

**ESHB 1187** - S COMM AMD

By Committee on Law & Justice

1 Beginning on page 2, line 14, strike all of section 2 and insert  
2 the following:

3 **"Sec. 2.** RCW 5.60.060 and 2020 c 302 s 113 and 2020 c 42 s 1 are  
4 each reenacted and amended to read as follows:

5 (1) A spouse or domestic partner shall not be examined for or  
6 against his or her spouse or domestic partner, without the consent of  
7 the spouse or domestic partner; nor can either during marriage or  
8 during the domestic partnership or afterward, be without the consent  
9 of the other, examined as to any communication made by one to the  
10 other during the marriage or the domestic partnership. 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 or domestic partner if the marriage or  
15 the domestic partnership occurred subsequent to the filing of formal  
16 charges against the defendant, nor to a criminal action or proceeding  
17 for a crime committed by said spouse or domestic partner against any  
18 child of whom said spouse or domestic partner is the parent or  
19 guardian, nor to a proceeding under chapter 71.05 or 71.09 RCW:  
20 PROVIDED, That the spouse or the domestic partner of a person sought  
21 to be detained under chapter 71.05 or 71.09 RCW may not be compelled  
22 to testify and shall be so informed by the court prior to being  
23 called as a witness.

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

28 (b) A parent or guardian of a minor child arrested on a criminal  
29 charge may not be examined as to a communication between the child  
30 and his or her attorney if the communication was made in the presence

1 of the parent or guardian. This privilege does not extend to  
2 communications made prior to the arrest.

3 (3) A member of the clergy, a Christian Science practitioner  
4 listed in the Christian Science Journal, or a priest shall not,  
5 without the consent of a person making the confession or sacred  
6 confidence, be examined as to any confession or sacred confidence  
7 made to him or her in his or her professional character, in the  
8 course of discipline enjoined by the church to which he or she  
9 belongs.

10 (4) Subject to the limitations under RCW 71.05.217 (6) and (7), a  
11 physician or surgeon or osteopathic physician or surgeon or podiatric  
12 physician or surgeon shall not, without the consent of his or her  
13 patient, be examined in a civil action as to any information acquired  
14 in attending such patient, which was necessary to enable him or her  
15 to prescribe or act for the patient, except as follows:

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

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

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

27 (6)(a) A peer support group counselor shall not, without consent  
28 of the peer support group client making the communication, be  
29 compelled to testify about any communication made to the counselor by  
30 the peer support group client while receiving counseling. The  
31 counselor must be designated as such by the agency employing the peer  
32 support group client prior to the incident that results in  
33 counseling. The privilege only applies when the communication was  
34 made to the counselor while acting in his or her capacity as a peer  
35 support group counselor. The privilege does not apply if the  
36 counselor was an initial responding first responder, department of  
37 corrections staff person, or jail staff person; a witness; or a party  
38 to the incident which prompted the delivery of peer support group  
39 counseling services to the peer support group client.

40 (b) For purposes of this section:

1 (i) "First responder" means:

2 (A) A law enforcement officer;

3 (B) A limited authority law enforcement officer;

4 (C) A firefighter;

5 (D) An emergency services dispatcher or recordkeeper;

6 (E) Emergency medical personnel, as licensed or certified by this  
7 state; or

8 (F) A member or former member of the Washington national guard  
9 acting in an emergency response capacity pursuant to chapter 38.52  
10 RCW.

11 (ii) "Law enforcement officer" means a general authority  
12 Washington peace officer as defined in RCW 10.93.020.

13 (iii) "Limited authority law enforcement officer" means a limited  
14 authority Washington peace officer as defined in RCW 10.93.020 who is  
15 employed by the department of corrections, state parks and recreation  
16 commission, department of natural resources, liquor and cannabis  
17 board, or Washington state gambling commission.

18 (iv) "Peer support group client" means:

19 (A) A first responder;

20 (B) A department of corrections staff person; or

21 (C) A jail staff person.

22 (v) "Peer support group counselor" means:

23 (A) A first responder, department of corrections staff person, or  
24 jail staff person or a civilian employee of a first responder entity  
25 or agency, local jail, or state agency who has received training to  
26 provide emotional and moral support and counseling to a peer support  
27 group client who needs those services as a result of an incident in  
28 which the peer support group client was involved while acting in his  
29 or her official capacity; or

30 (B) A nonemployee counselor who has been designated by the first  
31 responder entity or agency, local jail, or state agency to provide  
32 emotional and moral support and counseling to a peer support group  
33 client who needs those services as a result of an incident in which  
34 the peer support group client was involved while acting in his or her  
35 official capacity.

36 (7) A sexual assault advocate may not, without the consent of the  
37 victim, be examined as to any communication made between the victim  
38 and the sexual assault advocate.

39 (a) For purposes of this section, "sexual assault advocate" means  
40 the employee or volunteer from a community sexual assault program or

1 underserved populations provider, victim assistance unit, program, or  
2 association, that provides information, medical or legal advocacy,  
3 counseling, or support to victims of sexual assault, who is  
4 designated by the victim to accompany the victim to the hospital or  
5 other health care facility and to proceedings concerning the alleged  
6 assault, including police and prosecution interviews and court  
7 proceedings.

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

19 (8) A domestic violence advocate may not, without the consent of  
20 the victim, be examined as to any communication between the victim  
21 and the domestic violence advocate.

22 (a) For purposes of this section, "domestic violence advocate"  
23 means an employee or supervised volunteer from a community-based  
24 domestic violence program or human services program that provides  
25 information, advocacy, counseling, crisis intervention, emergency  
26 shelter, or support to victims of domestic violence and who is not  
27 employed by, or under the direct supervision of, a law enforcement  
28 agency, a prosecutor's office, or the child protective services  
29 section of the department of children, youth, and families as defined  
30 in RCW 26.44.020.

31 (b) A domestic violence advocate may disclose a confidential  
32 communication without the consent of the victim if failure to  
33 disclose is likely to result in a clear, imminent risk of serious  
34 physical injury or death of the victim or another person. This  
35 section does not relieve a domestic violence advocate from the  
36 requirement to report or cause to be reported an incident under RCW  
37 26.44.030(1) or to disclose relevant records relating to a child as  
38 required by RCW 26.44.030(15). Any domestic violence advocate  
39 participating in good faith in the disclosing of communications under  
40 this subsection is immune from liability, civil, criminal, or

1 otherwise, that might result from the action. In any proceeding,  
2 civil or criminal, arising out of a disclosure under this subsection,  
3 the good faith of the domestic violence advocate who disclosed the  
4 confidential communication shall be presumed.

5 (9) A mental health counselor, independent clinical social  
6 worker, or marriage and family therapist licensed under chapter  
7 18.225 RCW may not disclose, or be compelled to testify about, any  
8 information acquired from persons consulting the individual in a  
9 professional capacity when the information was necessary to enable  
10 the individual to render professional services to those persons  
11 except:

12 (a) With the written authorization of that person or, in the case  
13 of death or disability, the person's personal representative;

14 (b) If the person waives the privilege by bringing charges  
15 against the mental health counselor licensed under chapter 18.225  
16 RCW;

17 (c) In response to a subpoena from the secretary of health. The  
18 secretary may subpoena only records related to a complaint or report  
19 under RCW 18.130.050;

20 (d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.217  
21 (6) or (7); or

22 (e) To any individual if the mental health counselor, independent  
23 clinical social worker, or marriage and family therapist licensed  
24 under chapter 18.225 RCW reasonably believes that disclosure will  
25 avoid or minimize an imminent danger to the health or safety of the  
26 individual or any other individual; however, there is no obligation  
27 on the part of the provider to so disclose.

28 (10) An individual who acts as a sponsor providing guidance,  
29 emotional support, and counseling in an individualized manner to a  
30 person participating in an alcohol or drug addiction recovery  
31 fellowship may not testify in any civil action or proceeding about  
32 any communication made by the person participating in the addiction  
33 recovery fellowship to the individual who acts as a sponsor except  
34 with the written authorization of that person or, in the case of  
35 death or disability, the person's personal representative.

36 (11)(a) A union representative shall not, without the consent of  
37 his or her represented employee, be examined as to, or be required to  
38 disclose, any communication between an employee and union  
39 representative or between union representatives made in the course of  
40 union representation except:

1 (i) To the extent such examination or disclosure appears  
2 necessary to prevent the commission of a crime that is likely to  
3 result in a clear, imminent risk of serious physical injury or death  
4 of a person;

5 (ii) In actions, civil or criminal, in which the employee is  
6 accused of a crime or assault or battery;

7 (iii) In actions, civil or criminal, where an employee is a party  
8 to the action, the privilege is deemed waived if the employee calls  
9 the union representative as a witness. Such a waiver shall not be  
10 construed to waive privilege on behalf of other nonparty employees  
11 represented by the union without those employees' consent, and a  
12 court may review such issues in camera to determine the treatment of  
13 such communications;

14 (iv) In actions, regulatory, civil, or criminal, against the  
15 union or its affiliated, subordinate, or parent bodies or their  
16 agents; or

17 (v) When an admission of, or intent to engage in, criminal  
18 conduct is revealed by the employee to the union representative.

19 (b) The privilege created in this subsection (11) does not apply  
20 to any record of communications that would otherwise be subject to  
21 disclosure under chapter 42.56 RCW.

22 (c) The privilege created in this subsection (11) may not  
23 interfere with an employee's or union representative's applicable  
24 statutory mandatory reporting requirements, such as under chapters  
25 43.101, 26.44, and 74.34 RCW.

26 (d) For purposes of this subsection:

27 (i) "Employee" means a person represented by a certified or  
28 recognized union regardless of whether the employee is a member of  
29 the union.

30 (ii) "Union" means any lawful organization that has as one of its  
31 primary purposes the representation of employees in their employment  
32 relations with employers, including without limitation labor  
33 organizations defined by 29 U.S.C. Sec. 152(5) and 5 U.S.C. Sec.  
34 7103(a)(4), representatives defined by 45 U.S.C. Sec. 151, bargaining  
35 representatives defined in RCW 41.56.030, and employee organizations  
36 as defined in RCW 28B.52.020, 41.59.020, 41.80.005, 41.76.005,  
37 47.64.011, and 53.18.010.

38 (iii) "Union representation" means action by a union on behalf of  
39 one or more employees it represents in regard to their employment  
40 relations with employers, including personnel matters, grievances,

1 labor disputes, wages, rates of pay, hours of employment, conditions  
2 of work, or collective bargaining. "Union representation" does not  
3 include communications or circumstances where the union  
4 representative is called as a fact witness to a matter, or where  
5 casual communications between employees of the same employer would  
6 normally be disclosable to an employer in the employer's regular  
7 capacity as a manager or supervisor, or where efforts to maintain the  
8 communication's confidentiality were not maintained.

9 (iv) "Union representative" means a person authorized by a union  
10 to act for the union in regard to union representation.

11 (v) "Communication" includes any oral, written, or electronic  
12 communication or document containing such communication."

EFFECT: Clarifies that a union representative shall not be examined as to or disclose any communication between an employee and the union representative without the consent of the represented employee. Provides that testimonial privilege is waived if an employee is a party to a civil or criminal action and the employee calls the union representative as a witness. Provides that waiver of testimonial privilege for a party employee is not a waiver of privilege on behalf of nonparty employees represented by the union. Clarifies that testimonial privilege may not interfere with an employee's or union representative's statutory mandatory reporting requirements. Clarifies what is not considered "union representation."

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