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HOUSE BILL 2685

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State of Washington                      55th Legislature                      1998 Regular Session

By Representatives Sheahan, Costa, Lambert, O'Brien, Ballasiotes,  
Conway, B. Thomas and Romero

Read first time 01/16/98. Referred to Committee on Law & Justice.

1            AN ACT Relating to communications between victims of domestic  
2 violence and victims' advocates; 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 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 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 sexual assault advocate may not, without the consent of the  
20 victim, be examined as to any communication made by the victim to the  
21 sexual assault advocate.

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

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

1 advocate who disclosed the confidential communication shall be  
2 presumed.

3 (8) A domestic violence victim advocate may not, without the  
4 consent of the victim, be examined as to any communication made by the  
5 victim to the domestic violence victim advocate.

6 (a) For purposes of this section, "domestic violence victim  
7 advocate" means the employee or volunteer from a community-based  
8 domestic violence victims' services program, shelter, or association,  
9 that provides information, medical or legal advocacy, counseling, or  
10 support to victims of domestic violence.

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

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