

Victim Advocate Confidentiality Statutes



The National Center for Prosecution of Violence Against Women

Summary of Content

Traditionally, the rules of evidence have protected certain communications from disclosure in court.¹ For example, communications between husband and wives, psychotherapists and patients, attorneys and clients, as well as select others have been deemed “privileged,” or in other words confidential.² State legislatures have recently expanded this protection to communication between victim and non-licensed counselors who specialized in victim assistance.³ This expansion allows protection outside of the traditional patient-psychotherapist relationship, which may not be an accessible or affordable option for many victims of domestic violence and sexual assault.⁴

This document compiled statutes expanding the victim-counselor privilege for victims of domestic violence and/or rape, and specially trained advocates. The privilege statutes provide either: absolute, absolute diluted or qualified privilege. Absolute privilege protects virtually all communications between a victim and counselor.⁵ A semi-absolute privilege authorizes disclosure in limited instances of public interest.⁶ The most common public interest exceptions to the privilege involve reporting of abuse or neglect of a child or vulnerable adult, perjured testimony, evidence of the victim’s intent to commit a

¹ See Fed. R. Evid. 501.

² See Fed. R. Evid. 502; H. Carol Bernstein, *Psychotherapist-Patient Privilege Under Federal Rule of Evidence 501*, J. of Crim. L. & Criminology (1984).

³ See Office for Victims of Crime, U.S. Dep’t Justice, *Privacy Of Victims’ Counseling Communications* 1 (Nov. 2002, available at https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin8/ncj192264.pdf).

⁴ *Id.*

⁵ *Id.* at 3.

⁶ *Id.*

crime, or malpractice proceedings against the counselor.⁷ Qualified privilege allows the court to authorize disclosure if a court finds disclosure of the communication appropriate given the facts of the case.⁸ Most states have adopted some form of privilege statute expanding confidentiality rights for victims of these crimes and specialized counselors trained to assist them. **Last Updated August 2016.**

Scope of Compilation

This document is a compilation of Advocate Confidentiality statutes from all U.S. jurisdictions including states.. In states without specific laws on advocate confidentiality, similar laws/decisions were included instead. Please note that we recommend checking both case law and current legislation for later modifications to the statutes listed below. The dates on the citation of the statutes indicate they are up-to-date as of the year listed.

For further assistance, consult the National District Attorneys Association's National Center for Prosecution of Violence Against Women at 703.549.9222, or via the free online prosecution assistance service http://www.ndaa.org/ta_form.php

STATE	ABSOLUTE PRIVILEGE	ABSOLUTE DILUTED PRIVILEGE	QUALIFIED PRIVILEGE
ALABAMA		X	
ALASKA		X	
ARIZONA			X
ARKANSAS			
CALIFORNIA			X
COLORADO	X		
CONNECTICUT		X	
DELAWARE			
DISTRICT OF COLUMBIA		X many exceptions	
FLORIDA	X		
GEORGIA			X
HAWAII	X		
IDAHO			
ILLINOIS	X		
INDIANA	X		
IOWA			X
KANSAS			
KENTUCKY			X
LOUISIANA		X SA many exceptions	X DV

⁷ *Id.*

⁸ *Id.*

MAINE			X
MARYLAND			
MASSACHUSETTS		X SA	X DV
MICHIGAN			X
MINNESOTA			X
MISSISSIPPI			
MISSOURI			
MONTANA	X		
NEBRASKA			X
NEVADA		X	
NEW HAMPSHIRE			X
NEW JERSEY	X		
NEW MEXICO	X		
NEW YORK	X		
NORTH CAROLINA			X
NORTH DAKOTA			X
OHIO			
OKLAHOMA			X
OREGON			
PENNSYLVANIA	X		
RHODE ISLAND			
SOUTH CAROLINA			
SOUTH DAKOTA			
TENNESSEE			
TEXAS		X many exceptions	
UTAH		X	
VERMONT		X	
VIRGINIA		X	
WASHINGTON			X
WEST VIRGINIA		X	
WISCONSIN	X		
WYOMING		X	

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ALABAMA

ALA CODE . § 15-23-40 TO 46 (2016)

- (1) Any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from a sexual assault or family violence.
- (2) A person who consults a victim counselor for assistance in overcoming adverse emotional or psychological effects of a sexual assault or family violence.
- (3) Any sexual offense enumerated in Sections 13A-6-60 through 13A-6-70.
- (4) The occurrence of one or more of the following acts between family or household members:
 - a. Attempting to cause or causing physical harm.
 - b. Placing another in fear of imminent serious physical harm.
- (5) or Household members. — — Children, spouses, former spouses, persons of the opposite sex living as spouses now or in the past, or persons 60 years of age or older living in the same household and related by blood or marriage.
- (6) Assessment, diagnosis, and treatment to alleviate the adverse emotional or psychological impact of a sexual assault or family violence on the victim. Victim counseling includes, but is not limited to, crisis intervention.
- (7) A private organization or unit of a government agency which has as one of its primary purposes the treatment of victims for any emotional or psychological condition resulting from a sexual assault or family violence.
- (8) Any employee or supervised volunteer of a victim counseling center or other agency, business, or organization that provides counseling to victims who is not affiliated with a law enforcement agency or a prosecutor's office and whose duties include treating victims for any emotional or psychological condition resulting from a sexual assault or family violence.

ALA CODE. § 15-23-42 (2016). Compelled testimony prohibited.

- (a) A victim, a victim counselor without the consent of the victim, or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party, cannot be compelled to give testimony or to produce records concerning confidential communications for any purpose in any criminal proceeding.
- (b) A victim counselor or a victim cannot be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(c) The confidential communication privilege of a victim counselor with respect to communications made between the counselor and the victim shall terminate upon the death of the victim.

ALA CODE. § 15-23-43 (2016). Waiver of protection.

(a) A victim does not waive the protections afforded by this article by testifying in court about the crime.

(1) However, if the victim partially discloses the contents of a confidential communication in the course of testifying, then either party may request the court to rule that justice requires the protections of this section be waived, to the extent they apply to that portion of the communication.

(2) Any waiver shall apply only to the extent necessary to require any witness to respond to counsel's questions concerning the confidential communication that are relevant to the facts and circumstances of the case.

(b) A victim counselor cannot waive the protections afforded to a victim under this section. However, if a victim brings suit against a victim counselor or the agency, business, or organization in which the victim counselor was employed or served as a volunteer at the time of the counseling relationship and the suit alleges malpractice during the counseling relationship, the victim counselor may testify or produce records regarding confidential communications with the victim and is not liable for doing so.

ALA CODE § 15-23-44 (2016). Relationship to other testimonial privileges.

Nothing in this article shall be construed to limit any other testimonial privilege available to any person under other statutes or rules.

ALA CODE § 15-23-45 (2016). Counselor's other duties not relieved.

This article shall not be construed to relieve victim counselors of any duty to report suspected child abuse or neglect or any evidence that the victim is about to commit a crime.

ALA CODE § 15-23-46 (2016). Unauthorized practice.

Nothing in this article shall be construed to permit a victim counselor to administer or prescribe drugs in any form, or in any manner to engage in the practice of medicine as defined by the laws of this state or to engage in any act or to perform any service which act or service requires a license as described in Chapters 8A, 21, 24, 26, or 30 of Title 34, unless such victim counselor is duly licensed by the appropriate licensing agency. Nothing in this article shall be construed to enlarge or expand the scope of practice of any of the licensed professions or occupations enumerated above by virtue of an individual being designated as or holding the position of victim counselor.

ALA CODE. § 30-6-8 (2016)

Information identifying individuals or facilities received by the office, the circuit, any district attorney or his or her employees, the director, or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection, or

otherwise, is confidential and exempt from Section 36-12-40. Information about the location of domestic violence centers and facilities is confidential and exempt from Section 36-12-40. Oral communications between a domestic violence victim and an advocate and written reports and records concerning the victim may not be disclosed without the written consent of the victim. This privilege does not relieve a person from any duty imposed pursuant to Section 26-14-1 or Section 38-9-2. However, when cooperating with the Department of Human Resources, the staff and volunteers of a domestic violence center shall protect the confidentiality of other clients at the center. A victim or advocate may not claim this privilege when providing evidence in proceedings concerning child abuse, but may claim this privilege in all other proceedings, both criminal and civil. This privilege expires upon the death of the victim. The director shall ensure that the information obtained under authority of this chapter shall be restricted to the items germane to the implementation thereof and shall ensure that the provisions are administered so as not to accumulate any information or distribute any information that is not required by this chapter.

ALA. R. EVID. RULE 503A (2016).

(a) Definitions. As used in this rule:

(1) The term "client" means a person who, for the purpose of securing professional counseling services, consults with a licensed professional counselor or a certified counselor associate. It also means a person who, for the purpose of securing counseling services as the result of either sexual assault or family violence, consults with a victim counselor.

(2) A "licensed professional counselor" is any person who holds himself or herself out to the public by any title or description of services incorporating the words "licensed professional counselor" or "licensed counselor"; who offers to render professional counseling services to individuals, groups, organizations, corporations, institutions, government agencies, or the general public, implying that the person is licensed and trained, experienced or expert in counseling; and who holds a current, valid license to engage in the private practice of counseling.

(3) A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional counseling services to the client or those to whom disclosure is reasonably necessary for the transmission of the communication.

(4) "Counselor associate" is any person who has been certified by the Alabama Board of Examiners in counseling to offer counseling services under the supervision of a licensed professional counselor.

(5) "Counseling services" consist of all acts and behaviors that constitute the "practice of counseling" as that term is defined in this rule.

(6) The "practice of counseling" involves the rendering or offering to render counseling services such as, among others, the following methods and procedures employed by the counseling profession:

(A) Counseling. Assisting a person, through the counseling relationship, to develop understanding of personal problems, to define goals, and to plan action reflecting the person's interests, abilities, aptitudes, and needs as these are related to personal-social concerns, education progress, and occupations and careers.

(B) Appraisal activities. Selecting, administering, scoring and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics, but not including the use of projective techniques in the assessment of personality.

(C) Counseling, guidance, and personnel consulting. Interpreting or reporting upon scientific fact or theory in counseling, guidance, and personnel services to provide assistance in solving some current or potential problems of individuals, groups, or organizations.

(D) Referral activities. The evaluating of data to identify problems and to determine advisability of referral to other specialists.

(E) Research activities. The designing, conducting, and interpreting of research with human subjects.

(F) Victim counseling. The providing of counseling to victims for any emotional or psychological impact resulting from a sexual assault or family violence.

(7) "Victim counselor" means any employee or supervised volunteer of a victim counseling center or other agency, business, or organization that provides counseling to victims, who is not affiliated with a law enforcement agency or prosecutor's office and whose duties include treating victims for any emotional or psychological condition resulting from a sexual assault or family violence.

(8) "Sexual assault" includes any sexual offense set out in Ala. Code 1975, §§ 13A-6-60 through 13A-6-70.

(9) "Family violence" means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or causing physical harm.

(B) Placing another in fear of imminent serious physical harm.

(10) The designation "family or household members" encompasses children, spouses, former spouses, persons of the opposite sex living as spouses now or in the past, or persons 60 years of age or older living in the same household and related by blood or marriage.

(11) "Victim counseling center" means a private organization or unit of a government agency which has as one of its primary purposes the treatment of victims for any emotional or psychological condition resulting from a sexual assault or family violence.

(b) General rule of privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made for the purpose of facilitating the rendition of counseling services to the client.

(c) Who may claim the privilege. The privilege may be claimed by the client, the client's guardian or conservator, or the personal representative of a deceased client. The person who was the licensed counselor, counselor associate, or victim counselor at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the client.

(d) Exceptions.

(1) Proceedings for hospitalization. In proceedings to hospitalize the client for mental illness, there is no privilege under this rule for communications relevant to an issue in those proceedings if the counselor or counselor associate has determined, in the course of counseling that the client is in need of hospitalization.

(2) Examination by order of court. If the court orders an examination of the mental or emotional condition of a client, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered, unless the court orders otherwise.

(3) When the client's condition is an element of a claim or a defense. There is no privilege under this rule as to a communication relevant to an issue regarding the mental or emotional condition of the client, in any proceeding in which the client relies upon the condition as an element of the client's claim or defense, or, after the client's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(4) Breach of duty arising out of the counselor-client relationship. There is no privilege under this rule as to an issue of breach of duty by the counselor, counselor associate, or victim counselor to the client or by the client to the counselor, counselor associate, or victim counselor.

(5) Victim counseling in civil cases. There is no privilege under this rule in civil cases as to a communication made to facilitate victim counseling when the person conducting the counseling is neither a licensed professional counselor nor a counselor associate, except that under no circumstances may a victim counselor or a victim be compelled to provide testimony in any proceeding that would identify the name, address, location, or telephone number of a "safe house," abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding, unless the facility is a party to the proceeding.

ALASKA

ALASKA STAT. § 18.66.200 (2016).

Compulsory disclosure of communications prohibited

(a) Except as provided in AS 18.66.210 or 18.66.220, a victim or victim counselor may not be compelled, without appropriate consent, to give testimony or to produce records concerning

confidential communications for any purpose in a criminal, civil, legislative, or administrative proceeding. In this subsection, "appropriate consent" means

- (1) The consent of the victim with respect to the testimony of
 - (A) An adult victim; and
 - (B) A victim counselor when the victim is an adult;
- (2) The consent of the victim's parent, legal guardian, or guardian ad litem with respect to the testimony of a
 - (A) Victim who is a minor or incompetent to testify; and
 - (B) Victim counselor when the victim is a minor or incompetent to testify.

(b) Either party may apply for appointment of a guardian ad litem for purposes of (a) (2) of this section.

(c) A victim or victim counselor may not be compelled to provide testimony in a civil, criminal, or administrative proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding, or the name, address, or telephone number of a victim counselor, unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case.

(d) Notwithstanding (a) of this section,

- (1) a minor may waive the privilege provided under (a) of this section and testify or give consent for a victim counselor to testify if the court determines that the minor is capable of knowingly waiving the privilege;
- (2) a parent or legal guardian may not, on behalf of a minor, waive the privilege provided under (a) of this section with respect to the minor's testimony or the testimony of a victim counselor if
 - (A) the parent or legal guardian has been charged with a crime against the minor;
 - (B) a protective order or restraining order has been entered against the parent or legal guardian on request of or on behalf of the minor; or
 - (C) the parent or legal guardian otherwise has an interest adverse to that of the minor with respect to the waiver of privilege.

ALASKA STAT. § 18.66.210 (2016). Exceptions

The privilege provided under AS 18.66.200 does not apply to

- (1) reports of suspected child abuse or neglect under AS 47.17;
- (2) evidence that the victim is about to commit a crime;
- (3) a proceeding that occurs after the victim's death;
- (4) a communication relevant to an issue of breach by the victim or victim counselor of a duty arising out of the victim-victim counselor relationship;
- (5) a communication that is determined to be admissible hearsay as an excited utterance under the Alaska Rules of Evidence;
- (6) a child-in-need-of-aid proceeding under AS 47.10;
- (7) a communication made during the victim-victim counselor relationship if the services of the counselor were sought, obtained, or used to enable anyone to commit or plan a crime or to escape detection or apprehension after the commission of a crime; or
- (8) a criminal proceeding concerning criminal charges against a victim of domestic violence or sexual assault where the victim is charged with a crime
 - (A) under AS 11.41 against a minor; or
 - (B) in which the physical, mental, or emotional condition of the victim is raised in defense of the victim.

ALASKA STAT. § 18.66.220 (2016). Waiver

- (a) A victim does not waive the protections provided in AS 18.66.200 by testifying except that, if the victim partially discloses the contents of a confidential communication in the course of testifying in a civil, criminal, or administrative proceeding, then either party may request the court or hearing officer to rule that justice requires the protections of AS 18.66.200 to be waived to the extent they apply to that portion of the communication. A waiver under this subsection applies only to the extent necessary to require a witness to respond to counsel's questions concerning the confidential communications that were disclosed and only to the extent that they are relevant to the facts of the case.
- (b) A victim counselor may not waive the protections afforded to a victim under AS 18.66.200 without the consent of the victim or the consent of a parent, legal guardian, or guardian ad litem authorized to give consent under AS 18.66.200.

ALASKA STAT. § 18.66.230 (2016). Inference from claim of privilege; instruction

- (a) The claim of a privilege under AS 18.66.200, whether in a present proceeding or upon a prior occasion, is not a proper subject of comment by a judge, hearing officer, legislator, or counsel. An inference may not be drawn from the claim of privilege.
- (b) In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of a claim of privilege under AS 18.66.200 without the knowledge of the jury.

(c) Upon request, a party against whom a jury might draw an adverse inference from a claim of privilege under AS 18.66.200 is entitled to an instruction that an inference may not be drawn from the claim of privilege.

ALASKA STAT. § 18.66.250 (2016). Definitions

In AS 18.66.200 -- 18.66.250,

(1) "confidential communication" means information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and that is disclosed in the course of victim counseling resulting from a sexual assault or domestic violence;

(2) "sexual assault" means an offense under AS 11.41.410 -- 11.41.470 or an offense in another jurisdiction whose elements are similar to the elements of an offense under AS 11.41.410 -- 11.41.470;

(3) "victim" means a person who consults a victim counselor for assistance in overcoming adverse effects of a sexual assault or domestic violence;

(4) "victim counseling" means support, assistance, advice, or treatment to alleviate the adverse effects of a sexual assault or domestic violence on the victim;

(5) "victim counseling center" means a private organization, an organization operated by or contracted by a branch of the armed forces of the United States, or a local government agency that

(A) has, as one of its primary purposes, the provision of direct services to victims for trauma resulting from a sexual assault or domestic violence;

(B) is not affiliated with a law enforcement agency or a prosecutor's office; and

(C) is not on contract with the state to provide services under AS 47;

(6) "victim counselor" means an employee or supervised volunteer of a victim counseling center that provides counseling to victims

(A) who has undergone a minimum of 40 hours of training in domestic violence or sexual assault, crisis intervention, victim support, treatment and related areas; or

(B) whose duties include victim counseling.

ALASKA STAT. § 24.65.100 (2016)

(a) The victims' advocate has jurisdiction to advocate on behalf of crime victims of felony offenses or class A misdemeanors, if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41, in the courts of the state and to investigate the complaints of crime victims of felony offenses or class A misdemeanors, if the

class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41, that they have been denied their rights under the constitution and the laws of the state. In this subsection, "crime involving domestic violence" has the meaning given in AS 18.66.990.

(b) The victims' advocate shall exercise reasonable care to

(1) ensure that the victims' advocate's exercise of jurisdiction granted under this section does not interfere with an ongoing criminal investigation or with a criminal prosecution;

(2) prevent employees of the office of victims' rights from making extrajudicial statements that the victims' advocate is prohibited from making under the Alaska Rules of Professional Conduct.

(c) The victims' advocate may not advise, counsel, or advocate on behalf of a victim in a way that would

(1) prevent or discourage a victim from cooperating in a criminal investigation;

(2) encourage a victim to withhold evidence in a criminal investigation; or

(3) prevent or discourage a victim from testifying in a criminal proceeding.

(d) The victims' advocate shall provide written material to be given out to victims of crime as required by AS 12.61.010. The written material must contain a brief statement about the Violent Crimes Compensation Board and contact information for that board.

ALASKA STAT. § 24.65.110 (2016). Advocacy on behalf of crime victims; records

(a) The victims' advocate shall assist crime victims in obtaining the rights crime victims are guaranteed under the constitution and laws of the state with regard to the contacts crime victims have with justice agencies.

(b) The victims' advocate may make the statement a crime victim is authorized to make under art. I, sec. 24, Constitution of the State of Alaska, and AS 12.55.023, in a court of the state when requested by the crime victim and when the crime victim does not personally make a statement.

(c) When advocating on behalf of a crime victim in an ongoing criminal case or juvenile adjudication, the victims' advocate is entitled to all information available to the defendant or juvenile.

(d) Records obtained by the victims' advocate shall remain in the exclusive custody of the victims' advocate. The victims' advocate may not disclose confidential information to any person

ALASKA STAT. § 24.65.115 (2016). Authority to request return of property on behalf of certain persons

(a) Notwithstanding another provision of this chapter, the victims' advocate may

(1) file a request under AS 12.36.070 with a law enforcement agency for the return of property to a crime victim after having conducted an investigation and determining that the crime victim is entitled to the return of the property under the factors listed in AS 12.36.070(c);

(2) request a hearing under AS 12.36.070(f).

(b) In fulfilling the requirements of this section, the victims' advocate may use any of the powers granted to the advocate under this chapter.

ALASKA STAT. § 24.65.120 (2016). Investigations

(a) The victims' advocate may investigate complaints from crime victims that they have been denied the rights they are guaranteed under the constitution and laws of this state.

(b) In an investigation, the victims' advocate may

(1) make inquiries and obtain information considered necessary;

(2) hold private hearings; and

(3) notwithstanding other provisions of law, have access at all times to records of justice agencies, including court records of criminal prosecutions and juvenile adjudications, necessary to ensure that the rights of crime victims are not being denied; with regard to court and prosecution records, the victims' advocate is entitled to obtain access to every record that the defendant is entitled to access or receive.

(c) The victims' advocate shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before the victims' advocate except insofar as disclosures may be necessary to enable the victims' advocate to carry out duties and to support recommendations. However, the victims' advocate may not disclose a confidential record obtained from a court or justice agency.

ALASKA STAT. § 24.65.130 (2016). Powers

(a) Subject to the privileges recognized by court rule and statute of this state, the victims' advocate may compel by subpoena, at a specified time and place, the

(1) appearance and sworn testimony of a person who the victims' advocate reasonably believes may be able to give information relating to a matter under investigation under AS 24.65.120; and

(2) production by a person of a record or object that the victims' advocate reasonably believes may relate to the matter under investigation under AS 24.65.120.

(b) If a person refuses to comply with a subpoena issued under (a) of this section, the superior court may, on application of the victims' advocate, compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court or refusal to testify in the court.

(c) This section does not authorize the victims' advocate to issue a subpoena to

(1) a justice, judge, magistrate, or a law clerk acting under the direction of a justice, judge, or magistrate, concerning a judicial action or nonaction taken by, or under the direction of, the justice, judge, or magistrate;

(2) a person acting under the direction of a justice, judge, or magistrate, other than a law clerk, concerning a judicial action or nonaction taken by, or under the direction of, a justice, judge, or magistrate except to establish the occurrence or nonoccurrence of the action or nonaction or the person's own actions or nonactions; this paragraph does not authorize the victims' advocate to inquire into the decision-making or thought process of the justice, judge, or magistrate;

(3) a member of a jury concerning a matter that was considered by the jury;

(4) the person accused or convicted of committing the crime that is the basis for the complaint, and investigation under AS 24.65.120, concerning a denial of rights or an attorney retained by the person or appointed by a court to represent the person;

(5) a victim counselor concerning a matter made confidential by AS 18.66.200 -- 18.66.250; or

(6) a justice agency concerning records that lead to the disclosure of a confidential police informant.

ALASKA STAT. § 24.65.140 (2016). Consultation

Before giving an opinion or recommendation that is critical of a justice agency or person as a result of an investigation under AS 24.65.120, the victims' advocate shall consult with that agency or person. The victims' advocate may make a preliminary opinion or recommendation available to the agency or person for review, but the preliminary opinion or recommendation is confidential and may not be disclosed to the public by the agency or person.

ALASKA STAT. § 24.65.140 (2016). Procedure after investigation

(a) The victims' advocate shall report the advocate's opinion and recommendations to a justice agency if the victims' advocate finds, after investigation under AS 24.65.120, that the agency has denied a crime victim rights the crime victim is guaranteed under the constitution and laws of this state.

(b) The victims' advocate may request the justice agency to notify the victims' advocate, within a specified time, of any action taken on the recommendations.

(c) The report provided under (a) of this section is confidential and may not be disclosed to the public by the justice agency. The victims' advocate may disclose the report under AS 24.65.160 only after providing notice that the investigation has been concluded to the agency and after receiving the written approval of the complainant to release the report.

ALASKA STAT. § 24.65.160. (2016) Publication of recommendations

Except as provided in AS 24.65.150(c), within a reasonable amount of time after the victims' advocate reports the advocate's opinion and recommendations to a justice agency, the victims' advocate may present the opinion and recommendations to the governor, the legislature, a grand jury, the public, or any of these. The victims' advocate shall include with the opinion any reply made by the agency.

ALASKA STAT. § 24.65.170 (2016). Annual report

The victims' advocate shall make available to the public an annual report of the victims' advocate's activities under this chapter and notify the legislature that the report is available. The victim's advocate may include in the report a summary of the advocate's participation as an ex officio member of domestic violence fatality review teams established under AS 18.66.400.

ALASKA STAT § 24.65.180 (2016). Judicial review

A proceeding or decision of the victims' advocate may be reviewed in superior court only to determine if it is contrary to the provisions of this chapter.

ALASKA STAT § 24.65.190 (2016). Immunity of the victims' advocate

A civil action may not be brought against the victims' advocate or a member of the victims' advocate's staff for anything done, said, or omitted in performing the victims' advocate's duties or responsibilities under this chapter.

ALASKA STAT § 24.65.200 (2016). Victims' advocate's privilege not to testify or produce documents or other evidence

Except as may be necessary to enforce the provisions of this chapter, the determinations, conclusions, thought processes, discussions, records, reports, and recommendations of or information collected by the victims' advocate or staff of the victims' advocate are not admissible in a civil or criminal proceeding, and are not subject to questioning or disclosure by subpoena or discovery.

ARIZONA

ARIZONA REV. STAT. § 13-4401 (2016).

1. "Accused" means a person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial.
2. "Appellate proceeding" means any contested matter before the state court of appeals, the state supreme court, a federal court of appeals or the United States supreme court.

3. "Arrest" means the actual custodial restraint of a person or the person's submission to custody.
4. "Court" means all state, county and municipal courts in this state.
5. "Crime victim advocate" means a person who is employed or authorized by a public or private entity to provide counseling, treatment or other supportive assistance to crime victims.
6. "Criminal offense" means conduct that gives a peace officer or prosecutor probable cause to believe that a felony, a misdemeanor, a petty offense or a violation of a local criminal ordinance has occurred.
7. "Criminal proceeding" means any hearing, argument or other matter that is scheduled by and held before a trial court but does not include any deposition, lineup, grand jury proceeding or other matter that is not held in the presence of the court.
8. "Custodial agency" means any law enforcement officer or agency, a sheriff or municipal jailer, the state department of corrections or a secure mental health facility that has custody of a person who is arrested or in custody for a criminal offense.
9. "Defendant" means a person or entity that is formally charged by complaint, indictment or information of committing a criminal offense.
10. "Final disposition" means the ultimate termination of the criminal prosecution of a defendant by a trial court, including dismissal, acquittal or imposition of a sentence.
11. "Immediate family" means a victim's spouse, parent, child, sibling, grandparent or lawful guardian.
12. "Lawful representative" means a person who is designated by the victim or appointed by the court and who acts in the best interests of the victim.
13. "Post-arrest release" means the discharge of the accused from confinement on recognizance, bond or other condition.
14. "Post-conviction release" means parole, work furlough, community supervision, probation if the court waived community supervision pursuant to section 13-603, home arrest or any other permanent, conditional or temporary discharge from confinement in the custody of the state department of corrections or a sheriff or from confinement in a municipal jail or a secure mental health facility.
15. "Post-conviction relief proceeding" means a contested argument or evidentiary hearing that is held in open court and that involves a request for relief from a conviction or sentence.
16. "Prisoner" means a person who has been convicted of a criminal offense against a victim and who has been sentenced to the custody of the sheriff, the state department of corrections, a municipal jail or a secure mental health facility.
17. "Release" means no longer in the custody of a custodial agency and includes transfer from one custodial agency to another custodial agency.
18. "Rights" means any right that is granted to the victim by the laws of this state.

19. "Victim" means a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person's spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.

ARIZONA REV. STAT. § 13-4430 (2016)

A. A crime victim advocate shall not disclose as a witness or otherwise any communication made by or with the victim, including any communication made to or in the presence of others, unless the victim consents in writing to the disclosure.

B. Unless the victim consents in writing to the disclosure, a crime victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on communications made by or with the victim, including communications made to or in the presence of others.

C. The communication is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory evidence.

D. A defendant may make a motion for disclosure of privileged information. If the court finds there is reasonable cause to believe the material is exculpatory, the court shall hold a hearing in camera. Material that the court finds is exculpatory shall be disclosed to the defendant.

E. If, with the written or verbal consent of the victim, the crime victim advocate discloses to the prosecutor or a law enforcement agency any communication between the victim and the crime victim advocate or any records, notes, documents, correspondence, reports or memoranda, the prosecutor or law enforcement agent shall disclose such material to the defendant's attorney only if such information is otherwise exculpatory.

F. Notwithstanding subsections A and B, if a crime victim consents either verbally or in writing, a crime victim advocate may disclose information to other professionals and administrative support persons that the advocate works with for the purpose of assisting the advocate in providing services to the victim and to the court in furtherance of any victim's right pursuant to this chapter.

ARIZONA REV. STAT. § 8-409 (2016)

Juveniles:

A. A crime victim advocate shall not disclose as a witness or otherwise any communication made by or with the victim, including any communication made to or in the presence of others, unless the victim consents in writing to the disclosure.

- B. Unless the victim consents in writing to the disclosure, a crime victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on communications made by or with the victim, including communications made to or in the presence of others.
- C. The communication is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory material.
- D. An accused may make a motion for disclosure of privileged information. If the court finds there is reasonable cause to believe the material is exculpatory, the court shall hold a hearing in camera. Material that the court finds is exculpatory shall be disclosed to the accused.
- E. If, with the written or verbal consent of the victim, the crime victim advocate discloses to the prosecutor or a law enforcement agency any communication between the victim and the crime victim advocate or any records, notes, documents, correspondence, reports or memoranda, the prosecutor or law enforcement agent shall disclose the material to the accused's attorney only if the information is otherwise exculpatory.
- F. Notwithstanding subsections A and B of this section, if a crime victim consents either verbally or in writing, a crime victim advocate may disclose information to other professionals and administrative support persons that the advocate works with for the purpose of assisting the advocate in providing services to the victim and to the court in furtherance of any victims' right pursuant to this chapter.

ARIZONA REV. STAT. § 12-2239 (2016)

- A. In a civil action, a domestic violence victim advocate shall not be examined as to any communication made by the domestic violence victim to the domestic violence victim advocate.
- B. This section does not apply to a civil action brought pursuant to title 36, chapter 37, relating to the civil commitment of sexually violent persons.
- C. Unless the domestic violence shelter or service provider has immunity under other provisions of law, the communication is not privileged if the victim advocate knows or should have known that the victim will give or has given perjurious statements or statements that would tend to disprove the existence of domestic violence.
- D. The domestic violence victim advocate-victim privilege does not extend to cases in which the domestic violence victim advocate has a duty to report nonaccidental injuries and physical neglect of minors as required by section 13-3620.
- E. A party to an action may make a motion for disclosure of privileged information under this section and, if the court finds reasonable cause, the court shall hold a hearing in camera as to whether the privilege should apply.
- F. To qualify for the privilege prescribed in this section, a domestic violence victim advocate must have at least thirty hours of training in assisting victims of domestic violence. A portion of this training must include an explanation of privileged communication and the reporting requirements prescribed in section 13-3620.

G. A domestic violence victim advocate who is a volunteer shall perform all activities under qualified supervision.

H. The training prescribed in subsection F may be provided by the shelter or service provider or by an outside agency that issues a certificate of completion. The records custodian of the shelter or service provider must maintain the training documents.

I. For the purposes of this section, "domestic violence victim advocate" means a person who is an employee or volunteer at a domestic violence shelter or service provider for victims of domestic violence and who meets the training requirements of this section

ARKANSAS

ARK. CODE ANN. § 9-4-106 (2016)

Every shelter shall:

(1) Develop and implement a written nondiscrimination policy to provide services without regard to race, religion, color, age, marital status, national origin, ancestry, or sexual preference;

(2) Provide a facility that is open, accessible, and staffed by an advocate or a volunteer each day of the calendar year and twenty-four (24) hours each day;

(3) Provide emergency housing and related supportive services in a safe, protective environment for victims of domestic abuse and their children;

(4)

(A) Provide a crisis telephone hotline that is answered by an advocate or a volunteer who meets the training requirements under this chapter each day of the calendar year and twenty-four (24) hours each day.

(B) The crisis telephone hotline shall not be answered by an answering machine, answering service, or mobile telephone;

(5) (A) Require all advocates and volunteers who provide direct services to victims to sign a written confidentiality agreement that prohibits the release of the following:

(i) The names or other personal and identifying information about the victims who are served at the shelter; and

(ii) The names or other personal and identifying information about the family or household members of the victims who are served at the shelter.

(B) The confidentiality agreement shall not apply to advocates who testify in court.

(C) The confidentiality agreement shall not prevent disclosure from federal grant review, audit, or reporting;

(6) Develop and implement a written plan for outreach efforts to aid victims of domestic violence;

(7) Provide peer support groups for victims;

- (8) Provide assistance and court advocacy for victims seeking orders of protection; and
- (9) Provide training and educational information on domestic violence for professionals, community organizations, and interested individuals.

CALIFORNIA

CAL. EVID CODE § 1035 (2016)

As used in this article, "victim" means a person who consults a sexual assault counselor for the purpose of securing advice or assistance concerning a mental, physical, or emotional condition caused by a sexual assault.

As used in this article, "sexual assault counselor" means any of the following:

(a) A person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.

(2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

- (A) Law.
- (B) Medicine.
- (C) Societal attitudes.
- (D) Crisis intervention and counseling techniques.
- (E) Role playing.
- (F) Referral services.
- (G) Sexuality.

(b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting sexual assault victims, and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling.

(2) Has the minimum training for sexual assault counseling required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

- (A) Law.
- (B) Victimology.
- (C) Counseling.
- (D) Client and system advocacy.
- (E) Referral services.

CAL. EVID CODE § 1035.2 (2016). "Sexual assault counselor"

As used in this article, "sexual assault counselor" means any of the following:

(a) A person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.

(2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

- (A) Law.
- (B) Medicine.
- (C) Societal attitudes.
- (D) Crisis intervention and counseling techniques.
- (E) Role playing.
- (F) Referral services.
- (G) Sexuality.

(b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting sexual assault victims, and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling.

(2) Has the minimum training for sexual assault counseling required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

- (A) Law.
- (B) Victimology.
- (C) Counseling.
- (D) Client and system advocacy.
- (E) Referral services.

CAL. EVID CODE § 1035.4 (2016). "Confidential communication between the sexual assault counselor and the victim"

As used in this article, "confidential communication between the sexual assault counselor and the victim" means information transmitted between the victim and the sexual assault counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the sexual assault counselor is consulted. The term includes all information regarding the facts and circumstances involving the alleged sexual assault and also includes all information regarding the victim's prior or subsequent sexual conduct, and opinions regarding the victim's sexual conduct or reputation in sexual matters.

The court may compel disclosure of information received by the sexual assault counselor which constitutes relevant evidence of the facts and circumstances involving an alleged sexual assault about which the victim is complaining and which is the subject of a criminal proceeding if the court determines that the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled. The court may also compel disclosure in proceedings related to child abuse if the court determines the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled.

CAL. EVID CODE § 1035.6 (2016). "Holder of the privilege"

As used in this article, "holder of the privilege" means:

- (a) The victim when such person has no guardian or conservator.
- (b) A guardian or conservator of the victim when the victim has a guardian or conservator.
- (c) The personal representative of the victim if the victim is dead.

CAL. EVID CODE § 1035.8 (2016). Victim's privilege

A victim of a sexual assault, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault counselor if the privilege is claimed by any of the following:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the sexual assault counselor at the time of the confidential communication, but that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

CAL. EVID CODE § 1036-1036.2 (2016)

The sexual assault counselor who received or made a communication subject to the privilege under this article shall claim the privilege if he or she is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1035.8.

CAL. EVID CODE § 1036.2 (2016). "Sexual assault"

As used in this article, "sexual assault" includes all of the following:

- (a) Rape, as defined in Section 261 of the Penal Code.
- (b) Unlawful sexual intercourse, as defined in Section 261.5 of the Penal Code.
- (c) Rape in concert with force and violence, as defined in Section 264.1 of the Penal Code.
- (d) Rape of a spouse, as defined in Section 262 of the Penal Code.
- (e) Sodomy, as defined in Section 286 of the Penal Code, except a violation of subdivision (e) of that section.
- (f) A violation of Section 288 of the Penal Code.

- (g) Oral copulation, as defined in Section 288a of the Penal Code, except a violation of subdivision (e) of that section.
- (h) Sexual penetration, as defined in Section 289 of the Penal Code.
- (i) Annoying or molesting a child under 18, as defined in Section 647a of the Penal Code.
- (j) Any attempt to commit any of the above acts.

CAL. EVID CODE § 1037-1037.8 (2016)

As used in this article, "victim" means any person who suffers domestic violence, as defined in Section 1037.7.

CAL. EVID CODE § 1037.1 (2016). "Domestic violence counselor"

(a)

(1) As used in this article, "domestic violence counselor" means a person who is employed by a domestic violence victim service organization, as defined in this article, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence and who has at least 40 hours of training as specified in paragraph (2).

(2) The 40 hours of training shall be supervised by an individual who qualifies as a counselor under paragraph (1), and who has at least one year of experience counseling domestic violence victims for the domestic violence victim service organization. The training shall include, but need not be limited to, the following areas: history of domestic violence, civil and criminal law as it relates to domestic violence, the domestic violence victim-counselor privilege and other laws that protect the confidentiality of victim records and information, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of domestic violence victims, and referral services available to domestic violence victims.

(3) A domestic violence counselor who has been employed by the domestic violence victim service organization for a period of less than six months shall be supervised by a domestic violence counselor who has at least one year of experience counseling domestic violence victims for the domestic violence victim service organization.

(b) As used in this article, "domestic violence victim service organization" means a nongovernmental organization or entity that provides shelter, programs, or services to victims of domestic violence and their children, including, but not limited to, either of the following:

(1) Domestic violence shelter-based programs, as described in Section 18294 of the Welfare and Institutions Code.

(2) Other programs with the primary mission to provide services to victims of domestic violence whether or not that program exists in an agency that provides additional services.

CAL. EVID CODE § 1037.2 (2016). "Confidential communication"; Compelling disclosure

(a) As used in this article, "confidential communication" means any information, including, but not limited to, written or oral communication, transmitted between the victim and the counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the domestic violence counselor is consulted. The term includes all information regarding the facts and circumstances involving all incidences of domestic violence, as well as all information about the children of the victim or abuser and the relationship of the victim with the abuser.

(b) The court may compel disclosure of information received by a domestic violence counselor which constitutes relevant evidence of the facts and circumstances involving a crime allegedly perpetrated against the victim or another household member and which is the subject of a criminal proceeding, if the court determines that the probative value of the information outweighs the effect of disclosure of the information on the victim, the counseling relationship, and the counseling services. The court may compel disclosure if the victim is either dead or not the complaining witness in a criminal action against the perpetrator. The court may also compel disclosure in proceedings related to child abuse if the court determines that the probative value of the evidence outweighs the effect of the disclosure on the victim, the counseling relationship, and the counseling services.

(c) When a court rules on a claim of privilege under this article, it may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege consents to have present. If the judge determines that the information is privileged and shall not be disclosed, neither he nor she nor any other person may disclose, without the consent of a person authorized to permit disclosure, any information disclosed in the course of the proceedings in chambers.

(d) If the court determines that information shall be disclosed, the court shall so order and inform the defendant in the criminal action. If the court finds there is a reasonable likelihood that any information is subject to disclosure pursuant to the balancing test provided in this section, the procedure specified in subdivisions (1), (2), and (3) of Section 1035.4 shall be followed.

CAL. EVID CODE § 1037.3 (2016). Effect of article on obligation to report child abuse

Nothing in this article shall be construed to limit any obligation to report instances of child abuse as required by Section 11166 of the Penal Code.

CAL. EVID CODE § 1037.4 (2016). "Holder of the privilege"

As used in this article, "holder of the privilege" means:

- (a) The victim when he or she has no guardian or conservator.
- (b) A guardian or conservator of the victim when the victim has a guardian or conservator, unless the guardian or conservator is accused of perpetrating domestic violence against the victim.

CAL. EVID CODE § 1037.5 (2016). Who may claim privilege

A victim of domestic violence, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a domestic violence counselor in any proceeding specified in Section 901 if the privilege is claimed by any of the following persons:

- (a) The holder of the privilege.
- (b) A person who is authorized to claim the privilege by the holder of the privilege.
- (c) The person who was the domestic violence counselor at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

CAL. EVID CODE § 1037.6 (2016). When domestic violence counselor must claim privilege

The domestic violence counselor who received or made a communication subject to the privilege granted by this article shall claim the privilege whenever he or she is present when the communication is sought to be disclosed and he or she is authorized to claim the privilege under subdivision (c) of Section 1037.5.

CAL. EVID CODE § 1037.7 (2016). "Domestic violence"

As used in this article, "domestic violence" means "domestic violence" as defined in Section 6211 of the Family Code.

CAL. EVID CODE § 1037.8 (2016). Informing victim of limitations on confidentiality of communications

A domestic violence counselor shall inform a domestic violence victim of any applicable limitations on confidentiality of communications between the victim and the domestic violence counselor. This information may be given orally.

COLORADO

COLO. REV. STAT. § 13-90-107 (2015)

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a)

(I) Except as otherwise provided in section 14-13-310 (4), C.R.S., a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent; nor during the marriage or afterward shall either be examined without the consent of the other as to any communications 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, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to the date of the parties' marriage. However, this exception shall not attach if the otherwise privileged information is communicated after the marriage.

(II) The privilege described in this paragraph (a) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1) (a) (IV) and (1) (a) (V), C.R.S., or to level 1 or 2 drug felonies as described in section 18-1.3-401.5 (2) (a), C.R.S. In this instance, during the marriage or afterward, a husband shall not be examined for or against his wife as to any communications intended to be made in confidence and made by one to the other during the marriage without his consent, and a wife shall not be examined for or against her husband as to any communications intended to be made in confidence and made by one to the other without her consent.

(III) Communications between a husband and wife are not privileged pursuant to this paragraph (a) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a marriage for the purposes of this paragraph (a) shall be on the party asserting the claim.

(V) Notice of the assertion of the marital privilege shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(a.5)

(I) Except as otherwise provided in section 14-13-310 (5), C.R.S., a partner in a civil union shall not be examined for or against the other partner in the civil union without the other partner's consent, nor during the civil union or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the civil union; except that this exception does

not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both partners when the alleged offense occurred prior to the date of the parties' certification of the civil union. However, this exception shall not attach if the otherwise privileged information is communicated after the certification of the civil union.

(II) The privilege described in this paragraph (a.5) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1) (a) (IV) and (1) (a) (V), C.R.S., or to level 1 or 2 drug felonies as described in section 18-1.3-401.5 (2) (a), C.R.S. In this instance, during the civil union or afterward, a partner in a civil union shall not be examined for or against the other partner in the civil union as to any communications intended to be made in confidence and made by one to the other during the civil union without the other partner's consent.

(III) Communications between partners in a civil union are not privileged pursuant to this paragraph (a.5) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a civil union for the purposes of this paragraph (a.5) shall be on the party asserting the claim.

(V) Notice of the assertion of the privilege described in this paragraph (a.5) shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(VI) For the purposes of this paragraph (a.5), "partner in a civil union" means a person who has entered into a civil union established in accordance with the requirements of article 15 of title 14, C.R.S.

(b) An attorney shall not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor shall an attorney's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in such capacity.

(c) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.

(d) A physician, surgeon, or registered professional nurse duly authorized to practice his or her profession pursuant to the laws of this state or any other state shall not be

examined without the consent of his or her patient as to any information acquired in attending the patient that was necessary to enable him or her to prescribe or act for the patient, but this paragraph (d) shall not apply to:

(I) A physician, surgeon, or registered professional nurse who is sued by or on behalf of a patient or by or on behalf of the heirs, executors, or administrators of a patient on any cause of action arising out of or connected with the physician's or nurse's care or treatment of such patient;

(II) A physician, surgeon, or registered professional nurse who was in consultation with a physician, surgeon, or registered professional nurse being sued as provided in subparagraph (I) of this paragraph (d) on the case out of which said suit arises;

(III) A review of a physician's or registered professional nurse's services by any of the following:

(A) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where said physician or registered professional nurse practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital;

(B) An organization authorized by federal or state law or contract to review physicians' or registered professional nurses' services or an organization which reviews the cost or quality of physicians' or registered professional nurses' services under a contract with the sponsor of a nongovernment group health care program;

(C) The Colorado medical board, the state board of nursing, or a person or group authorized by such board to make an investigation in its behalf;

(D) A peer review committee of a society or association of physicians or registered professional nurses whose membership includes not less than one-third of the medical doctors or doctors of osteopathy or registered professional nurses licensed to practice in this state and only if the physician or registered professional nurse whose services are the subject of review is a member of such society or association and said physician or registered professional nurse has signed a release authorizing such review;

(E) A committee, board, agency, government official, or court to which appeal may be taken from any of the organizations or groups listed in this subparagraph (III);

(IV) A physician or any health care provider who was in consultation with the physician who may have acquired any information or records relating to the services performed by the physician specified in subparagraph (III) of this paragraph (d);

(V) A registered professional nurse who is subject to any claim or the nurse's employer subject to any claim therein based on a nurse's actions, which claims are required to be defended and indemnified by any insurance company or trust obligated by contract;

(VI) A physician, surgeon, or registered professional nurse who is being examined as a witness as a result of his consultation for medical care or genetic counseling or screening pursuant to section 13-64-502 in connection with a civil action to which section 13-64-502 applies.

(e) A public officer shall not be examined as to communications made to him in official confidence, when the public interests, in the judgment of the court, would suffer by the disclosure.

(f)

(I) A certified public accountant shall not be examined without the consent of his or her client as to any communication made by the client to him or her in person or through the media of books of account and financial records or his or her advice, reports, or working papers given or made thereon in the course of professional employment; nor shall a secretary, stenographer, clerk, or assistant of a certified public accountant be examined without the consent of the client concerned concerning any fact, the knowledge of which he or she has acquired in such capacity.

(II) No certified public accountant in the employ of the state auditor's office shall be examined as to any communication made in the course of professional service to the legislative audit committee either in person or through the media of books of account and financial records or advice, reports, or working papers given or made thereon; nor shall a secretary, clerk, or assistant of a certified public accountant who is in the employ of the state auditor's office be examined concerning any fact, the knowledge of which such secretary, clerk, or assistant acquired in such capacity, unless such information has been made open to public inspection by a majority vote of the members of the legislative audit committee.

(III) (A) Subpoena powers for public entity audit and reviews. Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the

board's behalf, concerning an accountant's reports, working papers, or advice to a public entity that relate to audit or review accounting activities of the certified public accountant or certified public accounting firm being investigated.

(B) For the purposes of this subparagraph (III), a "public entity" shall include a governmental agency or entity; quasi-governmental entity; nonprofit entity; or public company that is considered an "issuer", as defined in section 2 of the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.

(IV) (A) Subpoena powers for private entity audit and reviews. Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports or working papers of a private entity that is not publicly traded and relate to audit or review attest activities of the certified public accountant or certified public accounting firm being investigated. This subparagraph (IV) shall not be construed to authorize the Colorado state board of accountancy or its agent to subpoena or examine income tax returns.

(B) At the request of either the client of the certified public accountant or certified public accounting firm or the certified public accountant or certified public accounting firm subject to the subpoena pursuant to this subparagraph (IV), a second certified public accounting firm or certified public accountant with no interest in the matter may review the report or working papers for compliance with the provisions of article 2 of title 12, C.R.S. The second certified public accounting firm or certified public accountant conducting the review must be approved by the board prior to beginning its review. The approval of the second certified public accounting firm or certified public accountant shall be in good faith. The written report issued by a second certified public accounting firm or certified public accountant shall be in lieu of a review by the board. Such report shall be limited to matters directly related to the work performed by the certified public accountant or certified public accounting firm being investigated and should exclude specific references to client financial information. The party requesting that a second certified public accounting firm or certified public accountant review the reports and working papers shall pay any additional expenses related to retaining the second certified public accounting firm or certified public accountant by the party who made the request. The written report of the second certified public accounting firm or certified public accountant shall be submitted to the board. The board may use the findings

of the second certified public accounting firm or certified public accountant as grounds for discipline pursuant to article 2 of title 12, C.R.S.

(V) Disclosure of information under subparagraph (III) or (IV) of this paragraph (f) shall not waive or otherwise limit the confidentiality and privilege of such information nor relieve any certified public accountant, any certified public accounting firm, the Colorado state board of accountancy, or a person or group authorized by such board of the obligation of confidentiality. Disclosure which is not in good faith of such information shall subject the board, a member thereof, or its agent to civil liability pursuant to section 12-2-103 (6), C.R.S.

(VI) Any certified public accountant or certified public accounting firm that receives a subpoena for reports or accountant's working papers related to the audit or review attest activities of the accountant or accounting firm pursuant to subparagraph (III) or (IV) of this paragraph (f) shall notify his or her client of the subpoena within three business days after the date of service of the subpoena.

(VII) Subparagraph (III) or (IV) of this paragraph (f) shall not operate as a waiver, on behalf of any third party or the certified public accountant or certified public accounting firm, of due process remedies available under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the open records laws, article 72 of title 24, C.R.S., or any other provision of law.

(VIII) Prior to the disclosure of information pursuant to subparagraph (III) or (IV) of this paragraph (f), the certified public accountant, certified public accounting firm, or client thereof shall have the opportunity to designate reports or working papers related to the attest function under subpoena as privileged and confidential pursuant to this paragraph (f) or the open records laws, article 72 of title 24, C.R.S., in order to assure that the report or working papers shall not be disseminated or otherwise republished and shall only be reviewed pursuant to limited authority granted to the board under subparagraph (III) or (IV) of this paragraph (f).

(IX) No later than thirty days after the board of accountancy completes the investigation for which records or working papers are subpoenaed pursuant to subparagraph (III) or (IV) of this paragraph (f), the board shall return all original records, working papers, or copies thereof to the certified public accountant or certified public accounting firm.

(X) Nothing in subparagraphs (III) and (IV) of this paragraph (f) shall cause the accountant-client privilege to be waived as to customer financial and account information of depository institutions or to the regulatory examinations and other regulatory information relating to depository institutions.

(XI) For the purposes of subparagraphs (III) to (X) of this paragraph (f), "entity" shall have the same meaning as in section 7-90-102 (20), C.R.S.

(g) A licensed psychologist, professional counselor, marriage and family therapist, social worker, or addiction counselor, a registered psychotherapist, a certified addiction counselor, a psychologist candidate registered pursuant to section 12-43-304 (7), C.R.S., a marriage and family therapist candidate registered pursuant to section 12-43-504 (5), C.R.S., a licensed professional counselor candidate registered pursuant to section 12-43-603 (5), C.R.S., or a person described in section 12-43-215, C.R.S., shall not be examined without the consent of the licensee's, certificate holder's, registrant's, candidate's, or person's client as to any communication made by the client to the licensee, certificate holder, registrant, candidate, or person or the licensee's, certificate holder's, registrant's, candidate's, or person's advice given in the course of professional employment; nor shall any secretary, stenographer, or clerk employed by a licensed psychologist, professional counselor, marriage and family therapist, social worker, or addiction counselor, a registered psychotherapist, a certified addiction counselor, a psychologist candidate registered pursuant to section 12-43-304 (7), C.R.S., a marriage and family therapist candidate registered pursuant to section 12-43-504 (5), C.R.S., a licensed professional counselor candidate registered pursuant to section 12-43-603 (5), C.R.S., or a person described in section 12-43-215, C.R.S., be examined without the consent of the employer of the secretary, stenographer, or clerk concerning any fact, the knowledge of which the employee has acquired in such capacity; nor shall any person who has participated in any psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates.

(h) A qualified interpreter, pursuant to section 13-90-202, who is called upon to testify concerning the communications he interpreted between a hearing-impaired person and another person, one of whom holds a privilege pursuant to this subsection (1), shall not be examined without the written consent of the person who holds the privilege.

(i) A confidential intermediary, as defined in section 19-1-103 (26), C.R.S., shall not be examined as to communications made to him or her in official confidence when the public interests, in the judgment of the court, would suffer by the disclosure of such communications.

(j) (I) (A) If any person or entity performs a voluntary self-evaluation, the person, any officer or employee of the entity or person involved with the voluntary self-evaluation, if a specific responsibility of such employee was the performance of or participation in the voluntary self-evaluation or the preparation of the environmental audit report, or

any consultant who is hired for the purpose of performing the voluntary self-evaluation for the person or entity may not be examined as to the voluntary self-evaluation or environmental audit report without the consent of the person or entity or unless ordered to do so by any court of record, or, pursuant to section 24-4-105, C.R.S., by an administrative law judge. For the purposes of this paragraph (j), "voluntary self-evaluation" and "environmental audit report" have the meanings provided for the terms in section 13-25-126.5 (2).

(B) This paragraph (j) does not apply if the voluntary self-evaluation is subject to an exception allowing admission into evidence or discovery pursuant to the provisions of section or (4).

(II) This paragraph (j) applies to voluntary self-evaluations that are performed on or after June 1, 1994.

(k)

(I) A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., or a victim of sexual assault, as described in sections 18-3-401 to 18-3-405.5, 18-6-301, and 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a "victim's advocate" means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate; and

(C) Who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

(l)

(I) A parent may not be examined as to any communication made in confidence by the parent's minor child to the parent when the minor child and the parent were in the presence of an attorney representing the minor child, or in the presence of a physician who has a confidential relationship with the minor child pursuant to

paragraph (d) of this subsection (1), or in the presence of a mental health professional who has a confidential relationship with the minor child pursuant to paragraph (g) of this subsection (1), or in the presence of a clergy member, minister, priest, or rabbi who has a confidential relationship with the minor child pursuant to paragraph (c) of this subsection (1). The exception may be waived by express consent to disclosure by the minor child who made the communication or by failure of the minor child to object when the contents of the communication are demanded. This exception does not relieve any physician, mental health professional, or clergy member, minister, priest, or rabbi from any statutory reporting requirements.

(II) This exception does not apply to:

- (A) Any civil action or proceeding by one parent against the other or by a parent or minor child against the other;
- (B) Any proceeding to commit either the minor child or parent, pursuant to title 27, C.R.S., to whom the communication was made;
- (C) Any guardianship or conservatorship action to place the person or property or both under the control of another because of an alleged mental or physical condition of the minor child or the minor child's parent;
- (D) Any criminal action or proceeding in which a minor's parent is charged with a crime committed against the communicating minor child, the parent's spouse, the parent's partner in a civil union, or a minor child of either the parent or the parent's spouse or the parent's partner in a civil union;
- (E) Any action or proceeding for termination of the parent-child legal relationship;
- (F) Any action or proceeding for voluntary relinquishment of the parent-child legal relationship; or
- (G) Any action or proceeding on a petition alleging child abuse, dependency or neglect, abandonment, or non-support by a parent.

(III) For purposes of this paragraph (I):

- (A) "Minor child" means any person under the age of eighteen years.
- (B) "Parent" includes the legal guardian or legal custodian of a minor child as well as adoptive parents.
- (C) "Partner in a civil union" means a person who has entered into a civil union in accordance with the requirements of article 15 of title 14, C.R.S.

(m) (I) A law enforcement or firefighter peer support team member shall not be examined without the consent of the person to whom peer support services have been provided as to any communication made by the person to the peer support team member under the circumstances described in subparagraph (III) of this paragraph (m); nor shall a recipient of individual peer support services be examined as to any such communication without the recipient's consent.

(I.5) An emergency medical service provider or rescue unit peer support team member shall not be examined without the consent of the person to whom peer support services have been provided as to any communication made by the person to the peer support team member under the circumstances described in subparagraph (III) of this paragraph (m); nor shall a recipient of individual peer support services be examined as to any such communication without the recipient's consent.

(II) For purposes of this paragraph (m):

(A) "Communication" means an oral statement, written statement, note, record, report, or document made during, or arising out of, a meeting with a peer support team member.

(A.5) "Emergency medical service provider or rescue unit peer support team member" means an emergency medical service provider, as defined in section 25-3.5-103 (8), C.R.S., a regular or volunteer member of a rescue unit, as defined in section 25-3.5-103 (11), C.R.S., or other person who has been trained in peer support skills and who is officially designated by the supervisor of an emergency medical service agency as defined in section 25-3.5-103 (11.5), C.R.S., or a chief of a rescue unit as a member of an emergency medical service provider's peer support team or rescue unit's peer support team.

(B) "Law enforcement or firefighter peer support team member" means a peace officer, civilian employee, or volunteer member of a law enforcement agency or a regular or volunteer member of a fire department or other person who has been trained in peer support skills and who is officially designated by a police chief, the chief of the Colorado state patrol, a sheriff, or a fire chief as a member of a law enforcement agency's peer support team or a fire department's peer support team.

(III) The provisions of this paragraph (m) shall apply only to communications made during individual interactions conducted by a peer support team member:

(A) Acting in the person's official capacity as a law enforcement or firefighter peer support team member or an emergency medical service provider or rescue unit peer support team member; and

(B) Functioning within the written peer support guidelines that are in effect for the person's respective law enforcement agency, fire department, emergency medical service agency, or rescue unit.

(IV) This paragraph (m) shall not apply in cases in which:

(A) A law enforcement or firefighter peer support team member or emergency medical service provider or rescue unit peer support team member was a witness or a party to an incident which prompted the delivery of peer support services;

(B) Information received by a peer support team member is indicative of actual or suspected child abuse, as described in section 18-6-401, C.R.S., or actual or suspected child neglect, as described in section 19-3-102, C.R.S.;

(C) Due to alcohol or other substance intoxication or abuse, as described in sections 27-82-107, C.R.S., the person receiving peer support is a clear and immediate danger to the person's self or others;

(D) There is reasonable cause to believe that the person receiving peer support has a mental illness and, due to the mental illness, is an imminent threat to himself or herself or others or is gravely disabled as defined in section 27-65-102, C.R.S.; or

(E) There is information indicative of any criminal conduct.

(2) The medical records produced for use in the review provided for in subparagraphs (III), (IV), and (V) of paragraph (d) of subsection (1) of this section shall not become public records by virtue of such use. The identity of any patient whose records are so reviewed shall not be disclosed to any person not directly involved in such review process, and procedures shall be adopted by the Colorado medical board or state board of nursing to ensure that the identity of the patient shall be concealed during the review process itself.

(3) The provisions of paragraph (d) of subsection (1) of this section shall not apply to physicians required to make reports in accordance with section 12-36-135, C.R.S. In addition, the provisions of paragraphs (d) and (g) of subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S. Physicians and psychologists testifying

concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S., do not fall under the attorney-client privilege in paragraph (b) of subsection (1) of this section.

CONNECTICUT

CONN. GEN. STAT. § 52-146K (2016)

(a) As used in this section:

(1) “Domestic violence agency” means any office, shelter, host home or agency offering assistance to victims of domestic violence through crisis intervention, emergency shelter referral and medical and legal advocacy, and which meets the Department of Social Services criteria of service provision for such agencies.

(2) “Domestic violence counselor” means any person engaged in a domestic violence agency (A) who has undergone a minimum of twenty hours of training which shall include, but not be limited to, the dynamics of domestic violence, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice system and information about state and community resources for victims of domestic violence, (B) who is certified as a counselor by the domestic violence agency that provided such training, (C) who is under the control of a direct service supervisor of a domestic violence agency, and (D) whose primary purpose is the rendering of advice, counsel and assistance to, and the advocacy of the cause of, victims of domestic violence.

(3) “Confidential communication” means information transmitted between a victim of domestic violence or a victim of a sexual assault and a domestic violence counselor or a sexual assault counselor in the course of that relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to a third person other than any person who is present to further the interests of the victim in the consultation or any person to whom disclosure is reasonably necessary for the transmission of the information or for the accomplishment of the purposes for which such counselor is consulted, and includes all information received by, and any advice, report or working paper given or made by, such counselor in the course of the relationship with the victim.

(4) “Rape crisis center” means any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal advocacy and follow-up counseling.

(5) “Sexual assault counselor” means (A) any person engaged in a rape crisis center who (i) has undergone a minimum of twenty hours of training which shall include, but not be limited to, the dynamics of sexual assault and incest, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice system, information about hospital and medical systems and information about state and community resources for sexual assault victims, (ii) is certified as a counselor by the sexual assault center which has provided such training, (iii) is under the control of a direct services supervisor of a rape crisis center, and (iv) whose primary purpose is the rendering of advice, counseling and assistance to, and the advocacy of the cause of, victims of sexual assault, or (B) any member of the armed forces of the

state or the United States who is trained and certified as a victim advocate or a sexual assault prevention coordinator in accordance with the military's sexual assault prevention and response program.

(6) "Victim" means any person who consults a domestic violence counselor or a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by domestic violence or a sexual assault.

(b) On or after October 1, 1983, a domestic violence counselor or a sexual assault counselor shall not disclose any confidential communications made to such counselor at any time by a victim in any civil or criminal case or proceeding or in any legislative or administrative proceeding unless the victim making the confidential communications waives the privilege, provided under no circumstances shall the location of the domestic violence agency or rape crisis center or the identity of the domestic violence counselor or sexual assault counselor be disclosed in any civil or criminal proceeding. Any request made on or after October 1, 1983, by the defendant or the state for such confidential communications shall be subject to the provisions of this subsection.

(c) When a victim is deceased or has been adjudged incompetent by a court of competent jurisdiction, the guardian of the victim or the executor or administrator of the estate of the victim may waive the privilege established by this section.

(d) A minor may knowingly waive the privilege established by this section. In any instance where the minor is, in the opinion of the court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, provided the parent or guardian is not the defendant and does not have a relationship with the defendant such that the parent or guardian has an interest in the outcome of the proceeding.

(e) The privilege established by this section shall not apply: (1) In matters of proof concerning chain of custody of evidence; (2) in matters of proof concerning the physical appearance of the victim at the time of the injury; or (3) where the domestic violence counselor or sexual assault counselor has knowledge that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed by the victim.

(f) The failure of any party to testify as a witness pursuant to the provisions of this section shall not result in an inference unfavorable to the state's cause or to the cause of the defendant.

DELAWARE

11 DEL .C., § 9403 (2016)

(a) Unless a victim or witness waives confidentiality in writing, neither a law-enforcement agency, the prosecutor, nor the corrections department may disclose, except among themselves or as authorized by law, the residential address, telephone number or place of employment of the victim or a member of the victim's family, or the identity, residential address, telephone number or place of employment of a witness or a member of the witness's family, except to the extent that disclosure is of the site of the crime, is required by law or the Rules of Criminal Procedure, is necessary for law-enforcement purposes, or is permitted by the court for good cause.

(b) A court may not compel a victim or witness or a member of the victim's or witness's family testifying in a criminal justice proceeding to disclose a residential address or place of employment on the record unless the court finds that disclosure of the information is necessary.

(c) The victim's address, place of employment and telephone number and any witness's identity, address, place of employment and telephone number, maintained by a court, prosecutor or law-enforcement agency pursuant to this chapter is exempt from disclosure under the Freedom of Information Act [Chapter 100 of Title 29].

DISTRICT OF COLUMBIA

D.C. CODE § 14-307 (2016) PHYSICIANS AND MENTAL HEALTH PROFESSIONALS

(a) In the Federal courts in the District of Columbia and District of Columbia courts a physician or surgeon or mental health professional as defined by § 7-1201.01(11) or a domestic violence counselor as defined in § 14-310(a)(2), a human trafficking counselor as defined in § 14-311(a)(2), or a sexual assault victim advocate as defined in § 14-312(a)(7) may not be permitted, without the consent of the client, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a client in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the client or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

- (1) evidence in a grand jury, criminal, delinquency, family, or domestic violence proceeding where a person is targeted for or charged with causing the death of or injuring a human being, or with attempting or threatening to kill or injure a human

being, or a report has been filed with the police pursuant to § 7-2601, and the disclosure is required in the interests of public justice;

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity or where the court is required under prevailing law to raise the defense sua sponte, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person;

(3) evidence relating to the mental competency or sanity of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court;

(4) evidence in a grand jury, criminal, delinquency, or civil proceeding where a person is alleged to have defrauded the District of Columbia or federal government in relation to receiving or providing services under the District of Columbia medical assistance program authorized by title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or where a person is alleged to have defrauded a health care benefit program; or

(5) evidence in a criminal or delinquency proceeding where a person is charged with an impaired driving offense and where the person caused the death of or injury to a human being and the disclosure is required in the interest of public justice.

(c) For the purposes of this section, the term:

(1) “Health care benefit program” means any public or private plan or contract under which a medical benefit, item, or service is or may be provided to an individual, and includes an individual or entity who provides a medical benefit, item, or service for which payment may be made under the plan or contract.

(2) “Injury” includes, in addition to physical damage to the body, a sexual act or sexual contact prohibited by Chapter 30 of Title 22.

D.C. CODE § 14-310 (2016) DOMESTIC VIOLENCE COUNSELORS.

(a) For the purposes of this section, the term:

(1) “Confidential communication” means information exchanged between a victim and a domestic violence counselor during the course of the counselor providing counseling, support, and assistance to a victim, including all records kept by the counselor and the domestic violence program concerning the victim and services provided to the victim.

(2) “Domestic violence counselor” means an employee, contractor, or volunteer of a domestic violence program who:

- (A) Is rendering support, counseling, or assistance to a victim;
- (B) Has undergone not less than 40 hours of domestic violence counselor training conducted by a domestic violence program that includes dynamics of domestic violence, trauma resulting from domestic violence, crisis intervention, personal safety, risk management, criminal and civil court processes, and resources available to victims; and
- (C)
 - (i) Is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or
 - (ii) Is or is under the supervision of a person who has a minimum of 5 years of experience rendering support, counseling, or assistance to persons against whom severe emotional abuse or a criminal offense has been committed or is alleged to have been committed, of which at least 2 years of experience involves victims.
- (3) “Domestic violence program” means a nonprofit, non-governmental organization that supports, counsels, and assists victims, including domestic violence hotlines, domestic violence shelters, and domestic violence intake centers.
- (4) “Intrafamily offense” shall have the same meaning as provided in § 16-1001(8).
- (5) “Victim” means a person against whom severe emotional abuse or an intrafamily offense has been committed or is alleged to have been committed.

(b)

- (1) A domestic violence counselor shall not disclose a confidential communication except:
 - (A) As required by statute or by a court of law;
 - (B) As voluntarily authorized in writing by the victim;
 - (C) To other individuals employed at the domestic violence program and third party providers when and to the extent necessary to facilitate the delivery of services to the victim;
 - (D) To the Metropolitan Police Department or other law enforcement agency to the extent necessary to protect the victim or another individual from a substantial risk of imminent and serious physical injury;
 - (E) To compile statistical or anecdotal information, without personal identifying information, for research or public information purposes; or

(F) For any confidential communications relevant to a claim or defense if the victim files a lawsuit against a domestic violence counselor or a domestic violence program.

(2) Unless the disclosure is public, confidential communications disclosed pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient except as authorized in paragraph (1) of this subsection.

(3) Confidential communications are not waived by the presence of a sign language or foreign language interpreter. Such an interpreter is subject to the same disclosure limitations set forth in paragraph (1) of this subsection and the same privilege set forth in subsection (c) of this section.

(c)

(1) Except as provided in paragraph (2) of this subsection, when a victim is under 12 years of age, has been adjudicated incompetent by a court of competent jurisdiction for the purpose of asserting or waiving the privilege established by this section, or is deceased, the victim's parent, guardian, or personal representative may assert or waive the privilege.

(2) If the parent, guardian, or personal representative of a victim described in paragraph (1) of this subsection has been charged with an intrafamily offense or has had a protection order or a neglect petition entered against him or her at the request of or on behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting or waiving the privilege.

(d) The assertion of any privilege under this section is not admissible in evidence.

D.C. CODE ANN. § 7-1201.01 (2016) MENTAL HEALTH INFORMATION

For purposes of this chapter:

(1) "Administrative information" means a client's name, age, sex, address, identifying number or numbers, dates and character of sessions (individual or group), and fees.

(2) "Client" means any individual who receives or has received professional services from a mental health professional in a professional capacity.

(3) "Client representative" means an individual specifically authorized by the client in writing or by the court as the legal representative of that client.

(4) "Data collector" means a person other than the client, mental health professional and mental health facility who regularly engages, in whole or in part, in the practice of assembling or evaluating client mental health information.

(5) “Diagnostic information” means a therapeutic characterization which is of the type that is found in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association or any comparable professionally recognized diagnostic manual.

(6) “Disclose” means to communicate any information in any form (written, oral or recorded).

(7) “Group session” means the provision of professional services jointly to more than 1 client in a mental health facility.

(8) “Insurance transaction” means whenever a decision (be it adverse or otherwise) is rendered regarding an individual’s eligibility for an insurance benefit or service.

(8A) “Joint consent” means a process established by the Department of Mental Health pursuant to § 7-1131.14(6) to enable all participating providers to rely on a single form in which a consumer of mental health services consents to the use of his or her protected mental health information by participating providers in the Department of Mental Health’s organized health care arrangement, for the purposes of delivering treatment, obtaining payment for services and supports rendered, and performing certain administrative operations, such as quality assurance, utilization review, accreditation, and oversight.

(9) “Mental health information” means any written, recorded or oral information acquired by a mental health professional in attending a client in a professional capacity which:

(A) Indicates the identity of a client; and

(B) Relates to the diagnosis or treatment of a client’s mental or emotional condition.

(10) “Mental health facility” means any hospital, clinic, office, nursing home, infirmary, provider as defined in § 7-1131.02(27), or similar entity where professional services are provided.

(11) “Mental health professional” means any of the following persons engaged in the provision of professional services:

(A) A person licensed to practice medicine;

(B) A person licensed to practice psychology;

(C) A licensed social worker;

(D) A professional marriage, family, or child counselor;

(E) A rape crisis or sexual abuse counselor who has undergone at least 40 hours of training and is under the supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist;

(F) A licensed nurse who is a professional psychiatric nurse; or

(G) Any person reasonably believed by the client to be a mental health professional within the meaning of subparagraphs (A) through (F) of this paragraph.

(11A) “Organized health care arrangement” means an organized system of health care in which more than one provider participates, and in which the participating providers hold themselves out to the public as participating in a joint arrangement, and either:

(A) Participate in joint activities that include utilization review under Chapter 8 of Title 44, in which health care decisions by participating providers are reviewed by other participating providers or by a third party on their behalf; or

(B) Participate in quality assessment and improvement activities under Chapter 8 of Title 44, in which mental health services or mental health supports provided by participating providers are assessed by other participating providers or by a third party on their behalf.

(11B) “Participating provider” means a provider of mental health services or mental health supports who, through participation in the joint consent promulgated by the Department of Mental Health pursuant to § 7-1131.14(6), joins the organized health care arrangement created by the Department of Mental Health.

(12) “Person” means any governmental organization or agency or part thereof, individual, firm, partnership, copartnership, association or corporation.

(13) “Personal notes” means mental health information regarding a client which is limited to:

(A) Mental health information disclosed to the mental health professional in confidence by other persons on condition that such information not be disclosed to the client or other persons; and

(B) The mental health professional’s speculations.

(14) “Professional services” means any form of diagnosis or treatment relating to a mental or emotional condition that is provided by a mental health professional.

(15) “Third-party payor” means any person who provides accident and sickness benefits or medical, surgical or hospital benefits whether on an indemnity, reimbursement, service or prepaid basis, including, but not limited to, insurance carriers, governmental agencies and employers.

D.C. CODE ANN. § 7-1201.02 (2016). Disclosures Prohibited; Exceptions

(a) Except as specifically authorized by subchapter II, III, or IV of this chapter, no mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose or permit the disclosure of mental health information to any person, including an employer.

(b) Except as specifically authorized by subchapter II or IV of this chapter, no client in a group session shall disclose or permit the disclosure of mental health information relating to another client in the group session to any person.

(c) No violation of subsection (a) or (b) of this section occurs until a single act or series of acts taken together amount to a disclosure of mental health information.

D.C. CODE ANN. § 7-1201.03 (2016). Personal Notes

If a mental health professional makes personal notes regarding a client, such personal notes shall not be maintained as a part of the client's record of mental health information.

Notwithstanding any other provision of this chapter, access to such personal notes shall be strictly and absolutely limited to the mental health professional and shall not be disclosed except to the degree that the personal notes or the information contained therein are needed in litigation brought by the client against the mental health professional on the grounds of professional malpractice or disclosure in violation of this section.

D.C. CODE ANN. § 7-1201.04 (2016). General Rules Governing Disclosures

(a) Upon disclosure of any of the client's mental health information pursuant to subchapter II, III, or IV of this chapter, a notation shall be entered and maintained with the client's record of mental health information which includes:

- (1) The date of the disclosure;
- (2) The name of the recipient of the mental health information; and
- (3) A description of the contents of the disclosure.

(b) All disclosures of mental health information, except on an emergency basis as provided in § 7-1203.03, shall be accompanied by a statement to the effect that: The unauthorized disclosure of mental health information violates the provisions of the District of Columbia Mental Health Information Act of 1978 (§§ 7-1201.01 to 7-1207.02). Disclosures may only be made pursuant to a valid authorization by the client or as provided in title III or IV of that Act. The Act provides for civil damages and criminal penalties for violations.

D.C. CODE ANN. § 7-1202.01 (2016). Disclosures by client authorization

Except as provided in § 7-1202.06, a mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose mental health information and a client in a group session may disclose mental health information upon the voluntary written authorization of the person or persons who have the power to authorize disclosure under § 7-1202.05.

D.C. CODE ANN. § 7-1202.02 (2016). Form of authorization

(a) Any written authorization which authorizes disclosure pursuant to § 7-1202.01 shall:

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National District Attorney Association
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(1) Specify the nature of the information to be disclosed, the type of persons authorized to disclose such information, to whom the information may be disclosed and the specific purposes for which the information may be used both at the time of the disclosure and at any time in the future;

(2) Advise the client of his right to inspect his record of mental health information;

(3) State that the consent is subject to revocation, except where an authorization is executed in connection with a client's obtaining a life or noncancellable or guaranteed renewable health insurance policy, in which case the authorization shall be specific as to its expiration date which shall not exceed 2 years from the date of the policy; or where an authorization is executed in connection with the client's obtaining any other form of health insurance in which case the authorization shall be specific as to its expiration date which shall not exceed 1 year from the date of the policy;

(4) Be signed by the person or persons authorizing the disclosure; and

(5) Contain the date upon which the authorization was signed and the date on which the authorization will expire, which shall be no longer than 365 days from the date of authorization.

(b) Repealed.

(c) A copy of such authorization shall:

(1) Be provided to the client and the person authorizing the disclosure;

(2) Accompany all such disclosures; and

(3) Be included in the client's record of mental health information.

D.C. CODE ANN. § 7-1202.03 (2016). Redisclosure.

Mental health information disclosed pursuant to this subchapter cannot be further disclosed by the recipient without authorization as provided in § 7-1202.01.

D.C. CODE ANN. § 7-1202.04 (2016). Revocation of authorization.

Except as provided in § 7-1202.02(a)(3), the person or persons who authorize a disclosure may revoke an authorization by providing a written revocation to the recipient named in the authorization and to the mental health professional, mental health facility or data collector authorized to disclose mental health information. The revocation of authorization shall be effective upon receipt. After the effective revocation date, no mental health information may be disclosed pursuant to the authorization. However, mental health information previously disclosed may be used for the purposes stated in the written authorization

D.C. CODE ANN. § 7-1202.05 (2016). Power to grant authorization.

(a) When a client is 18 years of age or over, the client or client representative shall have the power to authorize disclosures.

(b) When a client is under the age of 18, but beyond the age of 14, disclosures which require authorization may only be authorized by the joint written authorization of the client and the client's parent or legal guardian. When a client is less than 14 years of age, disclosures which require authorization may only be authorized by the client's parent or legal guardian. However, if the client's parent or legal guardian has not expressed consent to the mental health professional regarding the client's receipt of professional services, the client may, by written authorization, consent without any authorization from his parent or legal guardian.

D.C. CODE ANN. § 7-1202.06 (2016). Authority of mental health professional to limit authorized disclosures.

(a) The mental health professional primarily responsible for the diagnosis or treatment of a client may refuse to disclose or limit disclosure of the client's mental health information even though such mental health information is disclosable by virtue of a valid authorization; provided, that:

(1) Such mental health professional reasonably believes that such refusal or limitation on disclosure is necessary to protect the client from a substantial risk of imminent psychological impairment or to protect the client or another individual from a substantial risk of imminent and serious physical injury; and

(2) The mental health professional notifies the person or persons who authorized the disclosure, in writing, of: (A) the refusal or limitation on disclosure; (B) the reasons for such refusal or limitation; and (C) the remedies under this chapter; provided, further, that, in an insurance transaction, the mental health professional shall inform the insurer that the authorized disclosure was refused or limited.

(b) In the event the disclosure is limited by the mental health professional pursuant to subsection (a) of this section, the person or persons who authorized the disclosure may designate an independent mental health professional who shall be in substantially the same or greater professional class as the mental health professional who initially limited disclosure and who shall be permitted to review the client's record of mental health information. The independent mental health professional may authorize disclosure in whole or in part if, after a complete review of the client's record of mental health information, the independent mental health professional determines that the disclosure does not pose to the client a substantial risk of imminent psychological impairment or pose a substantial risk of imminent and serious physical injury to the client or another individual.

(c) A person who has taken action to achieve disclosure in accordance with subsection (b) of this section may institute an action in the Superior Court of the District of

Columbia to compel the disclosure of all or any part of the record of the client's mental health information which was not disclosed by the mental health professionals. An action instituted under this subsection shall be brought within 6 months of the denial, in whole or in part, of the disclosure by the independent mental health professional or the denial, in whole or in part, of disclosure to the independent mental health professional by the mental health professional. In the event that a person is indigent and is unable to obtain the services of an independent mental health professional, he may institute an action in the Superior Court of the District of Columbia, without regard to the provisions of subsection (b) of this section; provided, that the action is brought within 6 months of the denial, in whole or in part, of the disclosure by the mental health professional. If the person who instituted the action establishes that he executed a valid authorization which was transmitted to the mental health professional prior to the denial of disclosure by such mental health professional, the burden of proof shall then be placed upon the mental health professional to establish, by a preponderance of the evidence, that the denial of disclosure was in conformity with paragraphs (1) and (2) of subsection (a) of this section.

(d) Any refusal or limitation on disclosure shall be noted in the client's record of mental health information including, but not limited to, the names of the mental health professionals involved, the date of the refusal or limitation, the requested disclosure and the actual disclosure, if any.

(e) This section shall not apply to disclosures under § 21-562 (concerning the disclosure of records of a client hospitalized in a public hospital for a mental illness) or court-related disclosures under subchapter IV of this chapter.

D.C. CODE ANN. § 7-1202.07 (2016). Limited disclosure to 3rd-party payors.

(a) A mental health professional or mental health facility may disclose to a 3rd-party payor mental health information necessary to determine the client's entitlement to, or the amount of, payment benefits for professional services rendered; provided, that the disclosure is pursuant to a valid authorization, or for participating providers, a joint consent, and that the information to be disclosed is limited to:

- (1) Administrative information;
- (2) Diagnostic information;
- (3) The status of the client (voluntary or involuntary);
- (4) The reason for admission or continuing treatment; and
- (5) A prognosis limited to the estimated time during which treatment might continue.

(b) In the event the 3rd-party payor questions the client's entitlement to or the amount of payment benefits following disclosure under subsection (a) of this section, the 3rd-party payor may, pursuant to a valid authorization, or for participating providers, a joint consent, request an independent review of the client's record of mental health information by a mental health professional or professionals. Mental health information disclosed for the purpose of review shall not be disclosed to the 3rd-party payor.

D.C. CODE ANN. § 7-1203.01 (2016). Disclosures within a mental health facility or to participating providers.

(a) Mental health information may be disclosed to other individuals employed at the individual mental health facility when and to the extent necessary to facilitate the delivery of professional services to the client.

(b) Subject to subsection (c) of this section, a health care provider may disclose mental health information to another health care provider in connection with the diagnosis, evaluation, treatment, case management, or rehabilitation of a health or mental disorder or disease when and to the extent necessary to facilitate the delivery of health or professional services to the client. The authority to disclose mental health information under this subsection does not include the authority to disclose progress notes.

(c)

(1) A health care provider shall notify its clients, in plain language in writing, upon registration:

(A) Whether the health care provider's privacy practices permit the disclosure of mental health information pursuant to subsection (b) of this section; and

(B) That a client may request that his or her mental health information not be disclosed pursuant to subsection (b) of this section.

(2) If a client requests that his or her mental health information not be disclosed, the health care provider shall not disclose the client's mental health information pursuant to subsection (b) of this section; provided, that nothing contained in this subsection shall prohibit a health care provider from disclosing mental health information pursuant to another provision of this chapter or pursuant to Chapter 2A of this title [§ 7-241 et seq.].

(d) For the purposes of this section, the term:

(1) "Health care provider" means:

(A) A person who is licensed, certified, or otherwise authorized under Chapter 12 of Title 3 [§ 3-1201.01 et seq.] to provide health care in the ordinary course of business or practice of a health occupation or in an approved education or training program;

(B) A person licensed or permitted to practice a health occupation under the laws of another state; or

(C) A facility where health or mental health services are provided to patients or recipients, including a hospital, clinic, office, nursing home, infirmary, health maintenance organization, medical laboratory, provider, as defined by § 7-1131.02(27), or similar entity licensed, certified, or otherwise authorized by the District of Columbia.

(2) “Progress notes” means notes recorded, in any medium, by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record. The term “progress notes” excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

D.C. CODE ANN. § 7-1203.02 (2016). Disclosures under law.

Mental health information may be disclosed by a mental health professional or mental health facility where necessary and, to the extent necessary:

- (1) To meet the requirements of § 21-586 (concerning financial responsibility for the care of hospitalized persons);
- (2) To meet the compulsory reporting provisions of District or federal law that seek to promote human health and safety, including § 4-1371.12; or
- (3) For the purposes of and in accordance with Chapter 2A of this title [§ 7-251 seq.].

D.C. CODE ANN. § 7-1203.03 (2016). Disclosures on an emergency basis.

(a) To the extent the disclosure of mental health information is not otherwise authorized by this chapter, mental health information may be disclosed, on an emergency basis, to one or more of the following if the mental health professional reasonably believes that such disclosure is necessary to initiate or seek emergency hospitalization of the client under § 21-521 or to otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury:

- (1) The client’s spouse, parent, or legal guardian;
- (2) A duly accredited officer or agent of the District of Columbia in charge of public health;
- (3) The Department of Mental Health;
- (4) A provider as that term is defined in § 7-1131.02(27);
- (5) The District of Columbia Pretrial Services Agency;
- (6) The Court Services and Offender Supervision Agency;
- (7) A court exercising jurisdiction over the client as a result of a pending criminal proceeding;
- (8) Emergency medical personnel;
- (9) An officer authorized to make arrests in the District of Columbia; or
- (10) An intended victim.

(a-1) Any disclosure of mental health information under this section shall be limited to the minimum necessary to initiate or seek emergency hospitalization of the client under § 21-521 or to otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury.

(b) Mental health information disclosed to the Metropolitan Police Department pursuant to this section shall be maintained separately and shall not be made a part of any permanent police record. Such mental health information shall not be further disclosed except as a court-related disclosure pursuant to subchapter IV of this chapter. If no judicial action relating to the disclosure under this section is pending at the expiration of the statute of limitations governing the nature of the judicial action, the mental health information shall be destroyed. If a judicial action relating to the disclosure under this section is pending at the expiration of the statute of limitations, the mental health information shall be destroyed at the termination of the judicial action.

(c) Mental health information contained in a certification of incapacity, pursuant to § 21-2204, may be disclosed to initiate a proceeding pursuant to Chapter 20 of Title 21.

D.C. CODE ANN § 7-1203.04 (2016). Disclosures for collection of fees.

(a) A mental health professional or mental health facility may disclose the administrative information necessary for the collection of his or its fee from the client to a person authorized by the mental health professional or mental health facility for the collection of a fee from such client if the client or client representative has received a written notification that the fee is due and has failed to arrange for payment with the mental health professional or mental health facility within a reasonable time after such notification.

(b) In the event of a claim in any civil action for the collection of such a fee, no additional mental health information shall be disclosed in litigation, except to the extent necessary:

- (1) To respond to a motion of the client or client representative for greater specificity;
- or
- (2) To dispute a defense or counterclaim.

D.C. CODE ANN §§ 7-1203.05 (2016). Disclosures for research, auditing and program evaluation.

In addition to the disclosures authorized pursuant to Chapter 2A of this title [§ 7-251 et seq.], a mental health professional or mental health facility may disclose mental health information to qualified personnel, if necessary, for the purpose of conducting scientific research or management audits, financial audits or program evaluation of the mental health professional or mental health facility; provided, that such personnel have demonstrated and provided assurances, in writing, of their ability to insure compliance with the requirements of this chapter. Such personnel shall not identify, directly or indirectly, an individual client in any reports of such research, audit or evaluation, or otherwise disclose client identities in any

manner; except, that de-identified data may be shared in accordance with the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 1936; 42 U.S.C. § 1320d et seq.).

(a) A mental health professional or mental health facility may disclose to a correctional institution or a law enforcement official having lawful custody of an individual mental health information about the individual to facilitate the delivery of mental health services and mental health supports to the individual.

(b) Any disclosure of mental health information under this section shall be limited to the minimum necessary to facilitate the delivery of mental health services and mental health supports.

D.C. CODE ANN § 7-1203.06 (2016). Redisclosure.

Mental health information disclosed pursuant to this subchapter shall not be redisclosed except as specifically authorized by subchapter II, III or IV of this chapter or for the purposes of and in accordance with Chapter 2A of this title [§ 7-251 et seq.].

D.C. CODE ANN § 7-1204.01 (2016). Court-ordered examinations.

Except as provided elsewhere by law, mental health information acquired by a mental health professional pursuant to a court-ordered examination may be disclosed in a manner provided by rules of court or by order of the court

D.C. CODE ANN § 7-1204.02 (2016). Civil commitment proceedings.

Mental health information may be disclosed by a mental health professional when and to the extent necessary to initiate or seek civil commitment proceedings under § 21-541.

D.C. CODE ANN § 7-1204.03 (2016). Court actions.

(a) Mental health information may be disclosed in a civil or administrative proceeding in which the client or the client representative or, in the case of a deceased client, any party claiming or defending through or a beneficiary of the client, initiates his mental or emotional condition or any aspect thereof as an element of the claim or defense.

(b)

(1) In addition to mental health information that is disclosed when a defendant's competence or mental health is at issue or when otherwise authorized by law, in a criminal proceeding, the court may order the disclosure, or redisclosure, of a defendant or offender's mental health information when and only to the extent necessary to monitor the defendant or offender's compliance with a condition of pretrial release, probation, parole, supervised release, or diversion agreement that the defendant or offender obtain or

comply with mental health treatment ordered by a court or the U.S. Parole Commission.

(2) Any disclosure or redisclosure of mental health information ordered under this subsection shall be limited to the minimum necessary to monitor the individual's compliance and the court's order shall specify the information that may be disclosed or redisclosed.

Redisclosure of any mental health information disclosed pursuant to this subchapter shall be governed by order of the court or, if no order is issued, by the rules of the Superior Court of the District of Columbia.

D.C. CODE ANN. § 7-1204.05 (2016). Court records; anonymity of parties.

A client, client representative or any other party in a civil, criminal or administrative action, in which mental health information has been or will be disclosed, shall have the right to move the court to denominate, style or caption the names of all parties as "John Doe" or otherwise protect the anonymity of all of the parties.

D.C. CODE ANN. § 7-1205.01 (2016). Right to access.

Except as provided in this subchapter and in § 7-1201.03, a mental health professional, mental health facility or data collector shall permit any client or client representative, upon written request, to inspect and duplicate the client's record of mental health information maintained by the mental health professional, mental health facility or data collector within 30 days from the date of receipt of the request. A mental health professional, responsible for the diagnosis or treatment of the client, shall have the opportunity to discuss the mental health information with the client or client representative at the time of such inspection. In the case of a request to a data collector for disclosure of mental health information pursuant to this section, the data collector shall grant access either: (1) directly to the requestor; or (2) indirectly by providing the mental health information to a mental health professional designated by the requestor. If the mental health professional designated by the requestor is not the person who disclosed the mental health information to the data collector, he shall be in substantially the same or greater professional class as the mental health professional who disclosed the mental health information to the data collector.

§ 7-1205.02. Authority to limit access.

A mental health professional or mental health facility may limit the disclosure of portions of a client's record of mental health information to the client or client representative only if the mental health professional primarily responsible for the diagnosis or treatment of such client reasonably believes that such limitation is necessary to protect the client from a substantial risk of imminent psychological impairment or to protect the client or another individual from a substantial risk of imminent and serious physical injury. The mental health professional shall notify the client or client representative if the mental health professional does not grant complete access.

§ 7-1205.03. Review by independent mental health professional.

In the event that disclosure of the client's information is limited, the client or client representative may designate an independent mental health professional who shall be in substantially the same or greater professional class as the mental health professional who initially limited disclosure and who shall be permitted to review the client's record of mental health information. The independent mental health professional shall permit the client or client representative to inspect and duplicate those portions of the client's record of mental health information which, in his judgment, do not pose a substantial risk of imminent psychological impairment to the client or pose a substantial risk of imminent and serious physical injury to the client or another individual. In the event that the independent mental health professional allows the client to inspect and duplicate additional portions of the client's record of mental health information, the mental health professional primarily responsible for the diagnosis or treatment of the client shall have the opportunity to discuss the information with the client at the time of transmittal, examination and duplication of information.

§ 7-1205.04. Judicial action to compel access.

A client or client representative who has taken action in accordance with this subchapter may institute an action in the Superior Court of the District of Columbia to compel access to all or any part of the client's record of mental health information which was denied by the mental health professional. An action initiated under this section shall be brought within 6 months of the denial of access, in whole or in part, by the independent mental health professional. In the event that a person is indigent and is unable to obtain the services of an independent mental health professional, he may institute an action in the Superior Court of the District of Columbia, without regard to the provisions of § 7-1205.03; provided, that the action is brought within 6 months of the denial of access, in whole or in part, by the mental health professional. If the person who instituted the action establishes that he made a request for access in compliance with § 7-1205.01, the burden of proof shall be placed upon the mental health professional to establish by a preponderance of the evidence that the denial of access was in conformity with subchapter V of this chapter.

§ 7-1205.05. Right to correct information.

(a) The mental health professional, mental health facility and data collector shall maintain the client's mental health information in an accurate and complete manner.

(b) In the event that the client or client representative questions the accuracy or completeness of the client's record of mental health information, he may, within 15 days of the date of access, submit a written amendment of reasonable length to the mental health professional, mental health facility or data collector, as the case may be. The mental health professional, mental health facility or data collector shall either:

(1) Amend the client's mental health information record in accordance with the proposed amendment; or

(2) Include the proposed amendment as part of the client's mental health information record; provided, that the client may, at his option, withdraw the proposed amendment or file a more concise statement of disagreement as a substitute for the proposed amendment.

(c) If the requested amendment was adopted, the mental health professional, mental health facility or data collector shall either promptly transmit the client's amended record or the requested amendment to all persons to whom the client's unamended mental health information had been disclosed or promptly inform the client of the names and addresses of such persons not receiving the amended record or the requested amendment. In any such disclosure made pursuant to this subsection, the mental health professional, mental health facility or data collector, as the case may be, may also include a statement of reasons for not adopting the requested amendment.

§ 7-1206.01. Security requirement.

Mental health professionals, mental health facilities and data collectors shall maintain records of mental health information in a secure manner as to effectuate the purposes of this chapter. Any entity that receives mental health information shall have appropriate administrative, technical, and physical safeguards in place to protect the confidentiality of mental health information and shall promptly notify the Department of Mental Health in writing of any unauthorized disclosure or use of mental health information.

§ 7-1206.02. Notice requirement — Employees and agents with access to information.

Mental health professionals, mental health facilities and data collectors shall provide employees and agents who have lawful access to mental health information in the course of their employment with a written statement of the requirement of maintaining the security of records of mental health information and of the penalties provided in this chapter for unauthorized disclosure.

§ 7-1206.03. Notice Requirement — Clients in group sessions.

Mental health professionals shall provide clients in a group session with a written statement of the prohibition against the unauthorized disclosure of mental health information and the penalties provided in this chapter for unauthorized disclosure.

§ 7-1207.01. Civil liability.

(a) Except for violations of § 7-1205.05(a), any person who negligently violates the provisions of this chapter shall be liable in an amount equal to the damages sustained by the client plus the costs of the action and reasonable attorney's fees.

(b) Except for violations of § 7-1205.05(a), any person who willfully or intentionally violates the provisions of this chapter shall be liable in damages sustained by the client in an amount not less than \$1,000 plus the costs of the action and reasonable attorney's fees.

(c) Either party is entitled to trial by jury, upon request.

§ 7-1207.02. Criminal penalties.

(a) Except for violations of subchapter V of this chapter, any person who willfully violates the provisions of this chapter shall be guilty of a misdemeanor and such violator shall be fined not more than \$1,000 or imprisoned for not more than 60 days, or both.

(b) Any person who knowingly obtains mental health information from a mental health professional, mental health facility or data collector, under false pretenses or through deception, shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned not more than 90 days, or both.

§ 7-1208.01. Penalties under other laws.

Any civil liability or criminal penalty imposed for violation of this chapter is, in addition to and not in lieu of, any civil or administrative remedy, penalty or sanction otherwise authorized by law. This chapter and the penalties prescribed for violations of this chapter shall not supersede but shall supplement all statutes of the District government and the United States government in which similar conduct is prohibited or regulated.

§ 7-1208.02-1208.07 Misc.

Nothing in this chapter shall be construed as limiting or interfering with District of Columbia, state or federal regulation and monitoring of the handling and dispensing of prescription drugs.

Nothing in this chapter shall be construed to apply to the operations of the Commission on Mental Health.

Any consent or agreement purporting to waive the provisions of this chapter is hereby declared to be against public policy and void.

Nothing in this chapter shall be construed or applied to necessarily require or excuse noncompliance with any provision of any federal law.

The provisions of this chapter shall take effect pursuant to § 1-206.02(c) (1) and shall govern all mental health information regardless of when such information came into existence. However, the provisions of this chapter which create liabilities shall only apply to acts or failures to act which occur on or after the effective date.

FLORIDA

FLA. STAT. ANN. § 90.5035 (2016)

(1) For purposes of this section:

(a) A “rape crisis center” is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.

(b) A “sexual assault counselor” is any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery.

(c) A “trained volunteer” is a person who volunteers at a rape crisis center, has completed 30 hours of training in assisting victims of sexual violence and related topics provided by the rape crisis center, is supervised by members of the staff of the rape crisis center, and is included on a list of volunteers that is maintained by the rape crisis center.

(d) A “victim” is a person who consults a sexual assault counselor or a trained volunteer for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or sexual battery, an alleged sexual assault or sexual battery, or an attempted sexual assault or sexual battery.

(e) A communication between a sexual assault counselor or trained volunteer and a victim is “confidential” if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the victim in the consultation, examination, or interview.
2. Those persons necessary for the transmission of the communication.
3. Those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.

(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim. Such confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege includes any advice given by the sexual assault counselor or trained volunteer in the course of that relationship.

(3) The privilege may be claimed by:

- (a) The victim or the victim’s attorney on his or her behalf.
- (b) A guardian or conservator of the victim.
- (c) The personal representative of a deceased victim.
- (d) The sexual assault counselor or trained volunteer, but only on behalf of the victim. The authority of a sexual assault counselor or trained volunteer to claim the privilege is presumed in the absence of evidence to the contrary.

FLA. STAT. §90.5036 (2016)

(1) For purposes of this section:

(a) A “domestic violence center” is any public or private agency that offers assistance to victims of domestic violence, as defined in s. 741.28, and their families.

(b) A “domestic violence advocate” means any employee or volunteer who has 30 hours of training in assisting victims of domestic violence and is an employee of or volunteer for a program for victims of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence.

(c) A “victim” is a person who consults a domestic violence advocate for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by an act of domestic violence, an alleged act of domestic violence, or an attempted act of domestic violence.

(d) A communication between a domestic violence advocate and a victim is “confidential” if it relates to the incident of domestic violence for which the victim is seeking assistance and if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the victim in the consultation, assessment, or interview.
2. Those persons to whom disclosure is reasonably necessary to accomplish the purpose for which the domestic violence advocate is consulted.

(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the course of advising, counseling, or assisting the victim. The privilege applies to confidential communications made between the victim and the domestic violence advocate and to records of those communications only if the advocate is registered under s. 39.905 at the time the communication is made. This privilege includes any advice given by the domestic violence advocate in the course of that relationship.

(3) The privilege may be claimed by:

- (a) The victim or the victim's attorney on behalf of the victim.
- (b) A guardian or conservator of the victim.
- (c) The personal representative of a deceased victim.
- (d) The domestic violence advocate, but only on behalf of the victim. The authority of a domestic violence advocate to claim the privilege is presumed in the absence of evidence to the contrary.

GEORGIA

GA. CODE ANN. § 24-5-509 (2015)

(a) As used in this Code section, the term:

(1) "Agent" means a current or former employee or volunteer of a program who has successfully completed a minimum of 20 hours of training in family violence and sexual assault intervention and prevention at a Criminal Justice Coordinating Council certified victim assistance program.

(2) "Family violence" shall have the same meaning as provided in Code Section 19-13-1.

(3) "Family violence shelter" means a program whose primary purpose is to provide services to family violence victims and their families that is not under the direct supervision of a law enforcement agency, prosecuting attorney's office, or a government agency.

(4) "Family violence victim" means a person who consults a family violence shelter for the purpose of securing advice or other services concerning an act of family violence, an alleged act of family violence, or an attempted act of family violence.

(5) "Government agency" means any agency of the executive, legislative, or judicial branch of government or political subdivision or authority thereof of this state, any other state, the District of Columbia, the United States and its territories and possessions, or any foreign government or international governmental or quasi-governmental agency recognized by the United States or by any of the several states.

(6) "Negative effect of the disclosure of the evidence on the victim" shall include the impact of the disclosure on the relationship between the victim and the agent and the delivery and accessibility of services.

(7) "Program" means a family violence shelter or rape crisis center.

(8) "Rape crisis center" means a program whose primary purpose is to provide services to sexual assault victims and their families that is not under the direct supervision of a law enforcement agency, prosecuting attorney's office, or a government agency.

(9) "Services" means any services provided to a victim by a program including but not limited to crisis hot lines, safe homes and shelters, assessment and intake, counseling, services for children who are victims of family violence or sexual assault, support in medical, administrative, and judicial systems, transportation, relocation, and crisis intervention. Such term shall not include mandatory reporting as required by Code Section 19-7-5 or 30-5-4.

(10) "Sexual assault" shall have the same meaning as provided in Code Section 17-5-70.

(11) "Sexual assault victim" means a person who consults a rape crisis center for the purpose of securing advice or other services concerning a sexual assault, an alleged sexual assault, or an attempted sexual assault.

(12) "Victim" means a family violence victim or sexual assault victim.

(b) No agent of a program shall be compelled to disclose any evidence in a judicial proceeding that the agent acquired while providing services to a victim, provided that such evidence was necessary to enable the agent to render services, unless the privilege has been waived by the victim or, upon motion by a party, the court finds by a preponderance of the evidence at a pretrial hearing or hearing outside the presence of the jury that:

(1) In a civil proceeding:

(A) The evidence sought is material and relevant to factual issues to be determined;

(B) The evidence is not sought solely for the purpose of referring to the victim's character for truthfulness or untruthfulness; provided, however, that this subparagraph shall not apply to evidence of the victim's prior inconsistent statements;

(C) The evidence sought is not available or already obtained by the party seeking disclosure; and

(D) The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim; or

(2) In a criminal proceeding:

(A) The evidence sought is material and relevant to the issue of guilt, degree of guilt, or sentencing for the offense charged or a lesser included offense;

(B) The evidence is not sought solely for the purpose of referring to the victim's character for truthfulness or untruthfulness; provided, however, that this subparagraph shall not apply to evidence of the victim's prior inconsistent statements;

(C) The evidence sought is not available or already obtained by the party seeking disclosure; and

(D) The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.

(c) If the court finds that the evidence sought may be subject to disclosure pursuant to subsection (b) of this Code section, the court shall order that such evidence be produced for the court under seal, shall examine the evidence in camera, and may allow disclosure of those portions of the evidence that the court finds are subject to disclosure under this Code section.

(d) The privilege afforded under this Code section shall terminate upon the death of the victim.

(e) The privilege granted by this Code section shall not apply if the agent was a witness or party to the family violence or sexual assault or other crime that occurred in the agent's presence.

(f) The mere presence of a third person during communications between an agent and a victim shall not void the privilege granted by this Code section, provided that the communication occurred in a setting when or where the victim had a reasonable expectation of privacy.

(g) If the victim is or has been judicially determined to be incompetent, the victim's guardian may waive the victim's privilege.

(h) In criminal proceedings, if either party intends to compel evidence based on this Code section, the party shall file and serve notice of his or her intention on the opposing party at least ten days prior to trial or as otherwise directed by the court. The court shall hold a pretrial hearing in accordance with subsection (b) of this Code section and determine the issue prior to trial.

GA. CODE ANN. § 46-5-7 (2015)

(a) Prior to January 1, 2005, each person, corporation, or other entity that provides telephone service in this state and each person, corporation, or other entity that publishes, disseminates, or otherwise provides telephone directory information or listings of telephone subscribers in this state shall file a plan with the commission setting forth in detail how such person, corporation, or other entity will protect the confidentiality of the address or location of family violence shelters, as defined in Code Section 19-13-20, in this state. Such plan shall describe the manner in which the person, corporation, or other entity will identify all such shelters and the manner in which the person, corporation, or other entity will keep the location and address of such shelters confidential.

(b) Such persons, corporations, and other entities shall update such plans at least every 24 months.

(c) Such original and updated plans shall be approved by the commission within a reasonable time upon a determination that the plans are reasonably effective in identifying the family violence shelters in the state and in maintaining the confidentiality of the location and address of such family violence shelters. If the commission determines that a plan is inadequate, it shall state the basis on which the plan was determined to be inadequate and shall allow the person, corporation, or other entity filing such plan a period of not more than 30 days to file a revised plan that is acceptable to the commission.

(d) Such plans shall not be open to examination by the public and shall be exempt from disclosure under the provisions of Article 4 of Chapter 18 of Title 50.

(e) Within three days of filing original plans or updates with the commission, each person, corporation, or other entity subject to this Code section shall submit a copy of all original plans, updated plans, and revised plans to the State Commission on Family Violence, which is authorized to provide comments concerning such plans to the commission in order to aid in review and approval of such plans.

(f) The filing or approval of such plans shall not in any manner be a defense to any action or prosecution.

HAWAII

HAW. REV. STAT. ANN. § 626-505.5

(a) Definitions. As used in this rule:

(1) A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure would be in furtherance of the provision of counseling or treatment services to the victim or those reasonably necessary for the transmission of the communication.

(2) “Domestic violence victims’ program” means any refuge, shelter, office, safe home, institution, or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal, or support counseling.

(3) “Sexual assault crisis center” means any office, institution, or center offering assistance to victims of sexual assault and the families of such victims through crisis intervention, medical, and legal, or support counseling.

(4) “Social worker” means a person who has received a master’s degree in social work from a school of social work accredited by the Council on Social Work Education.

(5) A “victim” is a person who consults a victim counselor for assistance in overcoming any adverse emotional or psychological effect of sexual assault, domestic violence, or child abuse.

(6) A “victim counseling program” is any activity of a domestic violence victims’ program or a sexual assault crisis center that has, as its primary function, the counseling and treatment of sexual assault, domestic violence, or child abuse victims and their families, and that operates independently of any law enforcement agency, prosecutor’s office, or the department of human services.

(7) A “victim counselor” is either a sexual assault counselor or a domestic violence victims’ counselor. A sexual assault counselor is a person who is employed by or is a volunteer in a sexual assault crisis center, has undergone a minimum of thirty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a social worker, nurse, psychiatrist, psychologist, or psychotherapist, and whose primary function is the rendering of advice, counseling or assistance to victims of sexual assault. A domestic violence victims’ counselor is a person who is employed by or is a volunteer in a domestic violence victims’ program, has undergone a minimum of twenty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a direct service supervisor of a domestic violence victims’ program, and whose primary function is the rendering of advice, counseling, or assistance to victims of abuse.

(b) General rule of privilege. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a victim counselor for the purpose of counseling or treatment of the victim for the emotional or psychological effects of sexual assault, domestic violence, or child abuse or neglect, and to refuse to provide evidence that would identify the name, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim.

(c) Who may claim the privilege. The privilege may be claimed by the victim, the victim's guardian or conservator, or the personal representative of a deceased victim. The person who was the victim counselor at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the victim.

(d) Exceptions. There is no privilege under this rule:

(1) Perjured testimony by victim. If the victim counselor reasonably believes that the victim has given perjured testimony and a party to the proceeding has made an offer of proof that perjury may have been committed.

(2) Physical appearance and condition of victim. In matters of proof concerning the physical appearance and condition of the victim at the time of the alleged crime.

(3) Breach of duty by victim counselor or victim counseling program. As to a communication relevant to an issue of breach of duty by the victim counselor or victim counseling program to the victim.

(4) Mandatory reporting. To relieve victim counselors of any duty to refuse to report child abuse or neglect under chapter 350, domestic abuse under chapter 586, or abuse of a vulnerable adult under part X of chapter 346, and to refuse to provide evidence in child abuse proceedings under chapter 587A.

(5) Proceedings for hospitalization. For communications relevant to an issue in proceedings to hospitalize the victim for mental illness or substance abuse, or in proceedings for the discharge or release of a victim previously hospitalized for mental illness or substance abuse.

(6) Examination by order of court. If the court orders an examination of the physical, mental, or emotional condition of a victim, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose of which the examination is ordered unless the court orders otherwise.

(7) Condition an element of claim or defense. As to a communication relevant to the physical, mental, or emotional condition of the victim in any proceeding in which the victim relies upon the condition as an element of the victim's claim or defense or, after the victim's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(8) Proceedings against the victim counselor. In any administrative or judicial proceeding in which the competency or practice of the victim counselor or of the victim counseling program is at issue, provided that the identifying data of the victims whose records are admitted into evidence shall be kept confidential unless waived by the victim. The administrative agency, board or commission shall close to the public any portion of a proceeding, as necessary to protect the confidentiality of the victim.

IDAHO

IDAHO CODE § 39-5211 (2015)

To qualify for domestic violence grants under the provisions of this chapter, an applicant must:

- (1) Propose to operate and provide an eligible project;
- (2) Be a private, nonprofit corporation of the state of Idaho, or a public entity of the state of Idaho;
- (3) Provide matching moneys equal to twenty-five percent (25%) of the amount of the grant. The applicant may contribute to or provide the required local matching funds. The value of in-kind contributions and volunteer labor from the community may be computed and included as part of the local matching requirement;
- (4) Require persons employed by or volunteering services to the project to maintain the confidentiality of any information that would identify individuals served by the project; such information identifying individuals served by the project shall be subject to disclosure according to chapter 1, title 74, Idaho Code;
- (5) Require victims to reimburse the project monetarily or through volunteer efforts for services provided as they are able to do so. Minimum reimbursement may be established by the council, with a sliding scale of reimbursement based on the victim's ability to pay;
- (6) Provide a policy of nondiscrimination in its admissions and provision of services on the basis of race, religion, gender, color, age, marital status, national origin or ancestry.

I.R.E. RULE 517

(a) Definitions. As used in this rule:

- (1) Client. A "client" is a person who is rendered licensed counselor services.
- (2) Licensed counselor. A "licensed counselor" is any person licensed to be a licensed professional counselor or a licensed counselor in the State of Idaho pursuant to Title 54, Chapter 34, Idaho Code, or reasonably believed by the client so to be.
- (3) Confidential communication. A communication is "confidential" if not intended to be disclosed to third persons except persons present to further the interest of the client in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the rendition of counseling services to the client under the direction of the licensed counselor, including members of the client's family.

(b) General rule of privilege. A client has a privilege in any civil or criminal action to which the client is a party to refuse to disclose and to prevent any other person from disclosing confidential communications made in the furtherance of the rendition of licensed counseling services to the client, among the client, the client's licensed counselor, and persons who are participating in the licensed counseling under the direction of the licensed counselor including members of the client's family.

(c) Who may claim the privilege. The privilege may be claimed by the client, or for the client through the client's licensed counselor, lawyer, guardian or conservator, or the personal representative of a deceased client. The authority of the licensed counselor,

lawyer, guardian, conservator or personal representative to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Civil action. In a civil action, case or proceeding by one of the parties to the confidential communication against the other.

(2) Proceedings for guardianship, conservatorship or hospitalization. As to a communication relevant to an issue in proceedings for the appointment of a guardian or conservator for a client for mental illness or to hospitalize the client for mental illness.

(3) Child related communications. In a criminal or civil action or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition, of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child.

(4) Licensing board proceedings. In an action, case or proceeding under Idaho Code § 54-3404.

(5) Contemplation of crime or harmful act. If the communication reveals the contemplation of a crime or harmful act.

ILLINOIS

735 ILL. COMP. STAT. 5/8-802.2 (2016)

(a) Purpose. This Section is intended to protect victims of violent crimes from public disclosure of statements they make in confidence to counselors of organizations established to help them. Because of the fear and trauma that often results from violent crimes, many victims hesitate to seek help even where it is available and may therefore lack the psychological support necessary to report the crime and aid police in preventing future crimes.

(b) Definitions. As used in this Act, “violent crimes” include, but are not limited to, any felony in which force or threat of force was used against the victim or any misdemeanor which results in death or great bodily harm to the victim.

(c) Confidentiality. Where any victim of a violent crime makes a statement relating to the crime or its circumstances during the course of therapy or consultation to any counselor, employee or volunteer of a victim aid organization, the statement or contents thereof shall not be disclosed by the organization or any of its personnel unless the maker of the statement consents in writing or unless otherwise directed pursuant to this Section.

If in any judicial proceeding, a party alleges that such statements are necessary to the determination of any issue before the court and written consent to disclosure has not been given, the party may ask the court to consider the relevance and admissibility of the statements. In such a case, the court shall hold a hearing in camera on the relevance of the statements. If

the court finds them relevant and admissible to the issue, the court shall order the statements to be disclosed.

750 ILL. COMP. STAT. § 60/227 (2016)

(a) As used in this Section:

(1) “Domestic violence program” means any unit of local government, organization, or association whose major purpose is to provide one or more of the following: information, crisis intervention, emergency shelter, referral, counseling, advocacy, or emotional support to victims of domestic violence.

(2) “Domestic violence advocate or counselor” means any person (A) who has undergone a minimum of forty hours of training in domestic violence advocacy, crisis intervention, and related areas, and (B) who provides services to victims through a domestic violence program either on an employed or volunteer basis.

(3) “Confidential communication” means any communication between an alleged victim of domestic violence and a domestic violence advocate or counselor in the course of providing information, counseling, or advocacy. The term includes all records kept by the advocate or counselor or by the domestic violence program in the course of providing services to an alleged victim concerning the alleged victim and the services provided. The confidential nature of the communication is not waived by the presence at the time of the communication of any additional persons, including but not limited to an interpreter, to further express the interests of the domestic violence victim or by the advocate’s or counselor’s disclosure to such an additional person with the consent of the victim when reasonably necessary to accomplish the purpose for which the advocate or counselor is consulted.

(4) “Domestic violence victim” means any person who consults a domestic violence counselor for the purpose of securing advice, counseling or assistance related to one or more alleged incidents of domestic violence.

(5) “Domestic violence” means abuse as defined in the Illinois Domestic Violence Act [750 ILCS 60/101 et seq.].

(b) No domestic violence advocate or counselor shall disclose any confidential communication or be examined as a witness in any civil or criminal case or proceeding or in any legislative or administrative proceeding without the written consent of the domestic violence victim except (1) in accordance with the provisions of the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.] or (2) in cases where failure to disclose is likely to result in an imminent risk of serious bodily harm or death of the victim or another person.

(c) A domestic violence advocate or counselor who knowingly discloses any confidential communication in violation of this Act commits a Class A misdemeanor.

(d) When a domestic violence victim is deceased or has been adjudged incompetent by a court of competent jurisdiction, the guardian of the domestic violence victim or the

executor or administrator of the estate of the domestic violence victim may waive the privilege established by this Section, except where the guardian, executor or administrator of the estate has been charged with a violent crime against the domestic violence victim or has had an Order of Protection entered against him or her at the request of or on behalf of the domestic violence victim or otherwise has an interest adverse to that of the domestic violence victim with respect to the waiver of the privilege. In that case, the court shall appoint an attorney for the estate of the domestic violence victim.

(e) A minor may knowingly waive the privilege established by this Section. Where a minor is, in the opinion of the court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, except where such parent or guardian has been charged with a violent crime against the minor or has had an Order of Protection entered against him or her on request of or on behalf of the minor or otherwise has any interest adverse to that of the minor with respect to the waiver of the privilege. In that case, the court shall appoint an attorney for the minor child who shall be compensated in accordance with Section 506 of the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/506].

(f) Nothing in this Section shall be construed to limit in any way any privilege that might otherwise exist under statute or common law.

(g) The assertion of any privilege under this Section shall not result in an inference unfavorable to the State's cause or to the cause of the domestic violence victim.

750 ILL. COMP. STAT. § 60/227.1 (2016)

Except as otherwise provided in this Section, no court or administrative or legislative body shall compel any person or domestic violence program to disclose the location of any domestic violence program or the identity of any domestic violence advocate or counselor in any civil or criminal case or proceeding or in any administrative or legislative proceeding. A court may compel disclosure of the location of a domestic violence program or the identity of a domestic violence advocate or counselor if the court finds, following a hearing, that there is clear and convincing evidence that failure to disclose would be likely to result in an imminent risk of serious bodily harm or death to a domestic violence victim or another person. If the court makes such a finding, then disclosure shall take place in camera, under a restrictive protective order that does not frustrate the purposes of compelling the disclosure, and the information disclosed shall not be made a part of the written record of the case.

735 ILL. COMP. STAT. 5/8-802.1 (2016)

(a) Purpose. This Section is intended to protect victims of rape from public disclosure of statements they make in confidence to counselors of organizations established to help them. On or after July 1, 1984, "rape" means an act of forced sexual penetration or sexual conduct, as defined in Section 11-0.1 of the Criminal Code of 2012 [720 ILCS 5/11-0.1] including acts prohibited under Sections 11-1.20 through 11-1.60 or 12-13 through 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012 [720 ILCS 5/11-1.20 through 720 ILCS 5/11-1.60 or 720 ILCS

5/12-13 through 720 ILCS 5/12-16]. Because of the fear and stigma that often results from those crimes, many victims hesitate to seek help even where it is available at no cost to them. As a result they not only fail to receive needed medical care and emergency counseling, but may lack the psychological support necessary to report the crime and aid police in preventing future crimes.

(b) Definitions. As used in this Act:

(1) “Rape crisis organization” means any organization or association the major purpose of which is providing information, counseling, and psychological support to victims of any or all of the crimes of aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual assault, sexual relations between siblings, criminal sexual abuse and aggravated criminal sexual abuse.

(2) “Rape crisis counselor” means a person who is a psychologist, social worker, employee, or volunteer in any organization or association defined as a rape crisis organization under this Section, who has undergone 40 hours of training and is under the control of a direct services supervisor of a rape crisis organization.

(3) “Victim” means a person who is the subject of, or who seeks information, counseling, or advocacy services as a result of an aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual assault, sexual relations within families, criminal sexual abuse, aggravated criminal sexual abuse, sexual exploitation of a child, indecent solicitation of a child, public indecency, exploitation of a child, promoting juvenile prostitution as described in subdivision (a)(4) of Section 11-14.4 [720 ILCS 5/11-14.4], or an attempt to commit any of these offenses.

(4) “Confidential communication” means any communication between a victim and a rape crisis counselor in the course of providing information, counseling, and advocacy. The term includes all records kept by the counselor or by the organization in the course of providing services to an alleged victim concerning the alleged victim and the services provided.

(c) Waiver of privilege.

(1) The confidential nature of the communication is not waived by: the presence of a third person who further expresses the interests of the victim at the time of the communication; group counseling; or disclosure to a third person with the consent of the victim when reasonably necessary to accomplish the purpose for which the counselor is consulted.

(2) The confidential nature of counseling records is not waived when: the victim inspects the records; or in the case of a minor child less than 12 years of age, a parent or guardian whose interests are not adverse to the minor inspects the records; or in the case of a minor victim 12 years or older, a parent or guardian whose interests are not adverse to the minor inspects the records with the victim’s consent, or in the case of an adult who has a guardian of his or her person, the guardian inspects the records with the victim’s consent.

(3) When a victim is deceased, the executor or administrator of the victim’s estate may waive the privilege established by this Section, unless the executor or administrator has an interest adverse to the victim.

(4) A minor victim 12 years of age or older may knowingly waive the privilege established in this Section. When a minor is, in the opinion of the Court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, unless the parent or guardian has been charged with a violent crime against the victim or otherwise has any interest adverse to that of the minor with respect to the waiver of the privilege.

(5) 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.

(d) Confidentiality. Except as provided in this Act, 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 as provided in subparagraph (c).

(e) A rape crisis counselor may disclose a confidential communication without the consent of the victim 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. Any rape crisis counselor or rape crisis organization participating in good faith in the disclosing of records and communications under this Act shall have immunity from any liability, civil, criminal, or otherwise that might result from the action. 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.

(f) Any rape crisis counselor who knowingly discloses any confidential communication in violation of this Act commits a Class C misdemeanor.

INDIANA

IND. CODE ANN. § 35-37-6-1 TO -11(2016)

(a) As used in this chapter, “confidential communication” means any information:

- (1) exchanged between a victim and a victim advocate in the course of the relationship between the victim and the victim advocate;
- (2) exchanged or disclosed in a support group in which a victim is or was a participant; or
- (3) exchanged in the presence of a third person who facilitates or facilitated communication between a victim and a victim advocate.

(b) The term includes communication that is verbal or written and includes:

- (1) advice;
- (2) notes;

- (3) reports;
- (4) statistical data;
- (5) memoranda;
- (6) working papers;
- (7) records; and
- (8) personally identifying information; produced in the course of advocating for a victim.

§ 35-37-6-1.5. “Confidential information” defined.

(a) As used in this chapter, “confidential information” includes:

- (1) personally identifying information;
- (2) descriptions of physical appearance;
- (3) the case file; and
- (4) the case history;

of a person who seeks, receives, or has received services from a victim advocate.

(b) The term does not include:

- (1) information disclosed to a victim service provider or a victim advocate if the victim:
 - (A) files criminal charges;
 - (B) institutes a civil lawsuit; or
 - (C) reports allegations of criminal conduct to a law enforcement agency;

against the victim service provider or victim advocate; and

- (2) alleged child abuse or neglect that is required to be reported under IC 31-33.

§ 35-37-6-2.5. “Personally identifying information” defined.

(a) As used in this chapter, “personally identifying information” means information that identifies a victim or the location where domestic violence, dating violence, sexual assault, or stalking occurred, including the victim’s:

- (1) name;
- (2) mailing and physical address;
- (3) electronic mail address;
- (4) Internet protocol address;
- (5) telephone numbers, including facsimile numbers;
- (6) Social Security number;

- (7) date of birth;
- (8) racial or ethnic background; and
- (9) religious affiliation.

(b) The term includes any other information that, in combination with other nonpersonally identifying information, would identify an individual.

§ 35-37-6-3. “Victim” defined.

As used in this chapter, “victim” means:

(1) an individual against whom an act of:

- (A) domestic or family violence;
- (B) dating violence;
- (C) sexual assault (as defined in IC 5-26.5-1-8);
- (D) human and sexual trafficking (IC 35-42-3.5); or
- (E) stalking (IC 35-45-10-5);

is committed; or

(2) an individual:

(A) who is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and

(B) who:

(i) is a member of the family of an individual described in subdivision (1); but

(ii) is not a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).

§ 35-37-6-5. “Victim service provider” defined.

As used in this chapter, “victim service provider” means a person:

(1) that is:

- (A) a public agency;
- (B) a unit of a public agency; or

(C) an organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code;

(2) that is not affiliated with a law enforcement agency;

(3) that has, as one (1) of its primary purposes, to provide services for emotional and psychological conditions that occur to an individual:

(A) against whom an act of:

- (i) domestic or family violence;
 - (ii) dating violence;
 - (iii) sexual assault (as defined in IC 5-26.5-1-8);
 - (iv) human and sexual trafficking (IC 35-42-3.5); or
 - (v) stalking (IC 35-45-10-5);
- is committed; or

(B) who:

(i) is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and

(ii) is a member of the family of an individual described in clause (A) other than a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).

§ 35-37-6-8. Duty to report.

This chapter does not relieve a victim advocate of any duty to report suspected abuse, neglect, battery, or exploitation under IC 12-10-3, IC 31-33, or IC 35-46-1-13.

§ 35-37-6-9. Testimonial privileges.

(a) The following persons or entities may not be compelled to give testimony, to produce records, or to disclose any information concerning confidential communications and confidential information to anyone or in any judicial, legislative, or administrative proceeding:

(1) A victim.

(2) A victim advocate or victim service provider unless the victim specifically consents to the disclosure in a written authorization that contains the date the consent expires.

(b) A victim advocate, victim service provider, or victim may not be compelled to provide testimony in any judicial, legislative, or administrative proceeding that would identify the name, address, location, or telephone number of any facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(c) A victim service provider or victim advocate may not require a victim to consent to the disclosure of information concerning confidential communications and confidential information as a condition of the victim receiving services.

(d) This section does not prohibit a victim from providing testimony concerning an offense.

(e) The consent to disclose information on behalf of:

(1) a child who is less than eighteen (18) years of age and is unemancipated; or

(2) an incapacitated victim;

may be made by a custodial parent, custodian, guardian, or guardian ad litem in a written authorization that contains the date the consent expires.

(f) A consent under subsection (e) may not be given by a custodial parent, custodian, guardian, or guardian ad litem of the victim if the custodial parent, custodian, guardian, or guardian ad litem:

(1) committed; or

(2) is alleged to have committed; an offense against the victim.

§ 35-37-6-10. Waiver by victim — Limitation.

(a) A victim does not waive the protections afforded by this chapter by testifying in court about an offense. However, if the victim partially discloses the contents of a confidential communication in the course of testifying, either party may request the court to rule that justice requires the protections of this chapter to be waived, to the extent they apply to that portion of the communication.

(b) A waiver under this section applies only to the extent necessary to require any witness to respond to questions concerning the confidential communication that are relevant to the facts and circumstances of the case.

§ 35-37-6-11. Testimony by victim advocate.

A victim advocate may not waive the protections afforded to a victim under this chapter. However, if:

(1) a victim brings suit against a victim advocate or victim service provider in which the victim advocate was employed or served as a volunteer at the time of the counseling relationship; and

(2) the suit alleges malpractice during the relationship;

the victim advocate may testify or produce records regarding confidential communications with the victim and is not liable for doing so.

IOWA

IOWA CODE § 915.20A (2016)

1. As used in this section:

a. “Confidential communication” means information shared between a crime victim and a victim counselor within the counseling relationship, and includes all information received by the counselor and any advice, report, or working paper given to or prepared by the counselor in the course of the counseling relationship with the victim. “Confidential information” is confidential information which, so far as the victim is aware, is not disclosed to a third party with the exception of a person present in the consultation for the purpose of furthering the interest of the victim, a person to whom disclosure is reasonably necessary for the transmission of the information, or a person with whom disclosure is necessary for accomplishment of the purpose for which the counselor is consulted by the victim.

b. “Crime victim center” means any office, institution, agency, or crisis center offering assistance to victims of crime and their families through crisis intervention, accompaniment during medical and legal proceedings, and follow-up counseling.

c. “Victim” means a person who consults a victim counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a violent crime committed against the person.

d. “Victim counselor” means a person who is engaged in a crime victim center, is certified as a counselor by the crime victim center, and is under the control of a direct services supervisor of a crime victim center, whose primary purpose is the rendering of advice, counseling, and assistance to the victims of crime. To qualify as a “victim counselor” under this section, the person must also have completed at least twenty hours of training provided by the center in which the person is engaged, by the Iowa organization of victim assistance, by the Iowa coalition against sexual assault, or by the Iowa coalition against domestic violence, which shall include but not be limited to, the dynamics of victimization, substantive laws relating to violent crime, sexual assault, and domestic violence, crisis intervention techniques, communication skills, working with diverse populations, an overview of the state criminal justice system, information regarding pertinent hospital procedures, and information regarding state and community resources for victims of crime.

2. A victim counselor shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the counselor, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of a victim counselor be required to produce evidence of any such confidential communication, unless the victim waives this privilege in writing or disclosure of the information is compelled by a court pursuant to subsection 7. Under no circumstances shall the location of a crime victim center or the identity of the victim counselor be disclosed in any civil or criminal proceeding.

3. If a victim is deceased or has been declared to be incompetent, this privilege specified in subsection 2 may be waived by the guardian of the victim or by the personal representative of the victim's estate.

4. A minor may waive the privilege under this section unless, in the opinion of the court, the minor is incapable of knowingly and intelligently waiving the privilege, in which case the parent or guardian of the minor may waive the privilege on the minor's behalf if the parent or guardian is not the defendant and does not have such a relationship with the defendant that the parent or guardian has an interest in the outcome of the proceeding being favorable to the defendant.

5. The privilege under this section does not apply in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the counselor's first contact with the victim after the injury, or where the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

6. The failure of a counselor to testify due to this section shall not give rise to an inference unfavorable to the cause of the state or the cause of the defendant.

7. Upon the motion of a party, accompanied by a written offer of proof, a court may compel disclosure of certain information if the court determines that all of the following conditions are met:

a. The information sought is relevant and material evidence of the facts and circumstances involved in an alleged criminal act which is the subject of a criminal proceeding.

b. The probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the counseling relationship, and the treatment services.

c. The information cannot be obtained by reasonable means from any other source.

8. In ruling on a motion under subsection 7, the court, or a different judge, if the motion was filed in a criminal proceeding to be tried to the court, shall adhere to the following procedure:

a. The court may require the counselor from whom disclosure is sought or the victim claiming the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the victim and any other persons the victim is willing to have present.

b. If the court determines that the information is privileged and not subject to compelled disclosure, the information shall not be disclosed by any person without the consent of the victim.

c. If the court determines that certain information may be subject to disclosure, as provided in subsection 7, the court shall so inform the party seeking the

information and shall order a subsequent hearing out of the presence of the jury, if any, at which the parties shall be allowed to examine the counselor regarding the information which the court has determined may be subject to disclosure. The court may accept other evidence at that time.

d. At the conclusion of a hearing under paragraph “c”, the court shall determine which information, if any, shall be disclosed and may enter an order describing the evidence which may be introduced by the moving party and prescribing the line of questioning which may be permitted. The moving party may then offer evidence pursuant to the court order. However, no victim counselor is subject to exclusion under rule of evidence 5.615.

9. This section does not relate to the admission of evidence of the victim’s past sexual behavior which is strictly subject to rule of evidence 5.412.

KANSAS

KS. STAT. ANN. § 65-5810 (2016)

(a) The confidential relations and communications between a licensed professional counselor and such counselor’s client are placed on the same basis as provided by law for those between an attorney and an attorney’s client.

(b) The confidential relations and communications between a licensed clinical professional counselor and such counselor’s client are placed on the same basis as provided by law for those between an attorney and an attorney’s client.

(c) Nothing in this section or in this act shall be construed to prohibit any licensed professional counselor or licensed clinical professional counselor from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of the client. There is no privilege under this section for information which is required to be reported to a public official.

KS. STAT. ANN. § 65-5810 (2016)

(a) No licensed social work associate or licensed baccalaureate social worker, secretary, stenographer or clerk of a licensed social work associate or licensed baccalaureate social worker or anyone who participates in delivery of social work services or anyone working under supervision of a licensed social worker may disclose any information such person may have acquired from persons consulting such person in the person’s professional capacity or be compelled to disclose such information except:

(1) With the written consent of the client, or in the case of death or disability, of the personal representative of the client, other person authorized to sue or the beneficiary of an insurance policy on the client’s life, health or physical condition;

(2) when the person is a child under the age of 18 years and the information acquired by the licensed social worker indicated that the child was the victim or subject of a crime, the licensed social worker may be required to testify fully in relation thereto upon any examination, trial or other proceeding in which the commission of such a crime is a subject of inquiry;

(3) when the person waives the privilege by bringing charges against the licensed social worker but only to the extent that such information is relevant under the circumstances.

(b) The confidential relations and communications between a licensed master social worker's or a licensed specialist clinical social worker's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(c) Nothing in this section or in this act shall be construed to prohibit any licensed social worker from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of the client. There is no privilege under this section for information which is required to be reported to a public official.

KENTUCKY

KY. RULE OF EVID.

(a) Definitions. As used in this rule:

(1) A "counselor" includes:

(A) A certified school counselor who meets the requirements of the Kentucky Board of Education and who is duly appointed and regularly employed for the purpose of counseling in a public or private school of this state;

(B) A sexual assault counselor, who is a person engaged in a rape crisis center, as defined in KRS Chapter 421, who has undergone forty (40) hours of training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault;

(C) A certified professional art therapist who is engaged to conduct art therapy under KRS 309.130 to 309.1399;

(D) A licensed marriage and family therapist as defined in KRS 335.300 who is engaged to conduct marriage and family therapy pursuant to KRS 335.300 to 335.399;

(E) A licensed professional clinical counselor or a licensed professional counselor associate as defined in KRS 335.500;

(F) An individual who provides crisis response services as a member of the community crisis response team or local community crisis response team under KRS 36.250 to 36.270;

(G) A victim advocate as defined in KRS 421.570 except a victim advocate who is employed by a Commonwealth's attorney under KRS 15.760 or a county attorney pursuant to KRS 69.350; and

(H) A certified fee-based pastoral counselor as defined in KRS 335.600 who is engaged to conduct fee-based pastoral counseling under KRS 335.600 to 335.699.

(2) A "client" is a person who consults or is interviewed or assisted by a counselor for the purpose of obtaining professional or crisis response services from the counselor.

(3) A communication is "confidential" if it is not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client's family.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of counseling the client, between himself, his counselor, and persons present at the direction of the counselor, including members of the client's family.

(c) Who may claim the privilege.

The privilege may be claimed by the client, his guardian or conservator, or the personal representative of a deceased client. The person who was the counselor (or that person's employer) may claim the privilege in the absence of the client, but only on behalf of the client.

(d) Exceptions.

There is no privilege under this rule for any relevant communication:

(1) If the client is asserting his physical, mental, or emotional condition as an element of a claim or defense; or, after the client's death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.

(2) If the judge finds:

(A) That the substance of the communication is relevant to an essential issue in the case;

(B) That there are no available alternate means to obtain the substantial equivalent of the communication; and

(C) That the need for the information outweighs the interest protected by the privilege. The court may receive evidence in camera to make findings under this rule.

K.R.S. § 209A.070 (2016)

All records, requests for services, and reports that contain information that identifies a current or former client of a domestic violence program are confidential and shall not be disclosed by any person except as provided by law. The cabinet shall have access to client records, requests for services, and reports relating to any domestic violence program for the limited purpose of monitoring the program.

LOUISIANA

LA. REV. STAT. ANN. § 46:2124.1 (2016)

A. As used in this Section, the following terms shall have the following meanings:

- (1) "Community shelter" means a community shelter or other program established in accordance with R.S. 46:2124.
- (2) "Privileged communication" means a communication made to a representative or employee of a community shelter by a victim. It also means a communication not otherwise privileged made by a representative or employee of a community shelter to a victim in the course of rendering services authorized by R.S. 46:2124.
- (3) "Victim" means a victim or potential victim of an act of family or domestic violence and his or her children.

B. Except as provided in Subsection D, no person shall be required to disclose, by way of testimony or otherwise, a privileged communication or to produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged communication:

- (1) In connection with any civil or criminal case or proceeding.
- (2) By way of any discovery procedure.

C. The records relating to a privileged communication kept by a community shelter or other agency or department shall not be public records. Such records may be used for the compilation of statistical data if the identity of the victim or the contents of any privileged communication are not disclosed.

D. The prosecuting attorney or any person who is a party in a civil proceeding or who has been arrested or charged with a criminal offense may petition the court for an in-camera inspection of the records of a privileged communication concerning such person. The petition shall allege facts showing that such records would provide admissible evidence favorable to the person and, in criminal proceedings, are relevant to the issue of guilt or punishment and shall be verified. If the court determines that the person is entitled to all or any part of such records, it may order production and disclosure as it deems appropriate.

LA. C.E. ART. 510

A. Definitions. — The definitions of health care provider, physician, psychotherapist, and their representatives as provided in this Article include persons reasonably believed to be such by the patient or his representative. As used in this Article:

(1)

(a) “Confidential communication” is the transmittal or acquisition of information not intended to be disclosed to persons other than:

(i) A health care provider and a representative of a health care provider.

(ii) Those reasonably necessary for the transmission of the communication.

(iii) Persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist.

(iv) A patient’s health care insurer, including any entity that provides indemnification to a patient.

(v) When special circumstances warrant, those who are present at the behest of the patient, physician, or psychotherapist and are reasonably necessary to facilitate the communication.

(b) “Confidential communication” includes any information, substance, or tangible object, obtained incidental to the communication process and any opinion formed as a result of the consultation, examination, or interview and also includes medical and hospital records made by health care providers and their representatives.

(2) “Health care provider” is a person or entity defined as such in R.S. 13:3734(A)(1), and includes a physician and psychotherapist as defined below, and also includes a person who is engaged in any office, center, or institution referred to as a rape crisis center, who has undergone at least forty hours of sexual assault training and who is engaged in rendering advice, counseling, or assistance to victims of sexual assault.

(3) “Health condition” is a physical, mental, or emotional condition, including a condition induced by alcohol, drugs, or other substance.

(4) “Patient” is a person who consults or is examined or interviewed by another for the purpose of receiving advice, diagnosis, or treatment in regard to that person’s health.

(5) “Physician” is a person licensed to practice medicine in any state or nation.

(6) “Psychotherapist” is:

(a) A physician engaged in the diagnosis or treatment of a mental or emotional condition, including a condition induced by alcohol, drugs, or other substance.

(b) A person licensed or certified as a psychologist under the laws of any state or nation.

(c) A person licensed as a licensed professional counselor or social worker under the laws of any state or nation.

(7) “Representative” of a physician, psychotherapist, or other health care provider is:

(a) A person acting under the supervision, direction, control, or request of a physician, psychotherapist, or health care provider engaged in the diagnosis or treatment of the patient.

(b) Personnel of a “hospital”, as defined in R.S. 13:3734(A)(3), whose duties relate to the health care of patients or to maintenance of patient records.

(8) “Representative of a patient” is any person who makes or receives a confidential communication for the purpose of effectuating diagnosis or treatment of a patient.

B. General rule of privilege in civil proceedings.

(1) In a non-criminal proceeding, a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself or his representative, his health care provider, or their representatives.

(2) Exceptions. — There is no privilege under this Article in a noncriminal proceeding as to a communication:

(a) When the communication relates to the health condition of a patient who brings or asserts a personal injury claim in a judicial or worker’s compensation proceeding.

(b) When the communication relates to the health condition of a deceased patient in a wrongful death, survivorship, or worker’s compensation proceeding brought or asserted as a consequence of the death or injury of the deceased patient.

(c) When the communication is relevant to an issue of the health condition of the patient in any proceeding in which the patient is a party and relies upon the condition as an element of his claim or defense or, after the patient’s death, in any proceeding in which a party deriving his right from the patient relies on the patient’s health condition as an element of his claim or defense.

(d) When the communication relates to the health condition of a patient when the patient is a party to a proceeding for custody or visitation of a child and the condition has a substantial bearing on the fitness of the person claiming custody or visitation, or when the patient is a child who is the subject of a custody or visitation proceeding.

(e) When the communication made to the health care provider was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.

(f) When the communication is made in the course of an examination ordered by the court with respect to the health condition of a patient, the fact that the examination was so ordered was made known to the patient prior to the communication, and the communication concerns the particular purpose for which the examination was made, unless the court in its order directing the examination has stated otherwise.

(g)

(i) When the communication is made by a patient who is the subject of an interdiction or commitment proceeding to his current health care provider when such patient has failed or refused to submit to an examination by a health care provider appointed by the court regarding issues relating to the interdiction or commitment proceeding, provided that the patient has been advised of such appointment and the consequences of not submitting to the examination.

(ii) Notwithstanding the provisions of Subitem (i) of this Item, in any commitment proceeding, the court-appointed physician may review the medical records of the patient or respondent and testify as to communications therein, but only those which are essential to determine whether the patient is dangerous to himself, dangerous to others, or unable to survive safely in freedom or protect himself from serious harm. However, such communications shall not be disclosed unless the patient was informed prior to the communication that such communications are not privileged in any subsequent commitment proceedings. The court-appointed examination shall be governed by Item B(2)(f).

(h) When the communication is relevant in proceedings held by peer review committees and other disciplinary bodies to determine whether a particular health care provider has deviated from applicable professional standards.

- (i) When the communication is one regarding the blood alcohol level or other test for the presence of drugs of a patient and an action for damages for injury, death, or loss has been brought against the patient.
- (j) When disclosure of the communication is necessary for the defense of the health care provider in a malpractice action brought by the patient.
- (k) When the communication is relevant to proceedings concerning issues of child abuse, elder abuse, or the abuse of persons with disabilities or persons who are incompetent.
- (l) When the communication is relevant after the death of a patient, concerning the capacity of the patient to enter into the contract which is the subject matter of the litigation.
- (m) When the communication is relevant in an action contesting any testament executed or claimed to have been executed by the patient now deceased.

C. General rule of privilege in criminal proceedings.

- (1) In a criminal proceeding, a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself, his representative, and his physician or psychotherapist, and their representatives.
- (2) Exceptions. — There is no privilege under this Article in a criminal case as to a communication:
 - (a) When the communication is relevant to an issue of the health condition of the accused in any proceeding in which the accused relies upon the condition as an element of his defense.
 - (b) When the communication was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.
 - (c) When the communication was made in the course of an examination ordered by the court in a criminal case to determine the health condition of a patient, provided that a copy of the order was served on the patient prior to the communication.
 - (d) When the communication is a record of the results of a test for blood alcohol level or drugs taken from a patient who is under arrest, or who was subsequently arrested for an offense related to the test.
 - (e) When the communication is in the form of a tangible object, including a bullet, that is removed from the body of a patient and which was in the body as a result of the crime charged.

(f) When the communication is relevant to an investigation of or prosecution for child abuse, elder abuse, or the abuse of persons with disabilities or persons who are incompetent.

D. Who may claim the privilege. — In both civil and criminal proceedings, the privilege may be claimed by the patient or by his legal representative. The person who was the physician, psychotherapist, or health care provider or their representatives, at the time of the communication is presumed to have authority to claim the privilege on behalf of the patient or deceased patient.

E. Waiver. — The exceptions to the privilege set forth in Paragraph B(2) shall constitute a waiver of the privilege only as to testimony at trial or to discovery of the privileged communication by one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., or pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

F. Medical malpractice.

(1) There shall be no health care provider-patient privilege in medical malpractice claims as defined in R.S. 40:1299.41 et seq. as to information directly and specifically related to the factual issues pertaining to the liability of a health care provider who is a named party in a pending lawsuit or medical review panel proceeding.

(2) In medical malpractice claims information about a patient's current treatment or physical condition may only be disclosed pursuant to testimony at trial, pursuant to one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

G. Sanctions. — Any attorney who violates a provision of this Article shall be subject to sanctions by the court.

MAINE

16 MAINE REV. STAT. ANN. §53-A (2016)

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. Rape crisis center. "Rape crisis center" means any publicly or privately funded agency, institution or facility existing in this State, having as its purpose to reduce the trauma of sexual assault to sexual assault victims and their families through crisis intervention, counseling, medical and legal information and dissemination of educational information pertaining to sexual assault.

B. Sexual assault counselor. "Sexual assault counselor" means a person who has:

- 1) Undergone a program of training from a rape crisis center which shall include, but not be limited to: Law, medicine, societal attitudes, crisis intervention, counseling techniques and referral services; and
- 2) Is either a staff member, paid or unpaid, or under the supervision of a staff member of a rape crisis center.

C. "Confidential criminal history record information" has the same meaning as in section 703, subsection 2.

D. "Criminal justice agency" has the same meaning as in section 703, subsection 4.

2. Privileged Communications. Except with regard to reporting, cooperating in an investigation or giving evidence pursuant to Title 22, chapter 958-A or 1071, or except at the request, or with the consent of, the victim of sexual assault, a sexual assault counselor may not be required to testify in any civil or criminal action, suit or proceeding at law or in equity about any information that the sexual assault counselor may have acquired in providing sexual assault counseling services. A sexual assault counselor or a rape crisis center may not be required to disclose to the court any records, notes, memoranda or documents containing confidential communications. When a court in the exercise of sound discretion determines the disclosure necessary to the proper administration of justice, information communicated to, or otherwise learned by, that sexual assault counselor in connection with the provision of sexual assault counseling services is not privileged and disclosure may be required.

3. Confidential Criminal History Record Information. A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information to a sexual assault counselor for the purpose of planning for the safety of a victim of sexual assault. A sexual assault counselor who receives confidential criminal history record information pursuant to this subsection shall use it solely for the purpose authorized by this subsection and may not further disseminate the information.

16 ME. REV. STAT. ANN. § 53-B. (2016)

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advocate" means an employee of or volunteer for a nongovernmental or Maine tribal program for victims of domestic or family violence who:

- 1) Has undergone at least 30 hours of training; and
- 2) As a primary function with the program gives advice to, counsels or assists victims, supervises employees or volunteers who perform that function or administers the program.

A-1. "Confidential communications" means all information, whether written or oral, transmitted between a victim and a domestic violence advocate in the course of the working relationship. "Confidential communications" includes, but

is not limited to, information received or given by the advocate in the course of the working relationship, advice, records, reports, notes, memoranda, working papers, electronic communications, case files, history and statistical data, including name, date of birth and social security number, that personally identify the victim.

A-2. "Confidential criminal history record information" has the same meaning as in section 703, subsection 2.

A-3. "Criminal justice agency" has the same meaning as in section 703, subsection 4.

B. "Victim" means a victim of domestic or family violence.

1-A. Confidential Criminal History Record Information. A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information to an advocate for the purpose of planning for the safety of a victim of domestic violence. An advocate who receives confidential criminal history record information pursuant to this subsection shall use it solely for the purpose authorized by this subsection and may not further disseminate the information.

2. Privileged Communication. Communications are privileged from disclosure as follows.

A. A victim may refuse to disclose and may deny permission to an advocate to disclose confidential written or oral communications between the victim and the advocate and written records, notes, memoranda or reports concerning the victim.

B. Except as provided in subsection 3, a victim, advocate or advocate's agency may not be required through oral or written testimony or through production of documents to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate.

3. Exceptions. A person may not be required to publicly disclose the address or location of a domestic or family violence shelter or safe house, except that privileged communications may be disclosed in the following cases:

A. When disclosure is required under Title 22, chapter 958-A or 1071 and that disclosure is in accordance with the provisions of either chapter;

B. When a court in the exercise of its discretion determines the disclosure of the information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court; or

C. When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation.

16 MAINE REV. STAT. ANN. § 53-C (2016)

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Crime" means a criminal offense in which there is a victim, as defined in this section.

B. "Victim" means:

1) A person against whom a crime has been committed;

2) The immediate family of a victim of a crime if: trauma or serious financial loss or

a) The underlying crime is one of domestic violence or sexual assault or one in which the family suffered serious physical under this chapter.

b) Due to death, age or physical or mental disease, disorder or defect, the victim is unable to participate as allowed

C. "Victim witness advocate" or "victim witness coordinator" means an employee of or volunteer for a district attorney, the Attorney General or the United States Attorney whose primary job function is to advise, counsel or assist victims or witnesses of crimes, to supervise other employees or volunteers who perform that function or to administer the program.

2. Privileged Communications. Communications are privileged from disclosure as follows.

A. A victim may refuse to disclose and may deny permission to a victim witness advocate or coordinator to disclose confidential written or oral communications between the victim and the advocate or coordinator and written records, notes, memoranda or reports concerning the victim.

B. Except as provided in subsection 3, a victim, advocate or coordinator or the victim advocate's or coordinator's employer may not be required, through oral or written testimony or through production of documents, to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate or coordinator.

3. Exceptions. Privileged communications may be disclosed in the following cases:

A. Disclosure may be made to the district attorney, Attorney General or the United States Attorney or their assistants;

B. When disclosure is required under Title 22, chapter 958-A or 1071 and that disclosure is in accordance with either chapter;

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C. When a court in the exercise of its discretion determines the disclosure of information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court;

D. When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation; or

E. Evidence of an exculpatory nature must be disclosed to the criminal defendants pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16.

MARYLAND

MD. COURTS AND JUDICIAL PROCEEDINGS CODE ANN. § 9-109.1 (2016)

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Client" means an individual who communicates to or receives services from a psychiatric-mental health nursing specialist or a professional counselor regarding the diagnosis or treatment of the individual's mental or emotional disorder.

(3) "Professional counselor" means an individual who is certified, licensed, or exempted from licensure as a counselor under Title 17 of the Health Occupations Article.

(4) "Psychiatric-mental health nursing specialist" means a registered nurse who:

(i) Has a master's degree in psychiatric-mental health nursing;

(ii) Has a baccalaureate degree in nursing and a master's degree in a mental health field; or

(iii) Is certified as a clinical specialist in psychiatric and mental health nursing by the American Nurses' Association or by a body approved by the Board of Nursing.

(b) Privilege generally. -- Unless otherwise provided, in any judicial, legislative, or administrative proceeding, a client or a client's authorized representative has a privilege to refuse to disclose, and to prevent a witness from disclosing, communications relating to:

(1) Diagnosis or treatment of the client; or

(2) Any information that by its nature would show a medical record of the diagnosis or treatment exists.

(c) Appointment of guardian. --

(1) If a client is incompetent to assert or waive this privilege, a guardian shall be appointed and shall act for the client.

(2) A guardian appointed before the proceeding has the authority to act for the client.

(d) Circumstances in which there is no privilege. -- There is no privilege if:

(1) A disclosure is necessary for the purpose of placing the client in a facility for mental illness;

(2) A judge finds that the client, after being informed that there will be no privilege, makes communications in the course of an examination ordered by the court and the issue at trial involves the client's mental or emotional disorder;

(3) In a civil or criminal proceeding:

(i) The client introduces the client's mental condition as an element of the claim or defense; or

(ii) After the client's death, the client's mental condition is introduced by any party claiming or defending through or as a beneficiary of the client;

(4) The client, the authorized representative of the client, or the personal representative of the client makes a claim against the psychiatric-mental health nursing specialist or the professional counselor for malpractice;

(5) The client expressly consents to waive the privilege or, in the case of death or disability, the client's personal representative waives the privilege for the purpose of making a claim or bringing suit on a policy of insurance on life, health, or physical condition;

(6) In a criminal proceeding against a client or former client alleging that the client or former client has harassed or threatened or committed another criminal act against the psychiatric-mental health nursing specialist or the professional counselor, the disclosure is necessary to prove the charge; or

(7) In a peace order proceeding under Title 3, Subtitle 15 of this article in which the psychiatric-mental health nursing specialist or professional counselor is a petitioner and a client or former client is a respondent, the disclosure is necessary to obtain relief.

(e) Certain proceedings in which there is no privilege. -- There is no privilege in:

(1) Any administrative or judicial nondelinquent juvenile proceeding;

(2) Any guardianship and adoption proceeding initiated by a child placement agency;

(3) Any guardianship and protective services proceeding concerning a disabled person;
or

(4) Any criminal or delinquency proceeding in which there is a charge of child abuse or neglect or that arises out of an investigation of suspected child abuse or neglect.

MD. COURTS AND JUDICIAL PROCEEDINGS CODE ANN. § 9-121 (2016)

(a) Definitions. --

- (1) In this section the following words have the meanings indicated.
- (2) "Client" means a person who communicates to or receives services from a licensed certified social worker regarding his mental or emotional condition, or from any other person participating directly or vitally with a licensed certified social worker in rendering those services, in consultation with or under direct supervision of a licensed certified social worker.
- (3) "Licensed certified social worker" means any person licensed as a certified social worker under Title 19 of the Health Occupations Article.
- (4) "Witness" means a licensed certified social worker or any other person participating directly or vitally with a licensed certified social worker in rendering services to a client, in consultation with or under direct supervision of a licensed certified social worker.

(b) Privilege established. -- Unless otherwise provided, in all judicial or administrative proceedings, a client has a privilege to refuse to disclose, and to prevent a witness from disclosing, communications made while the client was receiving counseling or any information that by its nature would show that such counseling occurred.

(c) Incompetency of client. -- If a client is incompetent to assert or waive this privilege, a guardian shall be appointed and shall act for the client. A previously appointed guardian has the same authority.

(d) Privilege inapplicable in certain circumstances. -- There is no privilege if:

- (1) A disclosure is necessary for the purpose of placing the client in a facility for mental illness;
- (2) A judge finds that the client, after being informed there will be no privilege, makes communications in the course of an examination ordered by the court;
- (3) In a civil or criminal proceeding:
 - (i) The client introduces the client's mental condition as an element of the claim or defense; or
 - (ii) After the client's death, the client's mental condition is introduced by any party claiming or defending through or as a beneficiary of the client;
- (4) The client or the personal representative of the client makes a claim against the licensed certified social worker for malpractice;
- (5) The client expressly consents to waive the privilege, or in the case of death or disability, the client's personal representative waives the privilege for purpose of making a claim or bringing suit on a policy of insurance on life, health, or physical condition;

(6) In a criminal proceeding against a client or former client alleging that the client or former client has harassed or threatened or committed another criminal act against the licensed certified social worker, the disclosure is necessary to prove the charge; or

(7) In a peace order proceeding under Title 3, Subtitle 15 of this article in which the licensed certified social worker is a petitioner and a client or former client is a respondent, the disclosure is necessary to obtain relief.

(e) Privilege inapplicable in certain proceedings. -- There is no privilege in:

(1) Any administrative or judicial nondelinquent juvenile proceeding;

(2) Any guardianship and adoption proceeding initiated by a child placement agency;

(3) Any guardianship and protective services proceeding concerning disabled persons; or

(4) Any criminal or delinquency proceeding in which there is a charge of child abuse or neglect or which arises out of an investigation of suspected child abuse or neglect.

MASSACHUSETTS

MASS. GEN. LAWS ANN. CH. 233, § 20J (2016)

As used in this section the following words, unless the context clearly requires otherwise, shall have the following meaning:—

“Rape crisis center”, any office, institution or center offering assistance to victims of sexual assault and the families of such victims through crisis intervention, medical and legal counseling.

“Sexual assault counsellor”, a person who is employed by or is a volunteer in a rape crisis center, has undergone thirty-five hours of training, who reports to and is under the direct control and supervision of a licensed social worker, nurse, psychiatrist, psychologist or psychotherapist and whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

“Victim”, a person who has suffered a sexual assault and who consults a sexual assault counsellor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by such sexual assault.

“Confidential communication”, information transmitted in confidence by and between a victim of sexual assault and a sexual assault counsellor by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term includes all information received by the sexual assault counsellor which arises out of and in the course of such counseling and assisting, including, but not limited to reports, records, working papers or memoranda.

A sexual assault counsellor shall not disclose such confidential communication, without the prior written consent of the victim; provided, however, that nothing in this chapter shall be construed to limit the defendant's right of cross-examination of such counsellor in a civil or criminal proceeding if such counsellor testifies with such written consent.

Such confidential communications shall not be subject to discovery and shall be inadmissible in any criminal or civil proceeding without the prior written consent of the victim to whom the report, record, working paper or memorandum relates.

MASS. GEN. LAWS ANN. CH. 233, § 20K (2016)

As used in this section the following words shall unless the context clearly requires otherwise have the following meanings:—

“Abuse”, causing or attempting to cause physical harm; placing another in fear of imminent physical harm; causing another to engage in sexual relations against his will by force, threat of force, or coercion.

“Confidential communication”, information transmitted in confidence by and between a victim and a domestic violence victims' counselor by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term includes all information received by the domestic violence victims' counselor which arises out of and in the course of such counseling and assisting, including, but not limited to, reports, records, working papers, or memoranda.

“Domestic violence victims' counselor”, a person who is employed or volunteers in a domestic violence victims' program, who has undergone a minimum of twenty-five hours of training and who reports to and is under the direct control and supervision of a direct service supervisor of a domestic violence victims' program, and whose primary purpose is the rendering of advice, counseling or assistance to victims of abuse.

“Domestic violence victims' program”, any refuge, shelter, office, safe home, institution or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal or support counseling.

“Victim”, a person who has suffered abuse and who consults a domestic violence victims' counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by such abuse.

A domestic violence victims' counselor shall not disclose such confidential communication without the prior written consent of the victim, except as hereinafter provided. Such confidential communication shall not be subject to discovery in any civil, legislative or administrative proceeding without the prior written consent of the victim to whom such confidential communication relates. In criminal actions such confidential communication shall be subject to discovery and shall be admissible as evidence but only to the extent of information contained therein which is exculpatory in relation to the defendant; provided, however, that the court shall first examine such confidential communication and shall determine whether or not

such exculpatory information is therein contained before allowing such discovery or the introduction of such evidence.

MASS. GEN. LAWS ANN. CH. 233, § 20L(2016)

The location and street address of all domestic violence victims' programs, as defined in section twenty K and rape crisis centers, as defined in section twenty J, shall be absolutely confidential and shall not be required to be revealed in any criminal or civil proceeding.

MICHIGAN

MICH. COMP. LAWS ANN. § 600.2157a (2016)

(1) For purposes of this section:

(a) "Confidential communication" means information transmitted between a victim and a sexual assault or domestic violence counselor, or between a victim or sexual assault or domestic violence counselor and any other person to whom disclosure is reasonably necessary to further the interests of the victim, in connection with the rendering of advice, counseling, or other assistance by the sexual assault or domestic violence counselor to the victim.

(b) "Domestic violence" means that term as defined in section 1501 of Act No. 389 of the Public Acts of 1978, being section 400.1501 of the Michigan Compiled Laws.

(c) "Sexual assault" means assault with intent to commit criminal sexual conduct.

(d) "Sexual assault or domestic violence counselor" means a person who is employed at or who volunteers service at a sexual assault or domestic violence crisis center, and who in that capacity provides advice, counseling, or other assistance to victims of sexual assault or domestic violence and their families.

(e) "Sexual assault or domestic violence crisis center" means an office, institution, agency, or center which offers assistance to victims of sexual assault or domestic violence and their families through crisis intervention and counseling.

(f) "Victim" means a person who was or who alleges to have been the subject of a sexual assault or of domestic violence.

(2) Except as provided by section 11 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.631 of the Michigan Compiled Laws, a confidential communication, or any report, working paper, or statement contained in a report or working paper, given or made in connection with a consultation between a victim and a sexual assault or domestic violence counselor, shall not be admissible as evidence in any civil or criminal proceeding without the prior written consent of the victim.

MICH. R. CRIM. PRO. § 6.201 (c) (2016)

(C) Prohibited Discovery.

(1) Notwithstanding any other provision of this rule, there is no right to discover information or evidence that is protected from disclosure by constitution, statute, or privilege, including information or evidence protected by a defendant's right against self-incrimination, except as provided in sub-rule (2).

(2) If a defendant demonstrates a good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the trial court shall conduct an in camera inspection of the records.

(a) If the privilege is absolute, and the privilege holder refuses to waive the privilege to permit an in camera inspection, the trial court shall suppress or strike the privilege holder's testimony.

(b) If the court is satisfied, following an in camera inspection, that the records reveal evidence necessary to the defense, the court shall direct that such evidence as is necessary to the defense be made available to defense counsel. If the privilege is absolute and the privilege holder refuses to waive the privilege to permit disclosure, the trial court shall suppress or strike the privilege holder's testimony.

(c) Regardless of whether the court determines that the records should be made available to the defense, the court shall make findings sufficient to facilitate meaningful appellate review.

(d) The court shall seal and preserve the records for review in the event of an appeal

(i) By the defendant, on an interlocutory basis or following conviction, if the court determines that the records should not be made available to the defense, or

(ii) By the prosecution, on an interlocutory basis, if the court determines that the records should be made available to the defense.

(e) Records disclosed under this rule shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide.

MINNESOTA

MINN. STAT. Ann. § 595.02 (k-l) (2016)

(k) Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment

services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

“Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(l) A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. Nothing in this paragraph exempts domestic abuse advocates from compliance with the provisions of sections 626.556 and 626.557.

For the purposes of this section, “domestic abuse advocate” means an employee or supervised volunteer from a community-based battered women’s shelter and domestic abuse program eligible to receive grants under section 611A.32; that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor’s office, or by a city, county, or state agency.

MISSISSIPPI

MISS. CODE ANN. § 73-30-17 (2016)

No licensed professional counselor may disclose any information acquired during professional consultation with clients except:

(a) With the written consent of the client or, in the case of death or disability or in the case of a minor, with the written consent of his parent, legal guardian or conservator, or other person authorized by the court to file suit;

(b) When a communication reveals the contemplation of a crime or harmful act, or intent to commit suicide; or

(c) When a person waives the privilege by bringing charges against a licensed professional counselor for breach of privileged communication, or any other charges.

MISS. CODE ANN. § 93-21-109 (2016)

(1) Records maintained by domestic violence shelters, except the official minutes of the board of directors of the shelter, and financial reports filed as required by statute with the board of supervisors or municipal authorities or any other agency of government, shall be withheld from public disclosure under the provisions of the Mississippi Public Records Act of 1983.

(2) Any employee, contractor, volunteer or agent of a domestic violence shelter, or of any other entity in possession of information which would tend to identify a victim of domestic violence, who discloses any information that is exempt from disclosure under the Mississippi Public Records Act of 1983, or makes any observation or comment about the identity or condition of any person admitted to a shelter or receiving services of a shelter, unless directed to do so by an order of a court of competent jurisdiction, shall be civilly liable to the person whose personal information was disclosed in the amount of Ten Thousand Dollars (\$ 10,000.00), plus any compensatory damages that the individual may have suffered as the result of the disclosure.

(3) (a) No employee, contractor, volunteer or agent of a domestic violence shelter shall be compelled to testify in any civil matter, or surrender any documents, files, or other records of the shelter, regarding a victim of domestic violence or sexual assault without the consent of the victim, except as provided herein.

(b) A defendant may request from the court an in camera review of the materials in possession of any shelter employees, contractors, agents or volunteers to determine if there would be a good cause for allowing disclosure of the materials. In deciding on disclosure, the court shall consider the following factors:

- (i) The materiality of the information to the defense; and
- (ii) The effect disclosure may have on the victim and the victim's relationship with the employee, contractor, volunteer, or agent of the shelter.

(4) A resident or staff member of a domestic violence shelter shall not be required to disclose the street address or physical location of that shelter to any public or private agency. In all cases where the provision of a physical address is required, a post office box address for the domestic violence shelter shall be deemed sufficient.

MISS. CODE ANN. § 93-21-107 (2016)

(1) To qualify for funds under the provisions of Sections 93-21-101 through 93-21-113, a domestic violence shelter shall meet all the following requirements:

(a) Be incorporated in the state or recognized by the Secretary of State as a private or public nonprofit corporation. Such corporation shall have a board of directors and/or an advisory committee who represents the racial, ethnic and social economic diversity of the area to be served, including, if possible, at least one (1) person who is or has been a victim of domestic violence.

(b) Have designed and developed a program to provide the following basic services to victims of domestic violence and their children:

- (i) Shelter on a twenty-four (24) hour a day, seven (7) days a week basis.
- (ii) A twenty-four (24) hour, seven (7) days a week switchboard for crisis calls.

- (iii) Temporary housing and food facilities.
 - (iv) Group support and peer counseling.
 - (v) Referrals to existing services in the community and follow-up on the outcome of the referrals.
 - (vi) A method of referral for medical care, legal assistance and group support and counseling of victims of domestic violence.
 - (vii) Information regarding reeducation, marriage and family counseling, job counseling, and training programs, housing referrals, and other available social services.
 - (viii) A referral program of counseling for the victim and the offender.
- (2) Domestic violence shelters shall establish procedures for admission of victims of domestic violence who may seek admission to these shelters on a voluntary basis.
- (3) A domestic violence shelter shall not qualify for funds if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin or ancestry.
- (4) Any state-source grant made to a shelter shall be matched with local funds in an amount not less than twenty-five percent (25%) of the state-source grant amount. The local contribution may not include in-kind contributions.
- (5) A domestic violence shelter receiving state funding under the provisions of Sections 93-21-101 through 93-21-113 shall not be prohibited from accepting gifts, trusts, bequests, grants, endowments, federal funds, other special source funds or transfers of property of any kind for the support of that shelter program.
- (6) The OAIV shall insure that no grant made with state funds is in an amount that would exceed One Hundred Thousand Dollars (\$ 100,000.00) inflated by a general CPI inflator to insure that the grant offers shelters the same buying power that a grant of One Hundred Thousand Dollars (\$ 100,000.00) provided in 1983.
- (7) A domestic violence shelter shall require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify individuals served by the shelter.
- (8) A domestic violence shelter shall provide educational programs relating to battered spouses and domestic violence designed for both the community at large and/or specialized groups such as hospital personnel and law enforcement officials.
- (9) No child shall be placed in any domestic violence shelter that receives state funding under these provisions of Sections 93-21-101 through 93-21-113, and no domestic violence shelter that receives state funding under these provisions may admit or accept any child, unless the child is accompanied by his parent or guardian and such parent or guardian will remain with the child in the shelter until the child leaves or is released from the shelter. However, this subsection shall not prevent any rape crisis center from providing care, counseling and related services to any child who is a victim of rape, attempted rape, sexual battery or attempted sexual battery and who is not accompanied by his parent or guardian.

MISS. CODE ANN. § 93-21-9 (2016)

- (1) A petition filed under the provisions of this chapter shall state:
 - (a) Except as otherwise provided in this section, the name, address and county of residence of each petitioner and of each individual alleged to have committed abuse;
 - (b) The facts and circumstances concerning the alleged abuse;
 - (c) The relationships between the petitioners and the individuals alleged to have committed abuse; and
 - (d) A request for one or more domestic abuse protection orders.
- (2) If a petition requests a domestic abuse protection order for a spouse and alleges that the other spouse has committed abuse, the petition shall state whether or not a suit for divorce of the spouses is pending and, if so, in what jurisdiction.
- (3) Any temporary or permanent decree issued in a divorce proceeding subsequent to an order issued pursuant to this chapter may, in the discretion of the chancellor hearing the divorce proceeding, supersede in whole or in part the order issued pursuant to this chapter.
- (4) If a petitioner is a former spouse of an individual alleged to have committed abuse:
 - (a) A copy of the decree of divorce shall be attached to the petition; or
 - (b) The petition shall state the decree is currently unavailable to the petitioner and that a copy of the decree will be filed with the court before the time for the hearing on the petition.
- (5) If a petition requests a domestic abuse protection order for a child who is subject to the continuing jurisdiction of a youth court, family court or a chancery court, or alleges that a child who is subject to the continuing jurisdiction of a youth court, family court or chancery court has committed abuse:
 - (a) A copy of the court orders affecting the custody or guardianship, possession and support of or access to the child shall be filed with the petition; or
 - (b) The petition shall state that the orders affecting the child are currently unavailable to the petitioner and that a copy of the orders will be filed with the court before the hearing on the petition.
- (6) If the petition includes a request for emergency relief pending a hearing, the petition shall contain a general description of the facts and circumstances concerning the abuse and the need for immediate protection.
- (7) If the petition states that the disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household, or would reveal the confidential address of a shelter for domestic violence victims, the petitioner's

address may be omitted from the petition. If a petitioner's address has been omitted from the petition pursuant to this subsection and the address of the petitioner is necessary to determine jurisdiction or venue, the disclosure of such address shall be made orally and in camera. A nonpublic record containing the address and contact information of a petitioner shall be maintained by the court to be utilized for court purposes only.

(8) Every petition shall be signed by the petitioner under oath that the facts and circumstances contained in the petition are true to the best knowledge and belief of the petitioner.

(9) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop a standardized form petition to be used when requesting a domestic abuse protection order.

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MISSOURI

Mo. REV. STAT. § 455.220 (2016)

1. To qualify for funds allocated and distributed pursuant to section 455.215 a shelter shall meet all of the following requirements:

(1) Be incorporated in the state as a nonprofit corporation;

(2) Have trustees who represent the racial, ethnic and socioeconomic diversity of the community to be served, at least one of whom must possess personal experience in confronting or mitigating the problems of domestic violence;

(3) Receive at least twenty-five percent of its funds from sources other than funds distributed pursuant to section 455.215. These other sources may be public or private and may include contributions of goods or services, including materials, commodities, transportation, office space or other types of facilities or personal services;

(4) Provide residential service or facilities for children when accompanied by a parent, guardian, or custodian who is a victim of domestic violence and who is receiving temporary residential service at the shelter;

(5) Require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify individuals served by the shelter and any information or records that are directly related to the advocacy services provided to such individuals;

(6) Prior to providing any advocacy services, inform individuals served by the shelter of the nature and scope of the confidentiality requirement in subdivision (5) of this subsection.

2. Any person employed by or volunteering services to a shelter for victims of domestic violence shall be incompetent to testify concerning any confidential information described in subdivision

(5) of subsection 1 of this section, unless the confidentiality requirement is waived in writing by the individual served by the shelter.

3. A shelter does not qualify for funds if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin, or ancestry.

MO. REV. STAT. § 455.003 (2016)

1. A rape crisis center shall:

(1) Require persons employed by or volunteering services to the rape crisis center to maintain confidentiality of any information that would identify individuals served by the center and any information or records that are directly related to the advocacy services provided to such individuals; and

(2) Prior to providing any advocacy services, inform individuals served by the rape crisis center of the nature and scope of the confidentiality requirements of subdivision (1) of this subsection.

2. Any person employed by or volunteering services to a rape crisis center for victims of sexual assault shall be incompetent to testify concerning any confidential information in subsection 1 of this section, unless the confidentiality requirements are* waived in writing by the individual served by the center.

3. As used in this section, the term “rape crisis center” shall mean any public or private agency that offers assistance to victims of sexual assault, as the term sexual assault is defined in section 455.010, who are adults, as defined by section 455.010, or qualified minors, as defined by section 431.056.

MONTANA

MONT. CODE ANN. § 26-1-812 (2015)

26-1-812 Advocate privilege.

(1) Unless a report is otherwise required by law, an advocate may not, without consent of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.

(2) This privilege belongs to the victim and may not be waived, except by express consent. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

(3) For purposes of this section, the following definitions apply:

(a) “Advocate” means an employee or volunteer of a domestic violence shelter, crisis line, or victim’s services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.

(b) “Victim” means a person seeking assistance because of partner or family member assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

NEBRASKA

NEB. REV. STAT. ANN. § 29-4301 to 4304 (2016)

The Legislature finds that because of the fear and stigma that often results from crimes of sexual assault or domestic violence, and because of the risk of retaliatory violence by the perpetrator, many victims hesitate to seek help even when it is available at no cost to them. Without assurances that communications made while receiving assistance in overcoming the adverse effects of a sexual assault or domestic violence situation will be confidential and protected from disclosure, victims will be even more reluctant to seek assistance or to confide openly to their advocates and to explore legal and social remedies fully. As a result, victims may fail to receive needed vital care and counseling and thus lack the support, resources, and information necessary to recover from the crime, to report the crime, to assist in the prosecution of the crime, to participate effectively in the justice system, to achieve legal protections, and to prevent future sexual assaults and domestic violence. This is a matter of statewide concern, and the prevention of violence is for the protection of the health, safety, and welfare of the public.

§ 29-4302. Terms, defined.

For purposes of sections 29-4301 to 29-4304:

- (1) Advocate means any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor’s office, whose primary purpose is assisting domestic violence and sexual assault victims;
- (2) Victim means a person who communicates with an advocate for assistance in overcoming the adverse effects of domestic violence or sexual assault; and
- (3) Confidential communication means any written or spoken information exchanged between a victim and an advocate in private or in the presence of a third party who is necessary to facilitate communication or further the advocacy process and which is disclosed to the advocate for the purposes of overcoming the adverse effects of domestic violence or sexual assault.

§ 29-4303. Confidential communications; disclosure; when.

(1) A victim, an advocate without the consent of the victim, a third party as described in subdivision (3) of section 29-4302 without the consent of the victim, or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party, shall not be compelled to give testimony or to produce records concerning a confidential communication for any purpose in any criminal, civil, legislative, administrative, or other proceeding, except as follows:

(a) The party seeking disclosure of a confidential communication shall, in a criminal, civil, or administrative proceeding, file a motion that sets forth specifically the issues on which disclosure is sought and enumerates the reasons why the party is seeking disclosure and why disclosure is necessary, accompanied by an affidavit or affidavits containing specific information which establishes that the confidential communication constitutes relevant and material evidence in the case; and

(b) If the party seeking disclosure has complied with subdivision (a) of this subsection, the court or a hearing officer shall review the confidential communication in camera and out of the presence and hearing of all persons, except the victim, the advocate, and any other person the victim is willing to have present, to determine whether a failure to disclose the confidential communication would violate the constitutional rights of the party seeking disclosure.

(2) An advocate, a victim, or a third party as described in subdivision (3) of section 29-4302 cannot be compelled to provide testimony in any criminal, civil, legislative, administrative, or other proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense that is the subject of the proceeding unless the facility is a party to the proceeding.

§ 29-4304. Confidential communications; waiver; sections, how construed.

(1) A victim does not waive the protections afforded by sections 29-4301 to 29-4304 by testifying in court about the offense, except that:

(a) If the victim partially discloses the contents of a confidential communication in the course of testifying, then either party may request the court to rule that justice requires the protections afforded by sections 29-4301 to 29-4304 be waived to the extent the protections apply to that portion of the confidential communication; and

(b) Any waiver shall apply only to the extent necessary to require any witness to respond to counsel's questions concerning a confidential communication that is relevant to the case.

(2) An advocate cannot waive the protections afforded a victim under sections 29-4301 to 29-4304. However, if a victim brings suit against an advocate or the agency, business, or organization in which the advocate was employed or served as a volunteer at the time of the advocacy relationship, the advocate may testify or produce records regarding confidential communications with the victim and is not in violation of sections 29-4301 to 29-4304.

(3) Sections 29-4301 to 29-4304 shall not relieve an advocate of any duty to report suspected adult abuse or neglect as required by section 28-372 or suspected child abuse or neglect as required by section 28-711 or any other legal duty to report a criminal or unlawful act.

(4) Sections 29-4301 to 29-4304 shall not be construed to limit any other testimonial privilege available to any person under the laws of this state.

NEB. REV. STAT. ANN. § 42-918 (2016)

Under the Protection from Domestic Abuse Act, strict confidence shall be observed in all contact with victims of spouse abuse and their families. Any record, report, or files maintained by the department pursuant to the act shall be confidential, except that the department may release statistical information, while not revealing names. Violation of this section shall be a Class V misdemeanor.

NEVADA

NEV. REV. STAT. ANN. § 49.2541 to 2549 (2015)

As used in NRS 49.2541 to 49.2549, inclusive, the words and terms defined in NRS 49.2542 to 49.2545, inclusive, have the meanings ascribed to them in those sections.

“Domestic violence” means an act described in NRS 33.018.

“Sexual assault” means a violation of NRS 200.366 or an attempt to violate or conspiracy to violate NRS 200.366.

“Victim” means a person who alleges that an act of domestic violence or sexual assault has been committed against the person.

“Victim's advocate” means a person who works for a nonprofit program that provides assistance to victims with or without compensation and who has received at least 20 hours of relevant training.

49.2546. When communication deemed to be confidential; “communication” defined.

1. A communication shall be deemed to be confidential if the communication is between a victim and a victim's advocate and is not intended to be disclosed to third persons other than:

- (a) A person who is present to further the interest of the victim;
- (b) A person reasonably necessary for the transmission of the communication; or
- (c) A person who is participating in the advice, counseling or assistance of the victim, including, without limitation, a member of the victim's family.

2. As used in this section, “communication” includes, without limitation, all records concerning the victim and the services provided to the victim which are within the possession of:

- (a) The victim's advocate; or
- (b) The nonprofit program for whom the victim's advocate works.

49.2547. General rule of privilege.

Except as otherwise provided in NRS 49.2549, a victim who seeks advice, counseling or assistance from a victim's advocate has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications set forth in NRS 49.2546.

49.2548. Who may claim privilege.

1. The privilege provided pursuant to NRS 49.2547 may be claimed by:

- (a) The victim;
- (b) The guardian or conservator of the victim;
- (c) The personal representative of a deceased victim; and
- (d) The victim's advocate, but only on behalf of the victim.

2. The authority of a victim's advocate to claim the privilege is presumed in the absence of evidence to the contrary.

49.2549. Exceptions.

There is no privilege pursuant to NRS 49.2547 if:

- 1. The purpose of the victim in seeking services from a victim's advocate is to enable or aid any person to commit or plan to commit what the victim knows or reasonably should have known is a crime or fraud;
- 2. The communication concerns a report of abuse or neglect of a child, older person or vulnerable person in violation of NRS 200.508, 200.5093, or 200.50935, but only as to that portion of the communication;
- 3. The communication is relevant to an issue of breach of duty by the victim's advocate to the victim or by the victim to the victim's advocate; or
- 4. Disclosure of the communication is otherwise required by law.

NEW HAMPSHIRE

N.H. REV. STAT. ANN. § 173-C:1 to C:10 (2016)

In this chapter:

I. “Confidential communication” means information transmitted between a victim, as defined in paragraph VI, of an alleged sexual assault, alleged domestic abuse, alleged sexual harassment, or alleged stalking, and a sexual assault or domestic violence counselor in the course of that relationship and in confidence by means which, so far as the victim is aware, does not disclose the information to a third person. The presence of an interpreter for the hearing impaired, a foreign language interpreter, or any other interpreter necessary for that communication to take place shall not affect the confidentiality of the communication nor shall it be deemed a waiver of the privilege. The term includes all information received by the sexual assault or domestic violence counselor in the course of that relationship.

II. “Domestic violence center” means any organization or agency which would qualify as a direct service grantee under RSA 173-B:21.

III. “Domestic violence counselor” means any person who is employed or appointed or who volunteers in a domestic violence center who renders support, counseling, or assistance to victims of domestic abuse or attempted domestic abuse, who has satisfactorily completed 30 hours of training in a bona fide program which has been developed by a center as defined in RSA 173-C:1, II.

IV. “Rape crisis center” means any public or private agency, office, or center that primarily offers assistance to victims of sexual assault and their families and provides all the following services:

- (a) Crisis intervention to victims of sexual assault 24 hours per day.
- (b) Support services to victims of sexual assault by trained volunteers during the hospital examination, police investigation, and court proceedings.
- (c) Referral of victims of sexual assault to public and private agencies offering needed services.
- (d) The establishment of peer counseling services for the victims of sexual assault.
- (e) The development of training programs and the standardization of procedures for law enforcement, hospital, legal and social service personnel to enable them to respond appropriately to the needs of victims.
- (f) The coordination of services which are being provided by existing agencies.
- (g) Education of the public about the nature and scope of sexual assault and the services which are available.
- (h) Development of services to meet the needs of special populations, for example, children, the elderly, and minorities.
- (i) Court advocacy through the criminal justice system.

V. "Sexual assault counselor" means any person who is employed or appointed or who volunteers in a rape crisis center who renders support, counseling, or assistance to victims of sexual assault or attempted sexual assault, who has satisfactorily completed 30 hours of training in a bona fide program which has been developed by a rape crisis center as defined in RSA 173-C:1, IV.

VI. "Victim" means any person alleging sexual assault under RSA 632-A, domestic abuse as defined in RSA 173-B:1, stalking under RSA 633:3-a, or sexual harassment as defined under state or federal law, who consults a sexual assault counselor or a domestic violence counselor for the purpose of securing support, counseling or assistance concerning a mental, physical, emotional, legal, housing, medical, or financial problem caused by an alleged act of sexual assault or domestic abuse, stalking, or sexual harassment, or an alleged attempted sexual assault or domestic abuse.

§ 173-C:2. Privilege.

I. A victim has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to a sexual assault counselor or a domestic violence counselor, including any record made in the course of support, counseling, or assistance of the victim. Any confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege terminates upon the death of the victim.

I-a. The privilege and confidentiality under paragraph I shall extend to:

- (a) A third person present to assist communication with the victim.
- (b) A third person present to assist a victim who is physically challenged.
- (c) Co-participants in support group counseling of the victim.

II. Persons prevented from disclosing a confidential communication or record pursuant to paragraph I shall be exempt from the provisions of RSA 631:6.

§ 173-C:3. Assertion or Waiver of Privilege.

The privilege may be claimed or waived in all civil, administrative, and criminal legal proceedings, including discovery proceedings, by the following persons:

- (a) The victim or an attorney on the victim's behalf.
- (b) The guardian of the victim, if the victim has been found incompetent by a court of competent jurisdiction.
- (c) A minor victim who is emancipated, married, or over the age of 15, unless, in the opinion of the court, the minor is incapable of knowingly waiving the privilege. A guardian ad litem shall be appointed in all cases in which there is a potential conflict of interest between a victim under the age of 18 and his parent or guardian.

§ 173-C:4. Partial Waiver.

Waiver as to a specific portion of communication between the victim and the counselor shall not constitute a waiver of the privilege as to other portions of the confidential communication between victim and counselor, relating to the alleged crime.

§ 173-C:5. Limitation on the Privilege; Criminal Proceedings.

In criminal proceedings when a defendant seeks information privileged under this chapter in discovery or at trial, the procedure below shall be followed:

I. A written pretrial motion shall be made by the defendant to the court stating that the defendant seeks discovery of records of a rape crisis center or domestic violence center or testimony of a sexual assault counselor or domestic violence counselor. The written motion shall be accompanied by an affidavit setting forth specific grounds as to why discovery is requested and showing that there is a substantial likelihood that favorable and admissible information would be obtained through discovery or testimony. No discovery or hearing shall occur pursuant to the information sought to be disclosed for at least 3 business days after the filing of a motion for disclosure.

II. The only information subject to discovery from the records of a rape crisis center or a domestic violence center or which may be elicited during the testimony of a sexual assault or domestic violence counselor are those statements of the victim which relate to the alleged crime being prosecuted in the instant trial.

III. Prior to admission of information at deposition, trial, or other legal proceeding, when a claim of privilege has been asserted and whether or not the information was obtained through discovery, the burden of proof shall be upon the defendant to establish by a preponderance of the evidence that:

(a) The probative value of the information, in the context of the particular case, outweighs its prejudicial effect on the victim's emotional or physical recovery, privacy, or relationship with the counselor or the rape crisis or domestic violence center.

(b) That the information sought is unavailable from any other source.

(c) That there is a substantial probability that the failure to disclose that information will interfere with the defendant's right to confront the witnesses against him and his right to a fair trial.

IV. The trial court shall review each motion for disclosure of information on a case by case basis and determine on the totality of the circumstances that the information sought is or is not subject to the privilege established in RSA 173-C:2. In finding that the privilege shall not apply in a particular case, the trial court shall make written findings as to its reasons therefor.

V. The records and testimony of a rape crisis center or domestic violence center shall be disclosed solely to the trial judge to determine, as a matter of law, whether the information contained in the records or testimony is admissible under this chapter.

VI. That portion of any record and testimony of a rape crisis center or domestic violence center which is not disclosed to the defendant shall be preserved by the court under seal for appeal. For the purpose of preservation, a copy of the record shall be retained with the original released to the center. Costs of duplication shall be borne by the defendant.

VII. If, after disclosure of privileged information, the court upholds the privilege claim, the court shall impose a protective order against revealing any of the information without the consent of the person authorized to permit disclosure.

§ 173-C:6. Locations of Centers Privileged.

Notwithstanding any other provisions of this chapter, the location and the street address of a rape crisis center or domestic violence center are absolutely privileged.

§ 173-C:7. Involuntary Waiver.

The privilege established by this chapter shall not apply when the sexual assault counselor or the domestic violence counselor has knowledge that the victim has given perjured testimony and when the defendant has made an offer of proof that there is probable cause to believe that perjury has been committed.

§ 173-C:8. Failure to Testify.

Failure of any person to testify as a witness pursuant to the provisions of this chapter shall not give rise to an inference unfavorable to the prosecution or the defense.

§ 173-C:9. Appeal.

The victim shall have a right to interlocutory appeal to the supreme court from any decision by a court to require the disclosure of records or testimony of a rape crisis or domestic violence center or sexual assault or domestic violence counselor.

§ 173-C:10. Counselor's Duty to Report Child Abuse

The domestic violence or sexual assault counselor shall have the same reporting duties under RSA 169-C:29 as other professionals, providing that this duty shall not apply where a minor is seeking relief pursuant to RSA 173-B:3 for abuse by a spouse or former spouse of the minor, or by an intimate partner who is not related to the minor by consanguinity or affinity. As used in this section, "abuse" and "intimate partners" shall be as defined in RSA 173-B:1.

NEW JERSEY

N.J. STAT. ANN. § 2A:84A-22.13 to 22.16 (2016)

The Legislature finds and declares that:

- a. The emotional and psychological injuries that are inflicted on victims of violence are often more serious than the physical injuries suffered;
- b. Counseling is often a successful treatment to ease the real and profound psychological trauma experienced by these victims and their families;
- c. In the counseling process, victims of violence openly discuss their emotional reactions to the crime. These reactions are often highly intertwined with their personal histories and psychological profile;
- d. Counseling of violence and victims is most successful when the victims are assured their thoughts and feelings will remain confidential and will not be disclosed without their permission; and
- e. Confidentiality should be accorded all victims of violence who require counseling whether or not they are able to afford the services of private psychiatrists or psychologists.

Therefore, it is the public policy of this State to extend a testimonial privilege encompassing the contents of communications with a victim counselor and to render immune from discovery or legal process the records of these communications maintained by the counselor.

§ 2A:84A-22.14. Definitions

As used in this act:

- a. "Act of violence" means the commission or attempt to commit any of the offenses set forth in subsection b. of section 11 of P.L. 1971, c. 317 (C. 52:4B-11).
- b. "Confidential communication" means any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from an act of violence. It includes any advice, report or working paper given or made in the course of the consultation and all information received by the victim counselor in the course of that relationship.
- c. "Victim" means a person who consults a counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by an act of violence.
- d. "Victim counseling center" means any office, institution, or center offering assistance to victims and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

e. "Victim counselor" means a person engaged in any office, institution or center defined as a victim counseling center by this act, who has undergone 40 hours of training and is under the control of a direct services supervisor of the center and who has a primary function of rendering advice, counseling or assisting victims of acts of violence. "Victim counselor" includes a rape care advocate as defined in section 4 of P.L. 2001, c. 81 (C. 52:4B-52).

§ 2A:84A-22.15. Victim counselor confidentiality privilege

Subject to Rule 37 of the Rules of Evidence, a victim counselor has a privilege not to be examined as a witness in any civil or criminal proceeding with regard to any confidential communication. The privilege shall be claimed by the counselor unless otherwise instructed by prior written consent of the victim. When a victim is incapacitated or deceased consent to disclosure may be given by the guardian, executor, or administrator except when the guardian, executor, or administrator is the defendant or has a relationship with the victim such that the guardian, executor, or administrator has an interest in the outcome of the proceeding. The privilege may be knowingly waived by a juvenile. In any instance where the juvenile is, in the opinion of the judge, incapable of knowing consent, the parent or guardian of the juvenile may waive the privilege on behalf of the juvenile, provided that the parent or guardian is not the defendant and does not have a relationship with the defendant such that he has an interest in the outcome of the proceeding. A victim counselor or a victim cannot be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location, or telephone number of a domestic violence shelter or any other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

§ 2A:84A-22.16. Where disclosure required

Nothing in this act shall be deemed to prevent the disclosure to a defendant in a criminal action of statements or information given by a victim to a county victim-witness coordinator, where the disclosure of the statements or information is required by the Constitution of this State or of the United States.

N.J. R. EVID. 517 (2016)

(a) N.J.S.A. 2A:84A-22.13 provides:

The Legislature finds and declares that:

- a. The emotional and psychological injuries that are inflicted on victims of violence are often more serious than the physical injuries suffered;
- b. Counseling is often a successful treatment to ease the real and profound psychological trauma experienced by these victims and their families;
- c. In the counseling process, victims of violence openly discuss their emotional reactions to the crime. These reactions are often highly intertwined with their personal histories and psychological profile;

d. Counseling of violence and victims is most successful when the victims are assured their thoughts and feelings will remain confidential and will not be disclosed without their permission; and

e. Confidentiality should be accorded all victims of violence who require counseling whether or not they are able to afford the services of private psychiatrists or psychologists.

Therefore, it is the public policy of this State to extend a testimonial privilege encompassing the contents of communications with a victim counselor and to render immune from discovery or legal process the records of these communications maintained by the counselor.

(b) N.J.S.A. 2A:84A-22.14 provides:

As used in this act:

a. "Act of violence" means the commission or attempt to commit any of the offenses set forth in subsection b. of section 11 of P.L.1971, c.317 (C.52:4B-11).

b. "Confidential communication" means any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from an act of violence. It includes any advice, report or working paper given or made in the course of the consultation and all information received by the victim counselor in the course of that relationship.

c. "Victim" means a person who consults a counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by an act of violence.

d. "Victim counseling center" means any office, institution, or center offering assistance to victims and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

e. "Victim counselor" means a person engaged in any office, institution or center defined as a victim counseling center by this act, who has undergone 40 hours of training and is under the control of a direct services supervisor of the center and who has a primary function of rendering advice, counseling or assisting victims of acts of violence. "Victim counselor" includes a rape care advocate as defined in Section 4 of P.L.2001, c.81 (C.52:4B-52).

(c) N.J.S.A. 2A:84A-22.15 provides:

Subject to Rule 37 [Rule 530] of the Rules of Evidence, a victim counselor has a privilege not to be examined as a witness in any civil or criminal proceeding with regard to any confidential communication. The privilege shall be claimed by the counselor unless otherwise instructed by prior written consent of the victim. When a victim is incompetent or deceased consent to disclosure may be given by the guardian, executor or administrator except when the guardian, executor or administrator is the defendant or has a relationship with the victim such that he has an interest in the outcome of the proceeding. The privilege may be knowingly waived by a juvenile. In any instance where the juvenile is, in the opinion of the judge, incapable of knowing consent, the parent or guardian of the juvenile may waive the privilege on behalf of the juvenile,

provided that the parent or guardian is not the defendant and does not have a relationship with the defendant such that he has an interest in the outcome of the proceeding. A victim counselor or a victim cannot be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location, or telephone number of a domestic violence shelter or any other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(d) N.J.S.A. 2A:84A-22.16 provides:

Nothing in this act shall be deemed to prevent the disclosure to a defendant in a criminal action of statements or information given by a victim to a county victim-witness coordinator, where the disclosure of the statements or information is required by the constitution of this State or of the United States.

NEW MEXICO

N.M. STAT. ANN. § 31-25-1 to -6 (2016)

This act [31-25-1 to 31-25-6 NMSA 1978] may be cited as the “Victim Counselor Confidentiality Act”.

§ 31-25-2. Definitions.

As used in the Victim Counselor Confidentiality Act [31-25-1 NMSA 1978]:

- A. “confidential communication” means any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor’s treatment of the victim for any emotional or psychological condition resulting from a sexual assault or family violence;
- B. “victim” means a person who consults a victim counselor for assistance in overcoming adverse emotional or psychological effects of a sexual assault or family violence;
- C. “victim counseling” means assessment, diagnosis and treatment to alleviate the adverse emotional or psychological impact of a sexual assault or family violence on the victim. Victim counseling includes crisis intervention;
- D. “victim counseling center” means a private organization or unit of a government agency which has as one of its primary purposes the treatment of victims for any emotional or psychological condition resulting from a sexual assault or family violence; and
- E. “victim counselor” means any employee or supervised volunteer of a victim counseling center or other agency, business or organization that provides counseling to victims who is not affiliated with a law enforcement agency or the office of a district attorney, has successfully completed forty hours of academic or other formal victim counseling training or has had a

minimum of one year of experience in providing victim counseling and whose duties include victim counseling.

§ 31-25-3. Confidential communications; information; privileged.

A. A victim, a victim counselor without the consent of the victim or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party shall not be compelled to provide testimony or to produce records concerning confidential communications for any purpose in any criminal action or other judicial, legislative or administrative proceeding.

B. A victim counselor or a victim shall not be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location or telephone number of a safe house, abuse shelter or other facility that provided temporary emergency shelter to the victim of the offense or occurrence that is the subject of a judicial, legislative or administrative proceeding unless the facility is a party to the proceeding.

§ 31-25-4. Waiver.

A. A victim does not waive the protections afforded by the Victim Counselor Confidentiality Act [31-25-1 NMSA 1978] by testifying in court about the crime; provided that if the victim partially discloses the contents of a confidential communication in the course of his testimony, then either party to the action may request the court to rule that justice requires the protections of that act be waived to the extent they apply to that portion of the communication. Waiver shall apply only to the extent necessary to require any witness to respond to questions concerning the confidential communication that are relevant to the facts and circumstances of the case.

B. A victim counselor shall not have authority to waive the protections afforded to a victim under the Victim Counselor Confidentiality Act [31-25-1 NMSA 1978]; provided that if a victim brings suit against a victim counselor or the agency, business or organization in which the victim counselor was employed or served as a volunteer at the time of the counseling relationship and the suit alleges malpractice during the counseling relationship, the victim counselor may testify or produce records regarding confidential communications with the victim without liability for those actions.

§ 31-25-5. Interpretation.

The Victim Counselor Confidentiality Act [31-25-1 NMSA 1978] shall not be construed to relieve a victim counselor of a duty to report suspected child abuse or neglect pursuant to Section 32-1-15 NMSA 1978 [repealed], to report any evidence that the victim is about to commit a crime or to limit any testimonial privileges available to any person pursuant to other provisions of law.

§ 31-25-6. Rules.

The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of the Victim Counselor Confidentiality Act [31-25-1 NMSA 1978].

NEW YORK

N.Y. CIVIL PRACTICE LAW and RULES § 4510 (2016)

(a) Definitions. When used in this section, the following terms shall have the following meanings:

1. "Rape crisis program" means any office, institution or center which has been approved pursuant to subdivision fifteen of section two hundred six of the public health law, offering counseling and assistance to clients concerning sexual offenses, sexual abuses or incest.

2. "Rape crisis counselor" means any person who has been certified by an approved rape crisis program as having satisfied the training standards specified in subdivision fifteen of section two hundred six of the public health law, and who, regardless of compensation, is acting under the direction and supervision of an approved rape crisis program.

3. "Client" means any person who is seeking or receiving the services of a rape crisis counselor for the purpose of securing counseling or assistance concerning any sexual offenses, sexual abuse, incest or attempts to commit sexual offenses, sexual abuse, or incest, as defined in the penal law.

(b) Confidential information privileged. A rape crisis counselor shall not be required to disclose a communication made by his or her client to him or her, or advice given thereon, in the course of his or her services nor shall any clerk, stenographer or other person working for the same program as the rape crisis counselor or for the rape crisis counselor be allowed to disclose any such communication or advice given thereon nor shall any records made in the course of the services given to the client or recording of any communications made by or to a client be required to be disclosed, nor shall the client be compelled to disclose such communication or records, except:

1. that a rape crisis counselor may disclose such otherwise confidential communication to the extent authorized by the client;

2. that a rape crisis counselor shall not be required to treat as confidential a communication by a client which reveals the intent to commit a crime or harmful act;

3. in a case in which the client waives the privilege by instituting charges against the rape crisis counselor or the rape crisis program and such action or proceeding involves confidential communications between the client and the rape crisis counselor.

(c) Who may waive the privilege. The privilege may only be waived by the client, the personal representative of a deceased client, or, in the case of a client who has been adjudicated incompetent or for whom a conservator has been appointed, the committee or conservator.

(d) Limitation on waiver. A client who, for the purposes of obtaining compensation under article twenty-two of the executive law or insurance benefits, authorizes the disclosure of any privileged communication to an employee of the 1 office of victim services or an insurance representative shall not be deemed to have waived the privilege created by this section.

NY CLS FAMILY CT ACT § 1046 (A) (VII) (2016)

any writing, record or photograph, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a child in an abuse or neglect proceeding of any hospital or any other public or private agency shall be admissible in evidence in proof of that condition, act, transaction, occurrence or event, if the judge finds that it was made in the regular course of the business of any hospital, or any other public or private agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. A certification by the head of or by a responsible employee of the hospital or agency that the writing, record or photograph is the full and complete record of said condition, act, transaction, occurrence or event and that it was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make it, at the time of the condition, act, transaction, occurrence or event, or within a reasonable time thereafter, shall be prima facie evidence of the facts contained in such certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employee. All other circumstances of the making of the memorandum, record or photograph, including lack of personal knowledge of the maker, may be proved to affect its weight, but they shall not affect its admissibility

NY CLS CPL § 60.76 (2016)

Where disclosure of a communication which would have been privileged pursuant to section forty-five hundred ten of the civil practice law and rules is sought on the grounds that the privilege has been waived or that disclosure is required pursuant to the constitution of this state or the United States, the party seeking disclosure must file a written motion supported by an affidavit containing specific factual allegations providing grounds that disclosure is required. Upon the filing of such motion and affidavit, the court shall conduct an in camera review of the communication outside the presence of the jury and of counsel for all parties in order to determine whether disclosure of any portion of the communication is required.

NORTH CAROLINA

N.C. GEN. STAT. § 8-53.12 (2016)

(a) Definitions. -- The following definitions apply in this section:

(1) Agent. -- An employee or agent of a center who has completed a minimum of 20 hours of training as required by the center, or a volunteer, under the direct supervision of a center supervisor, who has completed a minimum of 20 hours of training as required by the center.

(2) Center. -- A domestic violence program or rape crisis center.

(3) Domestic violence program. -- A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims.

(4) Domestic violence victim. -- Any person alleging domestic violence as defined by G.S. 50B-1, who consults an agent of a domestic violence program for the purpose of obtaining, for himself or herself, advice, counseling, or other services concerning mental, emotional, or physical injuries suffered as a result of the domestic violence. The term shall also include those persons who have a significant relationship with a victim of domestic violence and who have sought, for themselves, advice, counseling, or other services concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by the domestic violence against the victim.

(5) Rape crisis center. -- Any publicly or privately funded agency, institution, organization, or facility that offers counseling and other services to victims of sexual assault and their families.

(6) Services. -- Includes, but is not limited to, crisis hotlines; safe homes and shelters; assessment and intake; children of violence services; individual counseling; support in medical, administrative, and judicial systems; transportation, relocation, and crisis intervention. The term does not include investigation of physical or sexual assault of children under the age of 16.

(7) Sexual assault. -- Any alleged violation of G.S. 14-27.21, 14-27.22, 14-27.24, 14-27.25, 14-27.26, 14-27.27, 14-27.29, 14-27.30, 14-27.31, 14-27.32, or 14-202.1, whether or not a civil or criminal action arises as a result of the alleged violation.

(8) Sexual assault victim. -- Any person alleging sexual assault, who consults an agent of a rape crisis center for the purpose of obtaining, for themselves, advice, counseling, or other services concerning mental, physical, or emotional injuries suffered as a result of sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who have sought, for themselves, advice, counseling, or other services concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by sexual assault of a victim.

(9) Victim. -- A sexual assault victim or a domestic violence victim.

(b) Privileged Communications. -- No agent of a center shall be required to disclose any information which the agent acquired during the provision of services to a victim and which information was necessary to enable the agent to render the services; provided, however, that this subsection shall not apply where the victim waives the privilege conferred. Any resident or presiding judge in the district in which the action is pending shall compel disclosure, either at the trial or prior thereto, if the court finds, by a preponderance of the evidence, a good faith,

specific and reasonable basis for believing that (i) the records or testimony sought contain information that is relevant and material to factual issues to be determined in a civil proceeding, or is relevant, material, and exculpatory upon the issue of guilt, degree of guilt, or sentencing in a criminal proceeding for the offense charged or any lesser included offense, (ii) the evidence is not sought merely for character impeachment purposes, and (iii) the evidence sought is not merely cumulative of other evidence or information available or already obtained by the party seeking the disclosure or the party's counsel. If the case is in district court, the judge shall be a district court judge, and if the case is in superior court, the judge shall be a superior court judge.

Before requiring production of records, the court must find that the party seeking disclosure has made a sufficient showing that the records are likely to contain information subject to disclosure under this subsection. If the court finds a sufficient showing has been made, the court shall order that the records be produced for the court under seal, shall examine the records in camera, and may allow disclosure of those portions of the records which the court finds contain information subject to disclosure under this subsection. After all appeals in the action have been exhausted, any records received by the court under seal shall be returned to the center, unless otherwise ordered by the court. The privilege afforded under this subsection terminates upon the death of the victim.

(c) Duty in Case of Abuse or Neglect. -- Nothing in this section shall be construed to relieve any person of any duty pertaining to abuse or neglect of a child or disabled adult as required by law.

NORTH DAKOTA

N.D. CENT. CODE § 14-07.1-18 (2015)

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:

a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;

b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and

c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.

2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:

a. A client consents to the release of information that relates only to that client or the client's dependents;

b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe

operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;

c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or

d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.

3. Any person who violates this section is guilty of an infraction.

N.D. SUP. CT. ADMIN. RULE 34

Section 1. Statement of Policy. Pursuant to the authority of the Supreme Court in N.D. Const. art. IV, § 3, and N.D.C.C. §§ 27-02-07 and 27-02-08, it is the policy of the Supreme Court of North Dakota to provide opportunity for appropriate services to persons who are alleged victims of domestic violence in proceedings in the trial courts of North Dakota.

Section 2. Definition of Certified Domestic Violence Advocate. A Certified Domestic Violence Advocate is defined as a person who:

(a) is certified by an approved certifying entity as a Certified Domestic Violence Advocate to provide direct support services to alleged victims of domestic violence;

(b) is affiliated with a domestic violence program which is a member of an approved certifying entity;

(c) has completed 40 hours of domestic violence training relating to the services and proceedings under N.D.C.C. ch. 14-07.1, pursuant to a curriculum provided by an approved certifying entity subject to the approval of a committee of three consisting of the State Health Officer, the North Dakota Attorney General and the President of the State Bar Association of North Dakota, or their designees; and

(d) has completed, in each year following the year of certification, ten additional hours of training in the areas set forth in Section 2(a) and which are developed and approved by the committee of three identified in Section 2(c).

Section 3. Definition of Approved Certifying Entity. An approved certifying entity is an organization determined by the Supreme Court or its designee to be qualified to train and certify domestic violence advocates. To qualify to train and certify domestic violence advocates an organization must file with the Supreme Court or its designee satisfactory proof that the organization:

(a) is capable of providing a 40-hour course of domestic violence training relating to the services and proceedings under Chapter 14-07.1, N.D.C.C., following a curriculum approved by the committee of three identified in Section 2(c);

(b) is capable of providing, in each year following the year of certification of a domestic violence advocate, ten additional hours of training in the areas set forth in Section 2(a) and which are developed and approved by the committee of three identified in Section 2(c);

(c) provides affiliation and support to local domestic violence programs in North Dakota; and

(d) has established a grievance procedure as set forth in Section 6.

Section 4. Lists of Certified Domestic Violence Advocates. Each approved certifying entity shall provide the State Court Administrator with an annual list of Certified Domestic Violence Advocates in North Dakota as may be revised by the entity from time to time. The State Court Administrator shall provide copies of the current list to all judges presiding in proceedings pursuant to N.D.C.C. ch. 14-07.1, and to any person, upon request.

Section 5. The Role of Domestic Violence Advocates in Court Proceedings. In all proceedings pursuant to N.D.C.C. ch. 14-07.1, a Certified Domestic Violence Advocate may:

(a) assist the petitioner in completing printed forms for proceedings pursuant to N.D.C.C. ch. 14-07.1;

(b) sit with the petitioner during court proceedings; and

(c) at the judge's discretion, make written or oral statements to the court.

Section 6. Grievance Procedure. The approved certifying entity shall establish a grievance procedure, prepared in consultation with the President of the State Bar Association of North Dakota, or the President's designee, which must include provisions for universal standing to submit a complaint, due process, and prompt disposition of complaints.

Section 7. Unauthorized Practice of Law. When providing services pursuant to Section 4, a Certified Domestic Violence Advocate is not engaged in the unauthorized practice of law.

Section 8. Effective Date. The effective date of this Rule, as amended, is January 1, 2005.

OHIO

OHIO REV. CODE ANN. § 3113.36 (2015)

(A) To qualify for funds under section 3113.35 of the Revised Code, a shelter for victims of domestic violence shall meet all of the following requirements:

(1) Be incorporated in this state as a nonprofit corporation;

(2) Have trustees who represent the racial, ethnic, and socioeconomic diversity of the community to be served, including at least one person who is or has been a victim of domestic violence;

(3) Receive at least twenty-five per cent of its funds from sources other than funds distributed pursuant to section 3113.35 of the Revised Code. These other sources may be public

or private, and may include funds distributed pursuant to section 3113.37 of the Revised Code, and contributions of goods or services, including materials, commodities, transportation, office space, or other types of facilities or personal services.

(4) Provide residential service or facilities for children when accompanied by a parent, guardian, or custodian who is a victim of domestic violence and who is receiving temporary residential service at the shelter;

(5) Require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify individuals served by the shelter.

(B) A shelter for victims of domestic violence does not qualify for funds if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin, or ancestry. A shelter does not qualify for funds in the second half of any year if its application projects the provision of residential service and such service has not been provided in the first half of that year; such a shelter does not qualify for funds in the following year.

OHIO REV. CODE ANN. § 3113.40 (2015)

When a shelter for victims of domestic violence provides accommodations to a person, the shelter, on admitting the person, shall determine, if possible, the person's last known residential address and county of residence. The information concerning the address and county of residence is confidential and may be released only to a public children services agency pursuant to section 2151.422 of the Revised Code.

OKLAHOMA

OKLA. STAT. ANN. § 18P-3 (2016)

A. The Attorney General is hereby authorized and directed to enter into agreements and to contract for the shelter and other services that are needed for victims of domestic abuse, sexual assault or batterers intervention programs. Any domestic violence, sexual assault or batterers intervention program providing services pursuant to certification by the Attorney General or a contract or subcontract with the Attorney General and receiving funds from the Attorney General or any contractor with the Attorney General shall be subject to the provisions of the administrative rules of the Attorney General.

B.

1. Except as otherwise provided by paragraph 3 of this subsection, the case records, case files, case notes, client records, or similar records of a domestic violence or sexual assault program certified by the Attorney General or of any employee or trained volunteer of a program regarding an individual who is residing or has resided in such program or who has otherwise utilized or is utilizing the services of any domestic violence or sexual assault program or counselor shall be confidential and shall not be disclosed.

2. For purposes of this subsection, the term “client records” shall include, but not be limited to, all communications, records, and information regarding clients of domestic violence and sexual assault programs.

3. The case records, case files, or case notes of programs specified in paragraph 1 of this subsection shall be confidential and shall not be disclosed except with the written consent of the individual, or in the case of the individual’s death or disability, of the individual’s personal representative or other person authorized to sue on the individual’s behalf or by court order for good cause shown by the judge in camera.

C. The district court shall not order the disclosure of the address of a domestic violence shelter, the location of any person seeking or receiving services from a domestic violence or sexual assault program, or any other information which is required to be kept confidential pursuant to subsection B of this section.

D. The home address, personal telephone numbers and social security number of board members, staff and volunteers of certified domestic violence and sexual assault programs shall not be construed to be open records pursuant to the Oklahoma Open Records Act.

OKLA. STAT. ANN. § 18P-8 (2016)

A. The Office of the Attorney General shall have the authority to collect information sufficient to meet its responsibilities related to oversight, management, evaluation, performance improvement and auditing of domestic violence and sexual assault services and combating and preventing domestic violence and sexual assault in this state.

B. The individual forms, computer and electronic data, and other forms of information collected by and furnished to the Attorney General shall be confidential and shall not be public records as defined in the Oklahoma Open Records Act.

C. Except as otherwise provided by state and federal confidentiality laws, identifying information shall not be disclosed and shall not be used for any public purpose other than the creation and maintenance of anonymous datasets for statistical reporting and data analysis.

OREGON

OR. REV. STAT. § 409.292 (2016)

(1) The Director of Human Services may make grants to and enter into contracts with nonprofit private organizations or public agencies for programs and projects designed to prevent, identify and treat family, domestic and teen dating violence. Grants or contracts under this subsection may be:

(a) For the funding of shelter homes for spouses and children who are or have experienced family violence or domestic violence including acquisition and maintenance of shelter homes;

(b) For the funding of crisis lines providing services to victims of family, domestic or teen dating violence and their families;

(c) For the funding of safe houses for victims of family or domestic violence and their families;

(d) For the funding of services, programs and curricula to educate and inform students in grades 7 through 12 about teen dating and domestic violence, to provide assistance to victims of teen dating and domestic violence and to prevent and reduce the incidence of teen dating and domestic violence; and

(e) For the development and establishment of programs for professional and paraprofessional personnel in the fields of social work, law enforcement, education, law, medicine and other relevant fields who are engaged in the field of the prevention, identification and treatment of family, domestic and teen dating violence and training programs in methods of preventing family, domestic and teen dating violence.

(2) The director shall not make a grant to any organization or agency under this section except on the condition that a local governmental unit or community organization provide matching moneys equal to 25 percent of the amount of the grant. The applying organization itself may contribute to or provide the required local matching funds. The value of in kind contributions and volunteer labor from the community may be computed and included as a part of the local matching requirement imposed by this subsection.

(3) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990:

(a) The director may by rule provide that the locations of premises utilized for shelter homes or other physical facilities in family and domestic violence programs and projects shall be kept confidential.

(b) All information maintained by the shelter home, safe house or crisis line relating to clients is confidential. However, crisis lines specifically funded to provide services for victims of child abuse are subject to the requirements of ORS 419B.005 to 419B.050. Except for the names of clients, necessary information may be disclosed to the director.

OR. REV. STAT. § 409.292 (2016)

(1) The Director of Human Services may make grants to and enter into contracts with private nonprofit organizations that provide intervention and support services to victims of sexual offenses and their families. Grants or contracts under this subsection may be:

(a) For the funding of sexual assault crisis centers; and

(b) For the funding of crisis lines providing services to victims of sexual offenses and their families.

(2) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990:

(a) The director may by rule provide that the locations of premises utilized for sexual assault crisis centers shall be kept confidential.

(b) All information maintained by the sexual assault crisis center or crisis line relating to clients is confidential. Except for the names of clients, necessary information may be disclosed to the director.

PENNSYLVANIA

23 PA. CONS. STAT. ANN. § 6116 (2016)

Unless a victim waives the privilege in a signed writing prior to testimony or disclosure, a domestic violence counselor/advocate or a coparticipant who is present during domestic violence counseling/advocacy shall not be competent nor permitted to testify or to otherwise disclose confidential communications made to or by the counselor/advocate by or to a victim. The privilege shall terminate upon the death of the victim. Neither the domestic violence counselor/advocate nor the victim shall waive the privilege of confidential communications by reporting facts of physical or sexual assault under Chapter 63 (relating to child protective services), a Federal or State mandatory reporting statute or a local mandatory reporting ordinance.

23 PA. CONS. STAT. ANN. § 6102 (2016) DEFINITIONS.

(a) General rule. — The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Abuse.” —The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.

(2) Placing another in reasonable fear of imminent serious bodily injury.

(3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).

(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).

(5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).

“Adult.” —An individual who is 18 years of age or older.

“Certified copy.” —A paper copy of the original order of the issuing court endorsed by the appropriate clerk of that court or an electronic copy of the original order of the issuing court endorsed with a digital signature of the judge or appropriate clerk of that court. A raised seal on the copy of the order of the issuing court shall not be required.

“Comparable court.” —A foreign court that:

(1) has subject matter jurisdiction and is authorized to issue ex parte, emergency, temporary or final protection orders in that jurisdiction; and

(2) possessed jurisdiction over the parties when the protection order was issued in that jurisdiction.

“Confidential communications.” —All information, whether written or spoken, transmitted between a victim and a domestic violence counselor or advocate in the course of the relationship. The term includes information received or given by the domestic violence counselor or advocate in the course of the relationship, as well as advice, reports, statistical data, memoranda or working papers, records or the like, given or made in the course of the relationship. The term also includes communications made by or to a linguistic interpreter assisting the victim, counselor or advocate in the course of the relationship.

“Domestic violence counselor/advocate.” —An individual who is engaged in a domestic violence program, the primary purpose of which is the rendering of counseling or assistance to victims of domestic violence, who has undergone 40 hours of training.

“Domestic violence program.” —A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims which include, but are not limited to, crisis hotline; safe homes or shelters; community education; counseling systems intervention and interface; transportation, information and referral; and victim assistance.

“Family or household members.” —Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

“Firearm.” —Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon as defined by 18 Pa.C.S. § 6105(i) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

“Foreign protection order.” —A protection order as defined by 18 U.S.C. § 2266 (relating to definitions) issued by a comparable court of another state, the District of Columbia, Indian tribe or territory, possession or commonwealth of the United States.

“Hearing officer.” —A magisterial district judge, judge of the Philadelphia Municipal Court, arraignment court magistrate appointed under 42 Pa.C.S. § 1123 (relating to jurisdiction and venue), master appointed under 42 Pa.C.S. § 1126 (relating to masters) and master for emergency relief.

“Master for emergency relief.” —A member of the bar of the Commonwealth appointed under section 6110(e) (relating to emergency relief by minor judiciary).

“Minor.” —An individual who is not an adult.

“Other weapon.” —Anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term does not include a firearm.

“Safekeeping permit.” —A permit issued by a sheriff allowing a person to take possession of any firearm, other weapon or ammunition that a judge ordered a defendant to relinquish in a protection from abuse proceeding.

“Secure visitation facility.” —A court-approved visitation program offered in a facility with trained professional staff operated in a manner that safeguards children and parents from abuse and abduction.

“Sheriff.”

(1) Except as provided in paragraph (2), the sheriff of the county.

(2) In a city of the first class, the chief or head of the police department.

“Victim.” —A person who is physically or sexually abused by a family or household member. For purposes of section 6116 (relating to confidentiality), a victim is a person against whom abuse is committed who consults a domestic violence counselor or advocate for the purpose of securing advice, counseling or assistance. The term shall also include persons who have a significant relationship with the victim and who seek advice, counseling or assistance from a domestic violence counselor or advocate regarding abuse of the victim.

“Weapon.” —Anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term includes a firearm which is not loaded or lacks a magazine, clip or other components to render it immediately operable and components which can readily be assembled into a weapon as defined by 18 Pa.C.S. § 907 (relating to possessing instruments of crime).

(b) Other terms. — Terms not otherwise defined in this chapter shall have the meaning given to them in 18 Pa.C.S. (relating to crimes and offenses).

42 PA. CONS. STAT. ANN. § 5945.1 (2016)

(a) Definitions. — As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Confidential communication.” —All information, oral or written, transmitted between a victim of sexual assault and a sexual assault counselor in the course of their relationship, including, but not limited to, any advice, reports, statistical data, memoranda, working papers, records or the like, given or made during that relationship, including matters transmitted between the sexual assault counselor and the victim through the use of an interpreter.

“Coparticipant.” —A victim participating in group counseling.

“Interpreter.” —A person who translates communications between a sexual assault counselor and a victim through the use of sign language, visual, oral or written translation.

“Rape crisis center.” —Any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

“Sexual assault counselor.” —A person who is engaged in any office, institution or center defined as a rape crisis center under this section, who has undergone 40 hours of sexual assault training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

“Victim.” —A person who consults a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who seek advice, counseling or assistance from a sexual assault counselor concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault of a victim.

(b) Privilege.

(1) No sexual assault counselor or an interpreter translating the communication between a sexual assault counselor and a victim may, without the written consent of the victim, disclose the victim’s confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding.

(2) No coparticipant who is present during counseling may disclose a victim’s confidential communication made during the counseling session nor consent to be examined in any civil or criminal proceeding without the written consent of the victim.

RHODE ISLAND

ADVISORY OPINION TO HOUSE OF REPRESENTATIVES (1983) (NO RELEVANT CODE)

In accordance with the provisions of section 2 of article XII of the amendments to the Constitution of the State of Rhode Island, we, the undersigned justices of the Supreme Court,

National Center for Prosecution of Violence Against Women
National District Attorney Association
DOJ Grant #2009-TA-AX-K012
www.ndaa.org

submit our response to an inquiry embodied in a resolution passed by the House of Representatives at its January 1983 session on May 10, 1983. The inquiry centers on House bill No. 83-H-5134, which was introduced on January 13, 1983, and referred on the same day to the House Committee on Judiciary. The bill seeks to amend G.L. 1956 (1969 Reenactment) chapter 17 of title 9, which is entitled "Witnesses," by adding another section to the chapter. The proposed section would be known as § 9-17-24. Accompanying the bill is an explanation of its contents that was prepared by the Legislative Council. The council's explanation states, "This act would make all communications privileged between a sexual assault victim and a sexual assault counselor."

On May 10, 1983, Representative Jeffrey J. Teitz, chairman of the House Committee on Judiciary, reported to the floor House bill No. 83-H-5134 (Substitute A) with the committee's recommendation that the substitute bill be passed and further consideration of the original bill be indefinitely postponed. Unanimous consent was given to the chairman's request that immediate consideration be given to the committee's recommendation, and thereafter it was unanimously voted to pass Substitute A and postpone indefinitely further consideration of the bill as originally introduced.

House bill 83-H-5134 (Substitute A) embodies the request for an advisory opinion. The resolution indicates that there are presently pending in the House Judiciary Committee two legislative proposals dealing with the question of the degree of confidentiality that would be legislatively accorded to communications between a victim of a sexual assault and a sexual-assault counselor or a rape crisis center. The two proposals are identified in the resolution as Proposed Amendment A and Proposed Amendment B. The definitional portions of both proposed amendments, to wit, "Rape crisis center," "Sexual assault counselor," "Sexual assault victim," and "Confidential communication" are virtually identical and are set forth in the appendix to this opinion.

The single significant difference between the two proposed amendments concerns the proposed § 9-17-24(B), which is entitled "Privileged communications." In describing [1163] privileged communications, Proposal A states:

"In the trial of every cause, both civil and criminal, no sexual assault counselor shall be competent to testify concerning any confidential communication without the prior written consent of the sexual assault victim, nor shall a sexual assault counselor or rape crisis center be required to disclose to the court any records, notes, memoranda, or documents containing confidential communications without the prior written consent of the sexual assault victim."

In dealing with privileged communications, Proposal B tracks the language found in § 9-17-24(B) but goes on to create an exception that is described in Proposal B as an additional section, that is, § 9-17-25, which reads as follows:

"9-17-25. Right of defendant to seek exception to confidentiality. -- Notwithstanding the provisions of section 9-17-24 (B), a defendant in a criminal proceeding may petition the trial justice to issue a subpoena and/or a subpoena duces tecum requiring the appearance of a

sexual assault counselor or other representative of a rape crisis center and/or the production of records, notes, memoranda or documents in their possession. Prior to issuance of said subpoena or subpoena duces tecum, the trial justice shall require the defense to show that there is reason to believe that the witness knows and/or the material sought contains information which is relevant to a material issue in the case. A witness responding to such a subpoena shall be interviewed, and/or material produced in response to such a subpoena duces tecum shall be reviewed in camera by the trial justice without counsel present. If the trial justice determines that the witness knows and/or the material contains evidence which would be clearly exculpatory in nature, then the trial justice shall make it known to counsel who shall be permitted to present such evidence at trial through the appropriate witnesses. If the trial justice finds that no such evidence is possessed by the witness or contained in the material, then the trial justice shall quash the subpoena or subpoena duces tecum."

The House of Representatives has asked the undersigned for their advice about whether Proposal A or Proposal B or both violate the rights of an accused guaranteed by the United States Constitution's Sixth Amendment in state criminal proceedings through the provisions of the Fourteenth Amendment and by art. I, sec. 10, of the Rhode Island Constitution. In its pertinent part, sec. 10, like its federal counterpart, the Sixth Amendment, guarantees an accused in a criminal prosecution the right to confront the prosecution's witnesses and the right to have compulsory process issue as well as the right to offer testimony of witnesses in his behalf and compel their attendance, if necessary. *State v. Counts*, R.I. , 452 A.2d 1141, 1143 (1982); *State v. Anthony*, R.I. , 422 A.2d 921, 923-24 (1980).

At this point, we would acknowledge the receipt on September 23, 1983, of a letter from Representative Elizabeth Morancy, a member of the House Judiciary Committee, to the Chief Justice and the submission by the Rhode Island Rape Crisis Center, Inc., of a document entitled "Notice and Statement of Opposition to Issuance of an Advisory Opinion." The Representative, who describes herself as the "principal sponsor" of the "absolute confidentiality" provision found in House bill No. 83-H-5134, states that the Proposed Amendment A was defeated in committee and that there is thus no legislation pending that would justify any response to the inquiry referred to above. The center's statement of opposition also refers to the committee's action and says that the defeat occurred on April 6, 1983. It also reports that the so-called Proposed Amendment B has never been introduced in either branch of the General Assembly.

The center also points to the passage of House bill No. 83-H-5981, Substitute A, which created a special legislative commission "to study privileged communication." [1164] The fifteen-member commission is due to submit its report by March 1, 1984. The center suggests that we defer any response to the House resolution until such time as the commission has completed its study. It also contends that the pending request must go unanswered because it would require us to indulge in factual assumptions.

We are well aware that the justices of the Supreme Court are constitutionally obligated to give their written opinions to either branch of the General Assembly only when the question

propounded concerns the constitutionality of pending legislation. We are also quite cognizant that in giving such advice we cannot indulge in factfinding.

We are not privy to what actually occurred whenever the House Judiciary Committee met during the January 1983 session to discharge its official duties. However, we are confronted with the fact that we have been presented with a duly certified resolution from the House of Representatives, which expressly states that there is pending before the body two proposed amendments to chapter 19 of title 7, either one of which would serve as a substitute for the original House bill 83-H-5134. HN1 This representation embodied in the resolution creates a presumption of regularity that we, as members of a coordinate branch of government, are bound to honor. *Opinion to the Governor*, 95 R.I. 109, 185 A.2d 111 (1962). Consequently, we will respond to the inquiry now before us, persuaded that the inquiry presents a pure question of law, and at no time hereafter shall we be indulging in any exercise of our factfinding processes. Hereinafter we shall speak only in terms of the Sixth Amendment, having in mind that the pertinent language in sec. 10 of art. I is identical to that found in the Sixth Amendment.

Each of the proposed bills seeks to protect from public scrutiny the confidential conversations conducted between sexual-assault victims and their counselors. These legislative efforts are a further response to the growing awareness that a sexual assault is a crime of violence that may have a lasting effect upon the victim.

In 1979, the Rhode Island Legislature enacted G.L. 1956 (1981 Reenactment) § 11-37-13 [Link to the text of the note relating to the admissibility of evidence of the prior sexual conduct of the complainant.](#) HN2 Commonly known as a "rape-victim shield" statute, the law limits the ability of a defendant to introduce evidence relating to the victim's sexual conduct with others. This law is designed to protect the victims from being subjected to psychological or emotional abuse in court as a price for their cooperation with the prosecuting authorities. *State v. Lemon*, R.I. , 456 A.2d 261, 264 (1983). The proposed bills echo these concerns by restricting the introduction of evidence that may be obtained from the examination of sexual-assault counselors or the records of a rape crisis center.

However, while protecting the sexual-privacy rights of victims, see, e.g., *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), and the confidentiality of sensitive discussions, this type of legislation also conflicts with the interest of society in the facilitation of justice. Its policy of privilege impedes the ability to present a defense by limiting the array of evidence. *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); *Washington v. Texas*, [1165] 388 U.S. 14, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967).

The constitutionality of "rape-victim shield" statutes has been considered by many courts and they have been found compatible with the defendant's Sixth Amendment rights. See generally, *State v. Lemon*, R.I. , 456 A.2d 261 (1983); *People v. McKenna*, 196 Colo. 367, 585 P.2d 275 (1978). However, these proposals vary in their dual concerns of having rape victims come

forward and testify under protection from unnecessary indignities and needless probing into their respective sexual histories while preserving the well-established Sixth Amendment rights of the defendant.

HN3 The rights contained in the Sixth Amendment and sec. 10 of art. I are not absolute. For example, there is no constitutional right to introduce irrelevant, immaterial, or prejudicial evidence. *Scales v. United States*, 367 U.S. 203, 81 S. Ct. 1469, 6 L. Ed. 2d 782, reh. denied, 366 U.S. 978, 81 S. Ct. 1912, 6 L. Ed. 2d 1267 (1961); *State v. Bowden*, 113 R.I. 649, 657, 324 A.2d 631, 637 (1974). Again, the rule barring use of hearsay evidence limits the admissibility of out-of-court statements although they may be relevant. *Chambers v. Mississippi*, 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973); *State v. Santos*, 122 R.I. 799, 413 A.2d 58 (1980).

The Supreme Court has considered the defendant's right to confront the witnesses against him and state exclusionary rules in *Davis v. Alaska* and *Washington v. Texas*, both *supra*. In each case there was a proposal of a complete ban on certain types of evidence. Both times the Supreme Court ruled it improper to ignore so completely the interests of the defendant.

Davis v. Alaska involved an Alaska state statute that denied the right of a defendant to offer the juvenile record of a witness into evidence. The defendant wanted to use this evidence to impeach the prosecution's star witness by showing bias. 415 U.S. at 309, 94 S. Ct. at 1107, 39 L. Ed. 2d at 349-50.

The Court recognized the legitimacy of the state policy of protecting juveniles and their families from embarrassment. *Id.* at 319, 94 S. Ct. at 111-12, 39 L. Ed. 2d at 355. Yet they held that this consideration was "outweighed by petitioner's right to probe into the influence of possible bias in the testimony of a crucial identification witness." *Id.* The court in *State v. Myers*, 115 R.I. 583, 589-90, 350 A.2d 611, 614 (1976), took a similar position, holding that the right to attack the credibility of a witness for the prosecution through the introduction of his juvenile record falls within the constitutional guarantees of the Sixth Amendment and the guarantees of the state constitution.

Davis adhered to the rule established earlier in *Washington v. Texas*, which considered the propriety of a Texas statute forbidding the use of testimony offered by the accomplice of a defendant. The Supreme Court held that this law unduly hampered the ability of a defendant to present a defense.

"The right to offer testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense. * * * Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to protect his own witnesses to establish a defense. This right is a fundamental element of due process of law." *Washington v. Texas*, 388 U.S. at 19, 87 S. Ct. at 1923, 18 L. Ed. 2d at 1023.

These cases are positive proof that a blanket denial of a defendant's right to raise issues or call witnesses at trial can violate the Sixth Amendment. This court has made a similar determination.

Recently, in *State v. Pari*, R.I., 430 A.2d 429 (1981), the court balanced the Fifth Amendment rights of a witness with the Sixth Amendment rights of a defendant to present a defense. The defendant in *Pari* wanted a police officer to testify about prior inconsistent statements made by the prosecution's prime witness. *Id.* at 430 A.2d at 431. The officer [1166] informed the court that he would assert his Fifth Amendment privilege against self-incrimination. *Id.*

The trial justice's termination of questioning once the privilege was asserted was faulted as the court observed that

"the assertion of a privilege against self-incrimination does not end the inquiry. It is the function of the trial to determine whether the privilege is properly asserted. In this connection the trial justice cannot defer to fanciful assertions of a privilege by the witness." *Id.* at 430 A.2d at 432.

The importance of the ability of the trial court to weigh the privileged evidence against the defendant's rights has also been applied to a restrictive rape-victim shield statute. The New Hampshire statute denied any evidence of the sexual history of the victim. *State v. Howard*, 121 N.H. 53, 58, 426 A.2d 457, 460 (1981), held that this "legislative prohibition of a certain class of evidence, even for the purpose of preventing a witness from suffering embarrassment on the stand, should not limit the Sixth Amendment right of a defendant to confront the witness against him."

Here, Proposal A, absent the victim's consent, absolutely bars the introduction of a class of evidence. On the other hand, Proposal B strikes a more equitable balance between the conflicting rights involved. By providing for an in camera hearing, the trial justice will ensure that no sensitive and irrelevant evidence is presented to the trier of fact.

The balance struck in Proposal B follows the dictate of *United States v. Nixon*, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974). In *Nixon*, the President, besieged by the Watergate episode, claimed an absolute privilege for all communications he had with his aides. The Supreme Court held that when such a claim is made, confrontations with other values arise. "We find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished by production of such material for in camera inspection with all the protection that a district court will be obliged to provide." *Id.* at 706, 94 S. Ct. at 3107, 41 L. Ed. 2d at 1063; see also, *In re Farber*, 78 N.J. 259, 274, 394 A.2d 330, 337, cert. denied, 439 U.S. 997, 99 S. Ct. 598, 58 L. Ed. 2d 670 (1978).

This conclusion protects the fundamental idea that HN4 there is a "need to develop all relevant facts in the adversary system * * *. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense." *United States v. Nixon*, 418 U.S. at 709, 94 S. Ct. at 3108, 41 L. Ed. 2d at 1064.

In summary, we advise Your Honors that the absolute cloak of confidentiality provided in Proposed Amendment A violates the federal and state constitutional rights of an accused to confront his or her accusers, to obtain compulsory process, and to offer testimony. Since Proposed Amendment B strikes the requisite balance between an accused's constitutional right at trial and the sexual-assault victim's need for confidentiality in regard to any conversations between the victim and the described counselor and center, we respond to this facet of Your Honors' inquiry in the negative.

APPENDIX

1. "Rape crisis center" shall mean any publicly or privately funded agency, institution, or facility, duly incorporated under the laws of this state, having as its purpose reducing the trauma of sexual assault to sexual assault victims and their families through crisis intervention, counseling, medical and legal information, and dissemination of educational information pertaining to the crime of sexual assault.

[1167] 2. "Sexual assault counselor" shall mean a person who (a) has undergone twenty (20) or more hours of training from a rape crisis center which shall include but not be limited to the following areas: law, medicine, societal attitudes, crisis intervention, counseling techniques, and referral services; and, (b) is either a staff member, or under the supervision of a staff member, of a rape crisis center.

3. "Sexual assault victim" shall mean a person who consults a sexual assault counselor for the purpose of securing information, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault.

4. "Confidential communication" shall mean any communication between a sexual assault victim and a sexual assault counselor obtained in his or her professional capacity in the course of rendering assistance or counseling to the sexual assault victim.

SOUTH CAROLINA

STATE V. TROTTER, 322 S.C. 537 (NO RELEVANT CODE)

Excerpt:

"That Court held counseling notes, such as the ones in the case at hand, were not results or reports of physical or mental examinations, but merely notes made during a counseling session, and as such, the prosecution was not required to produce them. They also found it significant that the role of a licensed counselor is not to investigate crimes or the occurrence in question. Rather, the primary purpose of the counseling is to help the client or victim understand and resolve her feelings about events; therefore, as a practical matter, the counselor's notes are usually not likely to result in the disclosure of any material useful to the accused.

We agree that HN2 counseling sessions such as the ones in this case do not constitute physical or mental examinations. Even if they did, notes made from those examinations would not be subject to disclosure under Rule 5(a)(1)(D). HN3 A medical report is an official statement of facts concerning a patient's condition; a medical result is a conclusion derived from facts gleaned during an examination. *United States v. Dennison*, 937 F.2d 559 (10th Cir. 1991); see also *United States v. Iglesias*, 881 F.2d 1519 (9th Cir. 1989), cert. denied, 493 U.S. 1088, 110 S. Ct. 1154, 107 L. Ed. 2d 1057 (1990). HN4 There is nothing in the language of the rule that requires the prosecution to produce an expert's notes of an examination. *United States v. Marengi*, 893 F. Supp. 85 (D. Maine 1995). HN5 The notes taken during an interview, particularly a mental examination, are merely the raw data from which the expert may later draw the conclusions that are noted in a report or test result. *Id.* [Link to the text of the note](#) Accordingly, we conclude there was no violation of Rule 5(a)(1)(D) in this case.

However, even if the solicitor had failed to comply with Rule 5(a)(1)(D), the trial judge offered the proper remedy. Rule 5(d)(2), SCRCrimP, HN7 states that if a party fails to comply with Rule 5, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing the undisclosed evidence, or it may enter such other order as it deems just under the circumstances. [Link to the text of the note](#)

SOUTH DAKOTA

S.D. CODIFIED LAWS § 36-32-27 (2016)

No licensed professional counselor or licensed professional counselor — mental health or a counselor's employee may disclose any information the counselor may have acquired from persons consulting the counselor in a professional capacity that was necessary to enable the counselor to render services in a professional capacity to those persons except:

(1) With the written consent of the person or, in the case of death or disability, of the person's own personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health, or physical condition;

(2) That a licensed professional counselor or licensed professional counselor — mental health is not required to treat as confidential a communication that reveals the contemplation or the commission of a crime or a harmful act;

(3) If the person is a minor under the laws of this state and the information acquired by the licensed professional counselor or licensed professional counselor — mental health indicated that the minor was the victim or subject of a crime, the licensed professional counselor or licensed professional — mental health may be required to testify fully in any examination, trial, or other proceeding in which the commission of such a crime is the subject of inquiry;

(4) If the person waives the privilege by bringing charges against the licensed professional counselor or licensed professional counselor — mental health.

TENNESSEE

TENN. CODE ANN. § 36-3-623 (2015)

The records of domestic violence shelters and rape crisis centers shall be treated as confidential by the records custodian of such shelters or centers, unless:

- (1) The individual to whom the records pertain authorizes their release; or
- (2) A court approves a subpoena for the records, subject to such restrictions as the court may impose, including in camera review.

TENN. CODE ANN. § 10-7-504 (2015)

(17) The telephone number, address and any other information which could be used to locate the whereabouts of a domestic violence shelter, family safety center or rape crisis center may be treated as confidential by a governmental entity, and shall be treated as confidential by a utility service provider as defined in subdivision (a)(15) upon the director of the shelter, family safety center or crisis center giving written notice to the records custodian of the appropriate entity or utility that such shelter, family safety center or crisis center desires that such identifying information be maintained as confidential. The records of family safety centers shall be treated as confidential in the same manner as the records of domestic violence shelters pursuant to § 36-3-623.

TEXAS

TEX. PENAL CODE ANN. § 420 .071 TO 075 (2015)

- (a) A communication between an advocate and a survivor, or a person claiming to be a survivor, that is made in the course of providing sexual assault advocacy services to the survivor is confidential and may not be disclosed except as provided by this subchapter.
- (b) A record of the identity, personal history, or background information of a survivor or information concerning the victimization of a survivor that is created by or provided to an advocate or maintained by a sexual assault program is confidential and may not be disclosed except as provided by this subchapter.
- (c) A person who receives information from a confidential communication or record as described by this subchapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(d) This subchapter governs a confidential communication or record concerning a survivor regardless of when the survivor received the services of an advocate or sexual assault program.

§ 420.072. Exceptions.

(a) A communication, a record, or evidence that is confidential under this subchapter may be disclosed in court or in an administrative proceeding if:

(1) the proceeding is brought by the survivor against an advocate or a sexual assault program or is a criminal proceeding or a certification revocation proceeding in which disclosure is relevant to the claims or defense of the advocate or sexual assault program; or

(2) the survivor or other appropriate person consents in writing to the disclosure as provided by Section 420.073 or 420.0735, as applicable.

(b) A communication, a record, or evidence that is confidential under this subchapter may be disclosed only to:

(1) medical or law enforcement personnel if the advocate determines that there is a probability of imminent physical danger to any person for whom the communication, record, or evidence is relevant or if there is a probability of immediate mental or emotional injury to the survivor;

(2) a governmental agency if the disclosure is required or authorized by law;

(3) a qualified person to the extent necessary for a management audit, financial audit, program evaluation, or research, except that a report of the research, audit, or evaluation may not directly or indirectly identify a survivor;

(4) a person authorized to receive the disclosure as a result of written consent obtained under Section 420.073 or 420.0735; or

(5) an advocate or a person under the supervision of a counseling supervisor who is participating in the evaluation or counseling of or advocacy for the survivor.

(c) A communication, a record, or evidence that is confidential under this subchapter may not be disclosed to a parent or legal guardian of a survivor who is a minor if an advocate or a sexual assault program knows or has reason to believe that the parent or legal guardian of the survivor is a suspect in the sexual assault of the survivor.

§ 420.073. Consent for Release of Certain Confidential Information.

(a) Consent for the release of confidential information other than evidence contained in an evidence collection kit must be in writing and signed by the survivor, a parent or legal guardian if the survivor is a minor, a legal guardian if the survivor has been adjudicated incompetent to manage the survivor's personal affairs, an attorney ad litem appointed for the survivor, or a personal representative if the survivor is deceased. The written consent must specify:

(1) the information or records covered by the release;

- (2) the reason or purpose for the release; and
- (3) the person to whom the information is to be released.

(b) A survivor or other person authorized to consent may withdraw consent to the release of information by submitting a written notice of withdrawal to the person or sexual assault program to which consent was provided. Withdrawal of consent does not affect information disclosed before the date written notice of the withdrawal was received.

(c) A person who receives information made confidential by this chapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person obtained the information.

§ 420.0735. Consent for Release of Certain Evidence.

(a) Consent for the release of evidence contained in an evidence collection kit must be in writing and signed by:

- (1) the survivor, if the survivor is 14 years of age or older;
- (2) the survivor's parent or guardian or an employee of the Department of Family and Protective Services, if the survivor is younger than 14 years of age; or
- (3) the survivor's personal representative, if the survivor is deceased.

(b) For purposes of Subsection (a)(1), a written consent signed by an incapacitated person, as that term is defined by Section 601, Texas Probate Code, is effective regardless of whether the incapacitated person's guardian, guardian ad litem, or other legal agent signs the release. If the incapacitated person is unable to provide a signature and the guardian, guardian ad litem, or other legal agent is unavailable to sign the release, then the investigating law enforcement officer may sign the release.

(c) Consent for release under Subsection (a) applies only to evidence contained in an evidence collection kit and does not affect the confidentiality of any other confidential information under this chapter.

(d) The written consent must specify:

- (1) the evidence covered by the release;
- (2) the reason or purpose for the release; and
- (3) the person to whom the evidence is to be released.

(e) A survivor or other person authorized to consent may withdraw consent to the release of evidence by submitting a written notice of withdrawal to the person or sexual assault program to which consent was provided. Withdrawal of consent does not affect evidence disclosed before the date written notice of the withdrawal was received.

(f) A person who receives evidence made confidential by this chapter may not disclose the evidence except to the extent that disclosure is consistent with the authorized purposes for which the person obtained the evidence.

§ Sec. 420.074. Criminal Subpoena.

Notwithstanding any other provision of this chapter, a person shall disclose a communication, a record, or evidence that is confidential under this chapter for use in a criminal investigation or proceeding in response to a subpoena issued in accordance with law.

§ Sec. 420.075. Offense.

A person commits an offense if the person intentionally or knowingly discloses a communication, a record, or evidence that is confidential under this chapter, except as provided by this chapter. An offense under this section is a Class C misdemeanor.

UTAH

UTAH CODE ANN. § 77-38-201 (2016)

This part is known and cited as the “Confidential Communications for Sexual Assault Act.”

§ 77-38-202. Purpose.

It is the purpose of this act to enhance and promote the mental, physical and emotional recovery of victims of sexual assault and to protect the information given by victims to sexual assault counselors from being disclosed.

§ 77-38-203. Definitions.

As used in this part:

- (1) “Confidential communication” means information given to a sexual assault counselor by a victim and includes reports or working papers made in the course of the counseling relationship.
- (2) “Rape crisis center” means any office, institution, or center assisting victims of sexual assault and their families which offers crisis intervention, medical, and legal services, and counseling.
- (3) “Sexual assault counselor” means a person who is employed by or volunteers at a rape crisis center who has a minimum of 40 hours of training in counseling and assisting victims of sexual assault and who is under the supervision of the director or designee of a rape crisis center.
- (4) “Victim” means a person who has experienced a sexual assault of whatever nature including incest and rape and requests counseling or assistance regarding the mental, physical, and emotional consequences of the sexual assault.

§ 77-38-204. Disclosure of confidential communications.

The confidential communication between a victim and a sexual assault counselor is available to a third person only when:

- (1) the victim is a minor and the counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;
- (2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;
- (3) the victim is not a minor, has given consent, and the counselor believes the disclosure is necessary to accomplish the desired result of counseling; or
- (4) the counselor has an obligation under Title 62A, Chapter 4a, Child and Family Services, to report information transmitted in the confidential communication.

UTAH CODE ANN. § 78B-1-137 (2016)

There are particular 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) Neither a wife nor a husband may 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.
 - (b) This exception does not apply:
 - (i) to a civil action or proceeding by one spouse against the other;
 - (ii) to a criminal action or proceeding for a crime committed by one spouse against the other;
 - (iii) to the crime of deserting or neglecting to support a spouse or child;
 - (iv) to any civil or criminal proceeding for abuse or neglect committed against the child of either spouse; or
 - (v) if otherwise specifically provided by law.
- (2) An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or any advice given regarding the communication in the course of the professional employment. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any fact, the knowledge of which has been acquired as an employee.
- (3) A member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to either of them in their professional character in the course of discipline enjoined by the church to which they belong.

(4) A physician or surgeon cannot, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient. However, this privilege shall be waived by the patient in an action in which the patient places the patient's medical condition at issue as an element or factor of the claim or defense. Under those circumstances, a physician or surgeon who has prescribed for or treated that patient for the medical condition at issue may provide information, interviews, reports, records, statements, memoranda, or other data relating to the patient's medical condition and treatment which are placed at issue.

(5) A public officer cannot be examined as to communications made in official confidence when the public interests would suffer by the disclosure.

(6) A sexual assault counselor as defined in Section 77-38-203 cannot, without the consent of the victim, be examined in a civil or criminal proceeding as to any confidential communication as defined in Section 77-38-203 made by the victim.

VERMONT

12 VT. STAT. ANN. § 1614 (2015)

(a) (1) "Crisis worker" means an employee or volunteer who:

(A) provides direct services to victims of abuse or sexual assault for a domestic violence program or sexual assault crisis program incorporated or organized for the purpose of providing assistance, counseling or support services;

(B) has undergone 20 hours of training;

(C) works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program; and

(D) is certified by the director of the program.

(2) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of services to the victim or those reasonably necessary for the transmission of the communication.

(b) A victim receiving direct services from a crisis worker has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to the crisis worker, including any record made in the course of providing support, counseling or assistance to the victim. The crisis worker shall be presumed to have authority to claim the privilege but only on behalf of the victim.

VIRGINIA

VA. CODE ANN. § 63.2-104.1 (2016)

A. In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, programs and individuals providing services to victims of sexual or domestic violence shall protect the confidentiality and privacy of persons receiving services.

B. Except as provided in subsections C and D, programs and individuals providing services to victims of sexual or domestic violence shall not:

1. Disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through sexual or domestic violence programs; or

2. Reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of an incapacitated person as defined in § 64.2-2000, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor.

C. If release of information described in subsection B is compelled by statutory or court mandate:

1. The service provider shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and

2. The service provider shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

D. Programs and individuals providing services to victims of sexual or domestic violence may share:

1. Nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements;

2. Court generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and

3. Information necessary for law enforcement and prosecution purposes.

For purposes of this section, "programs" shall include public and not-for-profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence.

WASHINGTON

WASH. REV. CODE ANN. § 70.123.075 (2016)

(1) Client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceeding unless:

(a) A written pretrial motion is made to a court stating that discovery is requested of the client's domestic violence records;

(b) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested of the domestic violence program's records;

(c) The court reviews the domestic violence program's records in camera to determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim or the victim's children by the disclosure of the records; and

(d) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings. The court shall further order that the parties are prohibited from further dissemination of the records or parts of the records that are discoverable, and that any portion of any domestic violence program records included in the court file be sealed.

(2) For purposes of this section, "domestic violence program" means a program that provides shelter, advocacy, or counseling services for domestic violence victims.

(3) Disclosure of domestic violence program records is not a waiver of the victim's rights or privileges under statutes, rules of evidence, or common law.

(4) If disclosure of a victim's records is required by court order, the domestic violence program shall make reasonable attempts to provide notice to the recipient affected by the disclosure, and shall take steps necessary to protect the privacy and safety of the persons affected by the disclosure of the information.

WASH. REV. CODE ANN. § 70.125.065 (2016)

Records maintained by a community sexual assault program and underserved populations provider shall not be made available to any defense attorney as part of discovery in a sexual assault case unless:

(1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the community sexual assault program or underserved populations provider records;

(2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the community sexual assault program or underserved populations provider records;

(3) The court reviews the community sexual assault program or underserved populations provider records in camera to determine whether the community sexual assault program or underserved populations provider records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

WASH. REV. CODE ANN. § 5.60.060 (2016)

(1) A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any communication made by one to the other during the marriage or the domestic partnership. But this exception shall 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 one against the other, nor to a criminal action or proceeding against a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom said spouse or domestic partner is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a person sought to be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)

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

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

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

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.360 (8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in

attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

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

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

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

(6)

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

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

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

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

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

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a community sexual assault program or underserved populations provider, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim 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. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

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

(a) For purposes of this section, “domestic violence advocate” means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor’s office, or the child protective services section of the department of social and health services as defined in RCW 26.44.020.

(b) A domestic violence advocate may disclose a confidential communication without the consent of the victim 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. This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under RCW 26.44.030(1) or to disclose relevant records relating to a child as required by *RCW 26.44.030(12). Any domestic violence advocate participating in good faith in the disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this subsection, the good faith of the domestic violence advocate who disclosed the confidential communication shall be presumed.

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

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

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

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

(d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.360 (8) and (9); or

(e) To any individual if the mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW reasonably believes that

disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose.

WEST VIRGINIA

W. VA. CODE ANN. § 48-26-202 (2016)

“Advocacy” means assisting victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children, in securing rights, remedies and services, by directly providing for, or referring to public and private agencies to provide for, safety planning; shelter; housing; legal services; outreach; counseling; case management; information and referral; training; employment; child care; health care; transportation; financial literacy education, financial planning and related economic empowerment services; parenting and other educational services; and other support services.

W. VA. CODE ANN. § 48-26-701 (2016)

(a) No program licensed pursuant to this article may disclose, reveal or release or be compelled to disclose, reveal or release, any written records or personal or personally identifying information about a program participant created or maintained in providing services, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected, pursuant to this article except:

- (1) Upon written consent, or upon oral consent in emergency situations defined by legislative rule, of the person seeking or who has sought services from the program;
- (2) In any proceeding brought under sections four [§ 9-6-4] and five [§ 9-6-5], article six, chapter nine of this code or article six [§§ 49-6-1 et seq.], chapter forty-nine of this code;
- (3) As mandated by article six-a [§§ 49-6A-1 et seq.], chapter forty-nine and article six [§§ 9-6-1 et seq.], chapter nine of this code;
- (4) Pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;
- (5) To protect against a clear and substantial danger of imminent injury by a person receiving services to himself or herself or another; or (6) As authorized by the releases signed by batterer intervention and prevention program participants pursuant to the provisions of subsection (b) of this section.

(b) Batterer intervention and prevention program participants shall authorize the release of information by signing the following releases:

- (1) Allowing the provider to inform the victim or alleged victim and the victim's advocates that the batterer is participating in a batterer intervention and prevention program

with the provider and to provide information to the victim or alleged victim and her or his advocates, if necessary, for the victim's or alleged victim's safety;

(2) Allowing prior and current service providers to provide information about the batterer to the provider;

(3) Allowing the provider, for good cause, to provide information about the batterer to relevant legal entities, including courts, parole officers, probation officers, child protective services, adult protective services, law enforcement, licensed domestic violence programs, or other referral agencies;

(4) Allowing the provider to report to the court, if the participation was court ordered, and to the victim or alleged victim, if she or he requests and provides a method of notification, and to his or her advocate, any assault, failure to comply with program requirements, failure to attend the program, threat of harm by the batterer, reason for termination and recommendations for changes in the court order; and

(5) Allowing the provider to report to the victim or alleged victim, or his or her advocate, without the participant's authorization, all perceived threats of harm, the participant's failure to attend and reason for termination.

(c) Monitored parenting and exchange programs may disclose to one parent or guardian, without the permission of the other parent or guardian, any perceived threat of harm or violation of the court order or violation of the monitored parenting and exchange program rules by the other parent or guardian.

(d) No monitored parenting and exchange program may release information about the child without consent of the parent with custodial responsibility or guardian.

(e) In addition to the provisions set forth in this section, the release of a victim's personally identifying information is subject to the provisions of 42 U. S. C. § 13925(b)(2).

(f) No consent or authorization for the transmission or disclosure of confidential information is effective unless it is signed by the program participant whose information is being disclosed. Every person signing an authorization shall be given a copy.

(g) A victim of domestic violence, dating violence, sexual assault, or stalking shall not be required to provide consent to release his or her personally identifying information as a condition of eligibility for the services, nor may any personally-identifying information be shared in order to comply with federal or state reporting, evaluation, or data collection requirements: Provided, That nothing in this section prohibits a program from reporting suspected abuse or neglect, as defined by law, when the program is mandated by law to report suspected abuse or neglect.

WISCONSIN

WIS. STAT. ANN. § 905.045 (2015)

(1) DEFINITIONS. In this section:

(a) “Abusive conduct” means abuse, as defined in s. 813.122 (1) (a), of a child, as defined in s. 813.122 (1) (b), interspousal battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, as defined in s. 813.12 (1) (am), sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225 , human trafficking involving a commercial sex act under s. 940.302, or child sexual abuse under s. 948.02, 948.025, or 948.05 to 948.11.

(c) A communication or information is “confidential” if not intended to be disclosed to 3rd persons other than persons present to further the interest of the person receiving counseling, assistance, or support services, persons reasonably necessary for the transmission of the communication or information, and persons who are participating in providing counseling, assistance, or support services under the direction of a victim advocate, including family members of the person receiving counseling, assistance, or support services and members of any group of individuals with whom the person receives counseling, assistance, or support services.

(d) “Victim” means an individual who has been the subject of abusive conduct or who alleges that he or she has been the subject of abusive conduct. It is immaterial that the abusive conduct has not been reported to any government agency.

(e) “Victim advocate” means an individual who is an employee of or a volunteer for an organization the purpose of which is to provide counseling, assistance, or support services free of charge to a victim.

(2) GENERAL RULE OF PRIVILEGE. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated among the victim, a victim advocate who is acting in the scope of his or her duties as a victim advocate, and persons who are participating in providing counseling, assistance, or support services under the direction of a victim advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the victim, by the victim’s guardian or conservator, or by the victim’s personal representative if the victim is deceased. The victim advocate may claim the privilege on behalf of the victim. The victim advocate’s authority to do so is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS. Subsection (2) does not apply to any report concerning child abuse that a victim advocate is required to make under s. 48.981.

(5) RELATIONSHIP TO S. 905.04 If a communication or information that is privileged under sub. (2) is also a communication or information that is privileged under s. 905.04 (2), the provisions of s. 905.04 supersede this section with respect to that communication or information.

WYOMING

WYO. STAT. ANN. § 1-12-116 (2016)

(a) As used in this section:

(i) "Advocate" or "family violence or sexual assault advocate" means a person who is employed by or volunteers services to any family violence and sexual assault program, who is certified by the program as having undergone at least forty (40) hours of crisis advocacy training and whose work is directed and supervised under a family violence and sexual assault program;

(ii) "Confidential communication" means information transmitted in confidence between a victim and an advocate in the course of that relationship and includes all information received by, and any report, working paper or document prepared by the advocate in the course of that relationship;

(iii) "Crisis services to victims of family violence and sexual assault" means emergency and follow-up intervention, information, referral services and medical, legal and social services advocacy;

(iv) "Family violence and sexual assault program" means a program whose primary purpose is to offer shelter and crisis services to victims of family violence and sexual assault through any community facility or center;

(v) "Shelter" means a place of temporary refuge, offered on a twenty-four (24) hour, seven (7) day per week basis to victims and their children;

(vi) "Victim" means a person who has been subjected to sexual assault as defined by W.S. 6-2-301(a)(v), incest as defined by W.S. 6-4-402 or domestic abuse as defined by W.S. 35-21-102(a)(iii).

(b) Except as provided by W.S. 14-3-210, a person exempted from testifying under the provisions of W.S. 1-12-116 shall not be examined as a witness in any civil, criminal, legislative or administrative proceeding concerning the following communications and information:

(i) An advocate shall not testify concerning a confidential communication made by a victim in the course of that relationship, except the advocate:

(A) May testify:

(I) With the express consent of the victim; or

(II) If the victim voluntarily testifies, provided the advocate's testimony shall be limited to the same subject matter.

(B) May be compelled to testify if the victim is unable to testify due to death or incompetence.

(ii) Any employee of a family violence and sexual assault program who has access to confidential communication shall not testify except in those circumstances where the advocate may testify.

