
SUBSTITUTE SENATE BILL 5357

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline, McCaslin, Kauffman and Fairley)

READ FIRST TIME 02/08/07.

1 AN ACT Relating to privileged communications; and reenacting and
2 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 2006 c 259 s 2, 2006 c 202 s 1, and 2006
5 c 30 s 1 are each reenacted and amended to read 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

1 under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled
2 to testify and shall be so informed by the court prior to being called
3 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 course
7 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 and
10 his or her attorney if the communication was made in the presence of
11 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 listed
14 in *The Christian Science Journal*, or a priest shall not, without the
15 consent of a person making the confession or sacred confidence, be
16 examined as to any confession or sacred confidence made to him or her
17 in his or her professional character, in the course of discipline
18 enjoined by the church to which he or she belongs.

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

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

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

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 or firefighter making the communication, be
38 compelled to testify about any communication made to the counselor by

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

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

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

36 (b) A sexual assault advocate may disclose a confidential
37 communication without the consent of the victim if failure to disclose
38 is likely to result in a clear, imminent risk of serious physical

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

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

12 (a) For purposes of this section, "domestic violence advocate"
13 means an employee or supervised volunteer from a community-based
14 domestic violence program or human services program that provides
15 information, advocacy, counseling, crisis intervention, emergency
16 shelter, or support to victims of domestic violence and who is not
17 employed by, or under the direct supervision of, a law enforcement
18 agency, a prosecutor's office, or the child protective services section
19 of the department of social and health services as defined in RCW
20 26.44.020.

21 (b) A domestic violence advocate may disclose a confidential
22 communication without the consent of the victim if failure to disclose
23 is likely to result in a clear, imminent risk of serious physical
24 injury or death of the victim or another person. This section does not
25 relieve a domestic violence advocate from the requirement to report or
26 cause to be reported an incident under RCW 26.44.030(1) or to disclose
27 relevant records relating to a child as required by RCW 26.44.030(11).
28 Any domestic violence advocate participating in good faith in the
29 disclosing of communications under this subsection is immune from
30 liability, civil, criminal, or otherwise, that might result from the
31 action. In any proceeding, civil or criminal, arising out of a
32 disclosure under this subsection, the good faith of the domestic
33 violence advocate who disclosed the confidential communication shall be
34 presumed.

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