

Laws about Private Communications Illinois

Last Updated: March 2020

Question	Answer
<p>What relationships qualify for privileged communications and how is "privilege" defined?</p>	<p>Confidentiality between rape crisis counselor and victim</p> <ul style="list-style-type: none"> • Generally, no rape crisis counselor shall disclose any confidential communication or be examined as a witness in any civil or criminal proceeding as to any confidential communication without the written consent of the victim (or a representative of the victim). 735 Ill. Comp. Stat. 5/8-802.1(d) • A rape crisis counselor who knowingly discloses any confidential communication in violation of the law commits a class C misdemeanor. 735 Ill. Comp. Stat. 5/8-802.1(f)
<p>Is the privilege qualified or absolute?</p>	<p>Qualified by statute.</p>
<p>Who holds the privilege and has the right to waive it? What are the standards for waiver of the privilege?</p>	<p>Holder of Privilege:</p> <ul style="list-style-type: none"> • Only the victim, a personal representative of the victim, or a parent or guardian (whose interests are not adverse to the minor) may waive the privilege. 735 Ill. Comp. Stat. 5/8-802.1(c) <p>Waiver of Privilege:</p> <ul style="list-style-type: none"> • Privilege is not waived by presence of a third person who further expresses the interests of the victim at the time of the communication; group counseling; or disclosure to third person with consent of victim, when reasonably necessary to accomplish purpose for which the counselor is consulted. 735 Ill. Comp. Stat. 5/8-802.1(c)(1) • Privilege is not waived when the victim inspects the records, or for victims less than 12 years old, the victim's parent or guardian (whose interests are not adverse to the minor) inspects the records, or in the case of a minor who is 12 years or older, the victim's parent or guardian (whose interests are not adverse to the minor) inspects the records with the victim's consent. The privilege is not waived in the case of an adult victim who has a guardian of his or her person, when the guardian inspects the records with the victim's consent. 735 Ill. Comp. Stat. 5/8-802.1(c)(2) • When the victim is deceased or incompetent, the victim's administrator or executor of the victim's estate may waive the privilege unless the administrator or executor has an interest adverse to the victim. 735 Ill. Comp. Stat. 5/8-802.1(c)(4) • A minor victim over age 12 may knowingly waive the privilege. 735 Ill. Comp. Stat. 5/8-802.1(c)(4) • When the court decides that a minor victim over 12 is incapable of knowingly waiving the privilege, the victim's parent or guardian may waive the privilege on behalf of the minor victim, unless the parent or guardian has an interest adverse to the minor victim. 735 Ill. Comp. Stat.

	<p>5/8-802.1(c)(4)</p> <ul style="list-style-type: none"> • An adult victim who has a guardian of his or her person may knowingly waive the privilege established in this Section. When the victim is, in the opinion of the court, incapable of knowingly waiving the privilege, the guardian of the adult victim may waive the privilege on behalf of the victim, unless the guardian has been charged with a violent crime against the victim or otherwise has any interest adverse to the victim with respect to the privilege. 735 Ill. Comp. Stat. 5/8-802.1(c)(5)
<p>Are there any exceptions to the privilege?</p>	<ul style="list-style-type: none"> • If failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person, then any rape crisis counselor or rape crisis organization participating in good faith in the disclosing of records and communications will have immunity from any liability, civil, criminal, or otherwise, that might result from the action. 735 ILL COMP. STAT. 5/8-802.1(e) • In any proceeding, civil or criminal, arising out of a disclosure under this Section, the good faith of any rape crisis counselor or rape crisis organization who disclosed the confidential communication shall be presumed. 735 ILL. COMP. STAT. 5/8-802.1(e)
<p>When and how may a judge review case documents in private?</p>	<p>Prohibited</p> <p><i>People v. Foggy</i>, 521 N.E.2d 86, 92 (Ill. 1988)</p> <ul style="list-style-type: none"> • The absolute privilege provided by the statute is not unconstitutional. • The absolute privilege did not violate defendant's constitutional rights because defendant offered no proof that the privileged records would provide impeachment evidence unavailable from any other source. • Although the <i>Foggy</i> court left open the issue of whether in camera review (i.e. private review by the judge) would be permitted if a defendant showed reason to believe that the privileged records contained impeachment material relevant to his defense, state courts have generally interpreted the statute as being absolute. <i>People v. Harlacher</i>, 634 N.E.2d 366, 372 (Ill. App. 1994) <p><i>Awalt v. Marketti</i>, 287 F.R.D. 409, 422-23 (N.D. Ill. 2012)</p> <ul style="list-style-type: none"> • The statutory prohibition on disclosures by rape victims and rape counselors and organizations is absolute and cannot be waived through litigation conduct. • Here defendant attempted to compel production of rape counseling records for counseling received by plaintiff in response to her minor daughter's rape. The court found that the records were not probative of any issue of fact in the suit. The court further stated that even if the records were relevant, they were protected by privilege.
<p>What other definitions are important to know?</p>	<p>Confidential Communication:</p> <ul style="list-style-type: none"> • Any communication between a victim and a rape crisis counselor in the course of providing information, counseling, and advocacy. 735 Ill. Comp. Stat. 5/8-802.1(b)(4) • Includes all records kept by the rape crisis counselor or the rape crisis organization concerning the victim (including an alleged victim) and the services provided. 735 Ill. Comp. Stat.

5/8-802.1(b)(4)

Rape Crisis Counselor:

- A psychologist, social worker, employee, or volunteer at any rape crisis organization who has undergone 40 hours of training and is under the control of a direct services supervisor at the rape crisis organization. 735 Ill. Comp. Stat. 5/8-802.1(b)(2)

Rape Crisis Organization:

- Any organization or association with the major purpose of providing information, counseling, and psychological support to victims of any sexual crime. 735 Ill. Comp. Stat. 5/8-802.1(b)(1)

Training Requirements for Rape Crisis Counselors:

- 40 hours of training. 735 Ill. Comp. Stat. 5/8-802.1(b)(2)

Victim:

- A person who is the subject of or seeks information, counseling, or advocacy services as a result of an aggravated sexual assault, sexual abuse, sexual relations with a family member, sexual exploitation of a child, indecent solicitation or exploitation of a child, public indecency, or promoting juvenile prostitution. Attempt to commit any of these crimes is also covered. 735 Ill. Comp. Stat. 5/8-802.1(b)(3)

Anything else I should know?

Proposal:

- 2013 Illinois Senate Bill No. 3308 Illinois Ninety-Eighth General Assembly - Second Regular Session
- The proposed bill would amend the Code of Civil Procedure and the Illinois Domestic Violence Act of 1986 to provide that if a victim of rape or domestic violence is deceased, has been adjudged by a court to be a person under legal disability, or has been reported missing for more than six months, a judge may inspect in camera the records of a rape crisis organization or domestic violence program to determine whether those records contain relevant information about the victim's death, legal disability, or disappearance and may order the disclosure of information the court determines is necessary for: (1) an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death, legal disability, or disappearance; or (2) a guardianship or custody proceeding involving the victim's minor child or children.

Statutory citation(s):

735 Ill. Comp. Stat. 5/8-802.1