
HOUSE BILL 1296

State of Washington

56th Legislature

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By Representatives O'Brien, Ballasiotes, Kastama, Lovick, Schual-Berke, Mitchell, Carlson, Kenney, Edmonds, Kagi, Constantine, Cody, Rockefeller, Poulsen, McIntire, Lantz, Miloscia, Santos, Ogden, Ruderman and Scott

Read first time 01/21/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to domestic violence advocates' communications with
2 victims of domestic violence; 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 1998 c 72 s 1 are each amended to read as
5 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 or 71.05 RCW:
19 PROVIDED, That the spouse of a person sought to be detained under

1 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall
2 be so informed by the court prior to being called as a witness.

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

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

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

17 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,
18 a physician or surgeon or osteopathic physician or surgeon or podiatric
19 physician or surgeon shall not, without the consent of his or her
20 patient, be examined in a civil action as to any information acquired
21 in attending such patient, which was necessary to enable him or her to
22 prescribe or act for the patient, except as follows:

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

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

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

34 (6)(a) A peer support group counselor shall not, without consent of
35 the law enforcement officer making the communication, be compelled to
36 testify about any communication made to the counselor by the officer
37 while receiving counseling. The counselor must be designated as such
38 by the sheriff, police chief, or chief of the Washington state patrol,
39 prior to the incident that results in counseling. The privilege only

1 applies when the communication was made to the counselor while acting
2 in his or her capacity as a peer support group counselor. The
3 privilege does not apply if the counselor was an initial responding
4 officer, a witness, or a party to the incident which prompted the
5 delivery of peer support group counseling services to the law
6 enforcement officer.

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

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

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

19 (7) A victim advocate may not, without the consent of the victim of
20 domestic violence as defined in chapter 26.50 RCW, be examined as to
21 any communication made by the victim to him or her in official
22 confidence.

23 For purposes of this section, "victim advocate" includes any person
24 working or volunteering for a recognized victim advocacy group or a
25 prosecutor-based or law enforcement-based agency on behalf of victims
26 or witnesses.

27 (8) A sexual assault advocate may not, without the consent of the
28 victim, be examined as to any communication made by the victim to the
29 sexual assault advocate.

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

38 (b) A sexual assault advocate may disclose a confidential
39 communication without the consent of the victim if failure to disclose

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

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