: (a) Pertains to services  
34 to their clients; or (b) is demographic information.

35 **Sec. 5.** RCW 74.04.060 and 1987 c 435 s 29 are each amended to read  
36 as follows:

37 (1)(a) For the protection of applicants and recipients, the

1 department and the county offices and their respective officers and  
2 employees are prohibited, except as hereinafter provided, from  
3 disclosing the contents of any records, files, papers and  
4 communications, except for purposes directly connected with the  
5 administration of the programs of this title. In any judicial  
6 proceeding, except such proceeding as is directly concerned with the  
7 administration of these programs, such records, files, papers and  
8 communications, and their contents, shall be deemed privileged  
9 communications and except for the right of any individual to inquire of  
10 the office whether a named individual is a recipient of welfare  
11 assistance and such person shall be entitled to an affirmative or  
12 negative answer. (~~However,~~) The secretary shall adopt policies and  
13 procedures to protect the confidentiality and prevent the disclosure of  
14 information about recipients who have disclosed to the department that  
15 they are past or current victims of domestic violence and stalking. In  
16 adopting these policies and procedures, the department shall: (i)  
17 Review methods to modify or improve existing data bases to protect from  
18 inadvertent or unauthorized information sharing and disclosure; (ii)  
19 review methods and tools to collect and share information about  
20 recipients that minimize the risk of danger to victims of domestic  
21 violence and stalking; and (iii) consider alternatives to providing the  
22 affirmative or negative answer about whether an individual is a  
23 recipient of welfare assistance as required in this section.

24 (b) Upon written request of a parent who has been awarded  
25 visitation rights in an action for divorce or separation or any parent  
26 with legal custody of the child, the department shall disclose to him  
27 or her the last known address and location of his or her natural or  
28 adopted children. The secretary shall adopt rules which establish  
29 procedures for disclosing the address of the children and providing,  
30 when appropriate, for prior notice to the custodian of the children.  
31 The notice shall state that a request for disclosure has been received  
32 and will be complied with by the department unless the department  
33 receives a copy of a court order which enjoins the disclosure of the  
34 information or restricts or limits the requesting party's right to  
35 contact or visit the other party or the child. Information supplied to  
36 a parent by the department shall be used only for purposes directly  
37 related to the enforcement of the visitation and custody provisions of

1 the court order of separation or decree of divorce. No parent shall  
2 disclose such information to any other person except for the purpose of  
3 enforcing visitation provisions of the said order or decree.

4 (2) The county offices shall maintain monthly at their offices a  
5 report showing the names and addresses of all recipients in the county  
6 receiving public assistance under this title, together with the amount  
7 paid to each during the preceding month.

8 (3) The provisions of this section shall not apply to duly  
9 designated representatives of approved private welfare agencies, public  
10 officials, members of legislative interim committees and advisory  
11 committees when performing duties directly connected with the  
12 administration of this title, such as regulation and investigation  
13 directly connected therewith: PROVIDED, HOWEVER, That any information  
14 so obtained by such persons or groups shall be treated with such degree  
15 of confidentiality as is required by the federal social security law.

16 (4) It shall be unlawful, except as provided in this section, for  
17 any person, body, association, firm, corporation or other agency to  
18 solicit, publish, disclose, receive, make use of, or to authorize,  
19 knowingly permit, participate in or acquiesce in the use of any lists  
20 or names for commercial or political purposes of any nature. The  
21 violation of this section shall be a gross misdemeanor.

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