
HOUSE BILL 2789

State of Washington

64th Legislature

2016 Regular Session

By Representatives Hurst and Kochmar

Read first time 01/20/16. Referred to Committee on Judiciary.

1 AN ACT Relating to testamentary privileges for alcohol and drug
2 addiction recovery sponsors; and amending RCW 5.60.060.

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

4 **Sec. 1.** RCW 5.60.060 and 2012 c 29 s 12 are each amended to read
5 as follows:

6 (1) A spouse or domestic partner shall not be examined for or
7 against his or her spouse or domestic partner, without the consent of
8 the spouse or domestic partner; nor can either during marriage or
9 during the domestic partnership or afterward, be without the consent
10 of the other, examined as to any communication made by one to the
11 other during the marriage or the domestic partnership. But this
12 exception shall not apply to a civil action or proceeding by one
13 against the other, nor to a criminal action or proceeding for a crime
14 committed by one against the other, nor to a criminal action or
15 proceeding against a spouse or domestic partner if the marriage or
16 the domestic partnership occurred subsequent to the filing of formal
17 charges against the defendant, nor to a criminal action or proceeding
18 for a crime committed by said spouse or domestic partner against any
19 child of whom said spouse or domestic partner is the parent or
20 guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or
21 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a

1 person sought to be detained under chapter 70.96A, 70.96B, 71.05, or
2 71.09 RCW may not be compelled to testify and shall be so informed by
3 the court prior to being called as a witness.

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

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

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

20 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.360
21 (8) and (9), a physician or surgeon or osteopathic physician or
22 surgeon or podiatric physician or surgeon shall not, without the
23 consent of his or her patient, be examined in a civil action as to
24 any information acquired in attending such patient, which was
25 necessary to enable him or her to prescribe or act for the patient,
26 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 law enforcement officer or firefighter making the
40 communication, be compelled to testify about any communication made

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

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

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

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

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

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

37 (b) A sexual assault advocate may disclose a confidential
38 communication without the consent of the victim if failure to
39 disclose is likely to result in a clear, imminent risk of serious
40 physical injury or death of the victim or another person. Any sexual

1 assault advocate participating in good faith in the disclosing of
2 records and communications under this section shall have immunity
3 from any liability, civil, criminal, or otherwise, that might result
4 from the action. In any proceeding, civil or criminal, arising out of
5 a disclosure under this section, the good faith of the sexual assault
6 advocate who disclosed the confidential communication shall be
7 presumed.

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

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

20 (b) A domestic violence advocate may disclose a confidential
21 communication without the consent of the victim if failure to
22 disclose is likely to result in a clear, imminent risk of serious
23 physical injury or death of the victim or another person. This
24 section does not relieve a domestic violence advocate from the
25 requirement to report or cause to be reported an incident under RCW
26 26.44.030(1) or to disclose relevant records relating to a child as
27 required by RCW 26.44.030(~~(+12)~~) (14). Any domestic violence
28 advocate participating in good faith in the disclosing of
29 communications under this subsection is immune from liability, civil,
30 criminal, or otherwise, that might result from the action. In any
31 proceeding, civil or criminal, arising out of a disclosure under this
32 subsection, the good faith of the domestic violence advocate who
33 disclosed the confidential communication shall be presumed.

34 (9) A mental health counselor, independent clinical social
35 worker, or marriage and family therapist licensed under chapter
36 18.225 RCW may not disclose, or be compelled to testify about, any
37 information acquired from persons consulting the individual in a
38 professional capacity when the information was necessary to enable
39 the individual to render professional services to those persons
40 except:

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

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

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

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

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

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

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