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SENATE BILL 6671

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State of Washington 57th Legislature

2002 Regular Session

By Senators Haugen and McCaslin

Read first time 01/25/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to spousal immunity; and amending RCW 5.60.060.

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

3 **Sec. 1.** RCW 5.60.060 and 2001 c 286 s 2 are each amended to read  
4 as follows:

5 (1)(a)(i) A husband shall not be examined for or against his wife,  
6 without ((the)) his consent ((of the wife)), nor a wife for or against  
7 her husband without ((the)) her consent ((of the husband; nor can  
8 either during marriage or afterward, be without the consent of the  
9 other, examined as to any communication made by one to the other during  
10 marriage. ~~But this exception~~)).

11 (ii) Neither a husband nor a wife, either during marriage or  
12 afterward, without the consent of the other, may be examined as to any  
13 communication made by one to the other during the marriage. But this  
14 privilege shall not apply to a criminal action or proceeding involving  
15 an allegation of conspiracy or an allegation of a joint criminal  
16 activity involving the spouses.

17 (b) The exceptions in (a) of this subsection shall not apply to a  
18 civil action or proceeding by one against the other, nor to a criminal  
19 action or proceeding for a crime committed by one against the other,

1 nor to a criminal action or proceeding against a spouse if the marriage  
2 occurred subsequent to the filing of formal charges against the  
3 defendant, nor to a criminal action or proceeding for a crime committed  
4 by (~~said~~) the husband or wife against any child of whom (~~said~~) the  
5 husband or wife is the parent or guardian, nor to a proceeding under  
6 chapter 70.96A, 71.05, or 71.09 RCW: PROVIDED, That the spouse of a  
7 person sought to be detained under chapter 70.96A, 71.05, or 71.09 RCW  
8 may not be compelled to testify and shall be so informed by the court  
9 prior to being called as a witness.

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

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

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

24 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,  
25 a physician or surgeon or osteopathic physician or surgeon or podiatric  
26 physician or surgeon shall not, without the consent of his or her  
27 patient, be examined in a civil action as to any information acquired  
28 in attending such patient, which was necessary to enable him or her to  
29 prescribe or act for the patient, except as follows:

30 (a) In any judicial proceedings regarding a child's injury,  
31 neglect, or sexual abuse or the cause thereof; and

32 (b) Ninety days after filing an action for personal injuries or  
33 wrongful death, the claimant shall be deemed to waive the physician-  
34 patient privilege. Waiver of the physician-patient privilege for any  
35 one physician or condition constitutes a waiver of the privilege as to  
36 all physicians or conditions, subject to such limitations as a court  
37 may impose pursuant to court rules.

1 (5) A public officer shall not be examined as a witness as to  
2 communications made to him or her in official confidence, when the  
3 public interest would suffer by the disclosure.

4 (6)(a) A peer support group counselor shall not, without consent of  
5 the law enforcement officer making the communication, be compelled to  
6 testify about any communication made to the counselor by the officer  
7 while receiving counseling. The counselor must be designated as such  
8 by the sheriff, police chief, or chief of the Washington state patrol,  
9 prior to the incident that results in counseling. The privilege only  
10 applies when the communication was made to the counselor while acting  
11 in his or her capacity as a peer support group counselor. The  
12 privilege does not apply if the counselor was an initial responding  
13 officer, a witness, or a party to the incident which prompted the  
14 delivery of peer support group counseling services to the law  
15 enforcement officer.

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

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

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

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

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

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

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