
SENATE BILL 5192

State of Washington

57th Legislature

2001 Regular Session

By Senators Morton, Rasmussen, Winsley, Franklin, Roach, McCaslin and Kohl-Welles

Read first time 01/15/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to privileged communications between
2 legislators and constituents; amending RCW 5.60.060; and creating
3 a new section.

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

5 **Sec. 1.** RCW 5.60.060 and 1998 c 72 s 1 are each amended to read as
6 follows:

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

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

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

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

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

19 (4) Subject to the limitations under RCW 70.96A.140 or
20 71.05.250, a physician or surgeon or osteopathic physician or
21 surgeon or podiatric physician or surgeon shall not, without the
22 consent of his or her patient, be examined in a civil action as to
23 any information acquired in attending such patient, which was
24 necessary to enable him or her to prescribe or act for the
25 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
30 physician-patient privilege. Waiver of the physician-patient
31 privilege for any one physician or condition constitutes a waiver
32 of the privilege as to all physicians or conditions, subject to
33 such limitations as a 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
38 consent of the law enforcement officer making the communication,

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

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

14 (i) Law enforcement officer, or civilian employee of a law
15 enforcement agency, who has received training to provide emotional
16 and moral support and counseling to an officer who needs those
17 services as a result of an incident in which the officer 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, or chief of the Washington state patrol to
21 provide emotional and moral support and counseling to an officer
22 who needs those services as a result of an incident in which the
23 officer was involved while acting in his or her official capacity.

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

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

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

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

8 (8) A state legislator may not be examined as to any
9 constituent communication made to him or her in his or her
10 official capacity without the consent of the constituent.

11 NEW SECTION. Sec. 2. Nothing in this act is intended to
12 diminish any constitutional, common law, or other statutory
13 privilege that may attach to communications between state
14 legislators and constituents.

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