

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2611

Chapter 165, Laws of 2018

65th Legislature
2018 Regular Session

LAW ENFORCEMENT PEER SUPPORT GROUP COUNSELORS--TESTIMONIAL PRIVILEGE

EFFECTIVE DATE: June 7, 2018

Passed by the House February 13, 2018
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate February 28, 2018
Yeas 49 Nays 0

CYRUS HABIB

President of the Senate

Approved March 22, 2018 10:45 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2611** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

March 26, 2018

**Secretary of State
State of Washington**

HOUSE BILL 2611

Passed Legislature - 2018 Regular Session

State of Washington

65th Legislature

2018 Regular Session

By Representatives Barkis, Walsh, Irwin, Klippert, Hayes, Maycumber, Lovick, Stambaugh, Griffey, Wilcox, Steele, and Young

Read first time 01/11/18. Referred to Committee on Judiciary.

1 AN ACT Relating to the privilege for peer support group
2 counselors; and reenacting 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 2016 sp.s. c 29 s 402 and 2016 sp.s. c
5 24 s 1 are each reenacted and amended to read 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 71.05 or 71.09 RCW:
21 PROVIDED, That the spouse or the domestic partner of a person sought

1 to be detained under chapter 71.05 or 71.09 RCW may not be compelled
2 to testify and shall be so informed by the court prior to being
3 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 71.05.360 (8) and (9), a
21 physician or surgeon or osteopathic physician or surgeon or podiatric
22 physician or surgeon shall not, without the consent of his or her
23 patient, be examined in a civil action as to any information acquired
24 in attending such patient, which was necessary to enable him or her
25 to prescribe or act for the patient, except as follows:

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

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

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

37 (6)(a) A peer support group counselor shall not, without consent
38 of the law enforcement officer, limited authority law enforcement
39 officer, or firefighter making the communication, be compelled to
40 testify about any communication made to the counselor by the officer

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

12 (b) For purposes of this section(~~(7)~~):

13 (i) "Law enforcement officer" means a general authority
14 Washington peace officer as defined in RCW 10.93.020;

15 (ii) "Limited authority law enforcement officer" means a limited
16 authority Washington peace officer as defined in RCW 10.93.020 who is
17 employed by the department of corrections, state parks and recreation
18 commission, department of natural resources, liquor and cannabis
19 board, or Washington state gambling commission; and

20 (iii) "Peer support group counselor" means a:

21 (~~(i)~~) (A) Law enforcement officer, limited authority law
22 enforcement officer, firefighter, or civilian employee of a law
23 enforcement agency, (~~or civilian employee of a~~) fire department, or
24 state agency who has received training to provide emotional and moral
25 support and counseling to an officer or firefighter who needs those
26 services as a result of an incident in which the officer or
27 firefighter was involved while acting in his or her official
28 capacity; or

29 (~~(ii)~~) (B) Nonemployee counselor who has been designated by the
30 (~~sheriff, police chief, fire chief, or chief of the Washington state~~
31 ~~patrol~~) law enforcement agency, fire department, or state agency to
32 provide emotional and moral support and counseling to an officer or
33 firefighter who needs those services as a result of an incident in
34 which the officer or firefighter was involved while acting in his or
35 her official capacity.

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

39 (a) For purposes of this section, "sexual assault advocate" means
40 the employee or volunteer from a community sexual assault program or

1 underserved populations provider, victim assistance unit, program, or
2 association, that provides information, medical or legal advocacy,
3 counseling, or support to victims of sexual assault, who is
4 designated by the victim to accompany the victim to the hospital or
5 other health care facility and to proceedings concerning the alleged
6 assault, including police and prosecution interviews and court
7 proceedings.

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

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

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

31 (b) A domestic violence advocate may disclose a confidential
32 communication without the consent of the victim if failure to
33 disclose is likely to result in a clear, imminent risk of serious
34 physical injury or death of the victim or another person. This
35 section does not relieve a domestic violence advocate from the
36 requirement to report or cause to be reported an incident under RCW
37 26.44.030(1) or to disclose relevant records relating to a child as
38 required by RCW 26.44.030(14). Any domestic violence advocate
39 participating in good faith in the disclosing of communications under
40 this subsection is immune from liability, civil, criminal, or

1 otherwise, that might result from the action. In any proceeding,
2 civil or criminal, arising out of a disclosure under this subsection,
3 the good faith of the domestic violence advocate who disclosed the
4 confidential communication shall be presumed.

5 (9) A mental health counselor, independent clinical social
6 worker, or marriage and family therapist licensed under chapter
7 18.225 RCW may not disclose, or be compelled to testify about, any
8 information acquired from persons consulting the individual in a
9 professional capacity when the information was necessary to enable
10 the individual to render professional services to those persons
11 except:

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

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

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

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

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

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

Passed by the House February 13, 2018.
Passed by the Senate February 28, 2018.
Approved by the Governor March 22, 2018.
Filed in Office of Secretary of State March 26, 2018.

--- END ---