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HOUSE BILL 1207

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives O'Brien and Ormsby

Read first time 01/18/2005. Referred to Committee on Judiciary.

1            AN ACT Relating to privileged communications between spouses; 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 2001 c 286 s 2 are each amended to read  
5 as 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 husband or wife against any child of whom said husband or wife is the  
18 parent or guardian, nor to a proceeding under chapter 70.96A, 71.05, or  
19 71.09 RCW: PROVIDED, That the spouse of a person sought to be detained

1 under chapter 70.96A, 71.05, or 71.09 RCW may not be compelled to  
2 testify and shall be so informed by the court prior to being called as  
3 a witness. The privilege contained in this subsection shall not apply  
4 to felony criminal proceedings involving both spouses in an allegation  
5 of criminal conspiracy or joint criminal activity with each other.

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

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

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

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

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

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

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

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

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

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