
HOUSE BILL 2971

State of Washington

55th Legislature

1998 Regular Session

By Representative Delvin

Read first time 01/26/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to privileged communications; amending RCW
2 5.60.060; and adding a new section to chapter 38.52 RCW.

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

4 **Sec. 1.** RCW 5.60.060 and 1997 c 338 s 1 are each amended to read
5 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 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 shall not,
19 without the consent of his or her patient, be examined in a civil
20 action as to any information acquired in attending such patient, which
21 was necessary to enable him or her to prescribe or act for the patient,
22 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~~) emergency service provider making the
36 communication, be compelled to testify about any communication made to
37 the counselor by the (~~officer~~) emergency service provider while
38 receiving counseling. The counselor must be designated as such by the
39 (~~sheriff, police chief, or chief of the Washington state patrol~~)

1 emergency service provider agency or entity, prior to the incident that
2 results in counseling. The privilege only applies when the
3 communication was made to the counselor while acting in his or her
4 capacity as a peer support group counselor. The privilege does not
5 apply if the counselor was an initial responding (~~(officer)~~) emergency
6 service provider, a witness, or a party to the incident which prompted
7 the delivery of peer support group counseling services to the (~~law~~
8 ~~enforcement officer~~) emergency service provider. Information
9 otherwise available from the original source shall not be immune from
10 discovery or use in any civil or criminal action merely because the
11 information was presented during a counseling session if the testimony
12 sought is otherwise permissible and discoverable.

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

14 (i) "Peer support group counselor" means (~~(a)~~):

15 (~~((i) Law enforcement officer)~~) (A) An emergency service provider,
16 or a civilian employee of (~~a law enforcement~~) an emergency service
17 provider agency or entity, who has received training to provide
18 emotional and moral support and counseling to an (~~(officer)~~) emergency
19 service provider who needs those services as a result of an incident in
20 which the (~~(officer)~~) emergency service provider was involved while
21 acting in his or her official capacity; or

22 (~~((ii))~~) (B) A nonemployee counselor who has been designated by the
23 (~~(sheriff, police chief, or chief of the Washington state patrol)~~)
24 emergency service provider agency or entity to provide emotional and
25 moral support and counseling to an (~~(officer)~~) emergency service
26 provider who needs those services as a result of an incident in which
27 the (~~(officer)~~) emergency service provider was involved while acting in
28 his or her official capacity.

29 (ii) "Emergency service provider" means a law enforcement officer,
30 fire fighter, emergency medical technician as defined in RCW 18.73.030,
31 emergency worker as defined in RCW 38.52.010, and ambulance or aid
32 vehicle services personnel.

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

36 (a) For purposes of this section, "sexual assault advocate" means
37 the employee or volunteer from a rape crisis center, victim assistance
38 unit, program, or association, that provides information, medical or
39 legal advocacy, counseling, or support to victims of sexual assault,

1 who is designated by the victim to accompany the victim to the hospital
2 or other health care facility and to proceedings concerning the alleged
3 assault, including police and prosecution interviews and court
4 proceedings.

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

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 38.52 RCW
17 to read as follows:

18 (1) Any communication or information acquired by any emergency
19 service provider involved in a peer support counseling session
20 conducted by a peer support group counselor is confidential and shall
21 not be disclosed by any party attending the group counseling session,
22 except to the extent necessary to provide assistance pursuant to the
23 counseling session.

24 (2) For the purposes of this section:

25 (a) "Peer support group counselor" means:

26 (i) An emergency service provider, or a civilian employee of an
27 emergency service provider agency or entity, who has received training
28 to provide emotional and moral support and counseling to an emergency
29 service provider who needs those services as a result of an incident in
30 which the emergency service provider was involved while acting in his
31 or her official capacity; or

32 (ii) A nonemployee counselor who has been designated by the
33 emergency service provider agency or entity to provide emotional and
34 moral support and counseling to an emergency service provider who needs
35 those services as a result of an incident in which the emergency
36 service provider was involved while acting in his or her official
37 capacity.

1 (b) "Emergency service provider" means a law enforcement officer,
2 fire fighter, emergency medical technician as defined in RCW 18.73.030,
3 emergency worker as defined in RCW 38.52.010, and ambulance or aid
4 vehicle services personnel.

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