

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 644

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO EVIDENCE; AMENDING SECTION 9-203, IDAHO CODE, TO DEFINE TERMS,
TO PROHIBIT DISCLOSURE OF CERTAIN COMMUNICATIONS, TO PROVIDE EXCEP-
TIONS, AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 9-203, Idaho Code, be, and the same is hereby
amended to read as follows:

9-203. CONFIDENTIAL RELATIONS AND COMMUNICATIONS. There are particu-
lar relations in which it is the policy of the law to encourage confidence and
to preserve it inviolate; therefore, a person cannot be examined as a witness
in the following cases:

(1-) A husband cannot be examined for or against his wife, without her
consent, nor a wife for or against her husband, without his consent; nor can
either, during the marriage or afterwards, be, without the consent of the
other, examined as to any communication made by one to the other during the
marriage; but this exception does not apply to a civil action or proceeding
by one against the other nor to a criminal action or proceeding for a crime
committed by violence of one against the person of the other, nor does this
exception apply to any case of physical injury to a child where the injury has
been caused as a result of physical abuse or neglect by one or both of the par-
ents, nor does this exception apply to any case of lewd and lascivious con-
duct or attempted lewd and lascivious conduct where either party would oth-
erwise be protected by this privilege.

(2-) An attorney cannot, without the consent of his client, be exam-
ined as to any communication made by the client to him, or his advice given
thereon, in the course of professional employment. The word client used
herein shall be deemed to include a person, a corporation or an association.

(3-) A clergyman or priest cannot, without the consent of the person
making the confession, be examined as to any confession made to him in his
professional character in the course of discipline enjoined by the church to
which he belongs.

(4-) A physician or surgeon cannot, without the consent of his patient,
be examined in a civil action as to any information acquired in attending
the patient which was necessary to enable him to prescribe or act for the pa-
tient, provided, however, that:

(Aa) Nothing herein contained shall be deemed to preclude physicians
from reporting of and testifying at all cases of physical injury to
children, where it appears the injury has been caused as a result of
physical abuse or neglect by a parent, guardian or legal custodian of
the child.

1 (Bb) Nothing herein contained shall be deemed to preclude physicians
2 from testifying at all cases of physical injury to a person where it ap-
3 pears the injury has been caused as a result of domestic violence.

4 (Cc) After the death of a patient, in any action involving the valid-
5 ity of any will or other instrument executed, or claimed to have been
6 executed, by him, conveying or transferring any real or personal prop-
7 erty or incurring any financial obligation, such physician or surgeon
8 may testify to the mental or physical condition of such patient and in so
9 testifying may disclose information acquired by him concerning such pa-
10 tient which was necessary to enable him to prescribe or act for such de-
11 ceased.

12 (Dd) ~~That~~ Where any person or his heirs or representatives brings an
13 action to recover damages for personal injuries or death, such action
14 shall be deemed to constitute a consent by the person bringing such ac-
15 tion that any physician who has prescribed for or treated said injured
16 or deceased person and whose testimony is material in the action may
17 testify.

18 (Ee) ~~That~~ If the patient be dead and during his lifetime had not given
19 such consent, the bringing of an action by a beneficiary, assignee or
20 payee or by the legal representative of the insured, to recover on any
21 life, health or accident insurance policy, shall constitute a consent
22 by such beneficiary, assignee, payee or legal representative to the
23 testimony of any physician who attended the deceased.

24 (5-) A public officer cannot be examined as to communications made to
25 him in official confidence, when the public interests would suffer by dis-
26 closure.

27 (6-) Any certificated counselor, psychologist or psychological exam-
28 iner, duly appointed, regularly employed and designated in such capacity by
29 any public or private school in this state for the purpose of counseling stu-
30 dents, shall be immune from disclosing, without the consent of the student,
31 any communication made by any student so counseled or examined in any civil
32 or criminal action to which such student is a party. Such matters so communi-
33 cated shall be privileged and protected against disclosure.

34 (7-) Any parent, guardian or legal custodian shall not be forced to
35 disclose any communication made by their minor child or ward to them con-
36 cerning matters in any civil or criminal action to which such child or ward
37 is a party. Such matters so communicated shall be privileged and protected
38 against disclosure; excepting, this section does not apply to a civil action
39 or proceeding by one against the other nor to a criminal action or proceeding
40 for a crime committed by violence of one against the person of the other, nor
41 does this section apply to any case of physical injury to a minor child where
42 the injury has been caused as a result of physical abuse or neglect by one or
43 both of the parents, guardians or legal custodians.

44 (8) (a) As used in this subsection:

45 (i) "First responder" means:

46 1. A peace officer as defined in section 19-5101(d), Idaho
47 Code, when employed by a city, county, or the Idaho state po-
48 lice;

49 2. A firefighter as defined in section 59-1302(16), Idaho
50 Code;

1 3. A volunteer emergency responder as defined in section
 2 72-102(31), Idaho Code;

3 4. An emergency medical service (EMS) provider certi-
 4 fied by the department of health and welfare pursuant to
 5 sections 56-1011 through 56-1018B, Idaho Code, and an am-
 6 bulance-based clinician as defined in the rules governing
 7 emergency medical services as adopted by the department of
 8 health and welfare; and

9 5. An emergency communications officer as defined in sec-
 10 tion 19-5101(f), Idaho Code.

11 (ii) "Peer support counseling session" means a meeting conducted
 12 by a peer support specialist, which meeting is held in response to
 13 a critical incident, traumatic event, or other personal or profes-
 14 sional wellness issue.

15 (iii) "Peer support specialist" means a person designated by a
 16 public agency employing first responders to lead, moderate, or
 17 assist in a peer support counseling session.

18 (b) Any peer support specialist or participant in a peer support coun-
 19 seling session cannot disclose and shall not be forced to disclose a
 20 communication made during or arising out of a peer support counseling
 21 session without the consent of the person who made the communication or
 22 about whom the communication was made, unless the communication:

23 (i) Involves a threat of suicide or a threat to commit a criminal
 24 act;

25 (ii) Involves information required by law to be reported;

26 (iii) Is an admission of criminal conduct; or

27 (iv) Was made by a deceased participant and the deceased partic-
 28 ipant's surviving spouse or the executor or administrator of the
 29 deceased participant's estate consents to the disclosure.

30 SECTION 2. An emergency existing therefor, which emergency is hereby
 31 declared to exist, this act shall be in full force and effect on and after its
 32 passage and approval.