
SENATE BILL 5721

State of Washington

57th Legislature

2001 Regular Session

By Senators Haugen, Spanel and Rasmussen

Read first time 02/01/2001. Referred to Committee on Judiciary.

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

1 criminal activity involving the spouses, nor to a proceeding under
2 chapter 70.96A ((~~or~~)), 71.05, or 71.09 RCW: PROVIDED, That the spouse
3 of a person sought to be detained under chapter 70.96A ((~~or~~)), 71.05,
4 or 71.09 RCW may not be compelled to testify and shall be so informed
5 by the court prior to being called as a witness.

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

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

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

20 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,
21 a 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 to
25 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 to
32 all physicians or conditions, subject to such limitations as a court
33 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 of
38 the law enforcement officer making the communication, be compelled to
39 testify about any communication made to the counselor by the officer

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

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

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

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

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

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

33 (b) A sexual assault advocate may disclose a confidential
34 communication without the consent of the victim if failure to disclose
35 is likely to result in a clear, imminent risk of serious physical
36 injury or death of the victim or another person. Any sexual assault
37 advocate participating in good faith in the disclosing of records and
38 communications under this section shall have immunity from any
39 liability, civil, criminal, or otherwise, that might result from the

1 action. In any proceeding, civil or criminal, arising out of a
2 disclosure under this section, the good faith of the sexual assault
3 advocate who disclosed the confidential communication shall be
4 presumed.

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