Laws about Private Communications Tennessee

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Question	Answer
What relationships qualify for privileged communications and how is "privilege" defined?	Tennessee law recognizes several relevant privileges. **Crisis intervention communications**: The following definitions are relevant to the privilege for crisis intervention communications discussed below: "***Crisis intervention***" means a session at which crisis response services are rendered by a critical incident stress management team member or leader prior to, during, or after a crisis or disaster. Tenn. Code § 24-1-204(a)(1). "***Crisis response services***" means consultation, risk assessment, prevention interventions, referral, and crisis intervention services provided by a critical incident stress management team to individuals affected by crisis or disaster. Tenn. Code § 24-1-204(a)(2). "***Critical incident stress management team member or team leader***," referred to also as "***team member***," or "***team leader***," means an individual specially trained to provide crisis response services as a member or leader of an organized community or local crisis response team that holds membership in a registered critical incident stress management team. Tenn. Code § 24-1-204(a)(3). Subject to the exceptions noted in the statute (and set forth below), no person, whether a team member, team leader or group participant, providing or participating in a crisis intervention shall be required to testify or divulge any information obtained solely through such crisis intervention. Tenn. Code § 24-1-204(c). All communications between a team member or team leader providing, and a group participant or person participating in, a crisis intervention shall be considered confidential and no such person shall be required to disclose any such communication unless otherwise required by law or rule of court. Tenn. Code § 24-1-204(b). **Psychiatrist-patient**: Communications between a patient and a licensed physician when practicing as a psychiatrist in the course of and in connection with a therapeutic counseling relationship (regardless of whether the therapy is individual, joint, or group) are privileged in proceedings before judicial and quasi-judicial tribunals. Subject to the exceptions noted in the statute (and set forth below), neither the psychiatrist nor any member of the staff may testify or be compelled to testify as to such communications or otherwise reveal them in such proceedings without consent of the patient. Tenn. Code § 24-1-207(a). **Licensed psychologists, licensed psychological examiners, certified psychological assistants, or**

	certified psychological testing technicians: The confidential relations and communications between licensed psychologist, licensed psychological examiner, licensed senior psychological examiner, certified psychological assistant, or certified psychological testing technician and client are placed upon the same basis as those provided by law between attorney and client; and nothing in this chapter shall be construed to require any such privileged communication to be disclosed. Tenn. Code § 63-11-213. **Licensed marital and family therapist, licensed professional counselor, and certified clinical pastoral therapist**: The confidential relations and communications between licensed marital and family therapists, licensed professional counselors or certified clinical pastoral therapists and clients are placed upon the same basis as those provided by law between attorney and client, and nothing in this part of the Tennessee Code shall be construed to require any such privileged communication to be disclosed. However, nothing contained within this section of the Tennessee Code shall be construed to prevent disclosures of confidential communications in proceedings arising under title 37, chapter 1, part 4 concerning mandatory child abuse reports. Tenn. Code § 63-22-114. **Licensed social worker**: The confidential relations and communications between a client and licensed social worker as defined in this chapter of the Tennessee Code, are placed upon the same basis as those provided by law between licensed psychologists, licensed psychological examiners, licensed senior psychological examiners, certified psychological assistants and client, and nothing in this chapter shall be construed to require any such privileged communication to be disclosed. However, this shall not be construed to prevent disclosure of confidential communications in proceedings arising under title 37, chapter 1, part 4, concerning mandatory child abuse reports. Tenn. Code § 63-23-109(a), (b). In addition, there are confidentiality provisions, including one specifying that the records of domestic violence shelters, human trafficking service providers, and rape crisis centers must be kept confidential by the shelters, providers, and centers ("Support Centers"). Tenn. Code § 36-3-623.
Is the privilege qualified or absolute?	Qualified by statute.
Who holds the privilege and has the right to waive it? What are the standards for waiver of the privilege?	**Holder of Privilege**: • **Psychiatrist-patient**: The patient holds the privilege. *See Long v. Coopertown*, No. 3:09–cv–00900, 2011 WL 253173, at *3 (M.D. Tenn. Jan. 25, 2011). • **Support Centers (confidentiality)**: The individual to whom the confidential records of domestic violence shelters, rape crisis centers, and human trafficking service providers pertain holds the right. Tenn. Code § 36-3-623(a)(1). **Waiver of Privilege:** • **Psychiatrist-patient**: The patient can waive the psychotherapist-patient privilege, including by placing his/her mental health at issue in a case. *See Long v. Coopertown*, No. 3:09–cv–00900, 2011 WL 253173, at *3 (M.D. Tenn. Jan. 25, 2011). • **Licensed psychologists/psychological examiners or certified psychological assistants**: The

	psychologist-patient privilege (Tenn. Code § 63-11-213) is not absolute and may be waived by the patient. *Bottorff v. Bottorff*, No. M201900676COAR3CV, 2020 WL 2764414, at *9 (Tenn. Ct. App. May 27, 2020). The *Bottorff* court explained that "if the patient 'divulges the communications he seeks to protect, then he has waived' the privilege.'" *Id.* (citations omitted). • **Support Centers (confidentiality)**: The individual to whom the records pertain may authorize their release. Tenn. Code § 36-3-623(a)(1). Also, each shelter program is required to have its own written policy specifying the procedure for releasing a program participant's information, but in all cases (except the exceptions listed below) prior written consent from the program participant is required. Tenn. Comp. R. & Regs. 0620-03-06-.07(5)(a).
Are there any exceptions to the privilege?	• **Crisis intervention communications**: The testimonial privilege described in Tenn. Code § 24-1-204(c) shall not apply if (1) the communication indicates the existence of a danger to the individual who receives crisis response services or to any other person or persons; (2) the communication indicates the existence of past or present child abuse or neglect of the individual, abuse of an adult as defined in title 71, chapter 6 or family violence as defined in title 71, chapter 6, part 2; (3) the communication indicates the existence of past or present acts constituting an intentional tort or crime; provided, that the applicable statute of limitation has not expired on the act indicated; or (4) all parties involved in the crisis intervention, including the individual or individuals who received crisis response services, expressly waive the privilege and consent to the testimony. Tenn. Code § 24-1-204(d). • **Psychiatrist-patient**: The privilege does not apply in proceedings (1) in which the patient raises the issue of the patient's mental or emotional condition; (2) for which the psychiatrist was ordered by the tribunal to examine the patient if the patient was advised that communications to the psychiatrist would not be privileged, but testimony as to the communications is admissible only on issues involving the patient's mental or emotional condition; and (3) to involuntarily hospitalize the patient in accordance with statute, if the psychiatrist decides that the patient is in need of care and treatment in a residential facility. Unless otherwise ordered by the court, the exception is limited to disclosures necessary to establish that the patient poses a substantial likelihood of serious harm requiring involuntary hospitalization. Tenn. Code § 24-1-207(a)(1)-(3). Additionally, privileged communications between a patient and a licensed physician when practicing as a psychiatrist in the course of and in connection with a therapeutic counseling relationship, regardless of whether the therapy is individual, joint, or group, may be disclosed without consent of the patient if: (A) the patient has made an actual threat to physically harm an identifiable victim or victims; and (B) the treating psychiatrist makes a clinical judgment that the patient has the apparent capability to commit such an act and that it is more likely than not that in the near future the patient will carry out the threat. The psychiatrist may disclose patient communications to the extent necessary to warn or protect any potential victim. No civil or criminal action shall be instituted, nor shall liability be imposed due to the disclosure of otherwise confidential communications by a psychiatrist pursuant to this subsection. Tenn. Code § 24-1-207(c). Finally, a separate statute expressly provides that the psychiatrist-patient privilege is not a ground for

excluding evidence regarding harm or the cause of harm to a child in any dependency and neglect proceeding resulting from a report of such harm under § 37-1-403 or a criminal prosecution for severe child abuse. Tenn. Code § 37-1-411.

- **Licensed psychologists/psychological examiners or certified psychological assistants**: A separate statute expressly provides that the psychologist-patient privilege is not a ground for excluding evidence regarding harm or the cause of harm to a child in any dependency and neglect proceeding resulting from a report of such harm under § 37-1-403 or a criminal prosecution for severe child abuse. Tenn. Code § 37-1-411. Note also that "the psychologist-patient privilege 'is not designed to specifically protect [a] psychotherapist's own opinion, observations, diagnosis, or treatment alternatives, particularly when such information finds its way beyond [a] patient's personal file.'" *Bottorff v. Bottorff*, No. M201900676COAR3CV, 2020 WL 2764414, at *9 (Tenn. Ct. App. May 27, 2020) (citations omitted).
- **Licensed marital and family therapist, licensed professional counselor, and certified clinical pastoral therapist**: The privilege does not prevent disclosures of confidential communications in proceedings arising under title 37, chapter 1, part 4 concerning mandatory child abuse reports. Tenn. Code § 63-22-114.
- **Licensed social workers**: The privilege does not prevent disclosure of confidential communications in proceedings arising under title 37, chapter 1, part 4, concerning mandatory child abuse reports. Tenn. Code § 63-23-109(b).
- **Support Centers (confidentiality)**: The records of domestic violence shelters, rape crisis centers, and human trafficking service providers may be disclosed if a court approves a subpoena for the records, subject to such restrictions as the court may impose. Tenn. Code § 36-3-623(a)(2).

Under Tennessee law, a family violence shelter is a shelter (Support Center) where only family violence victims, their children, and dependents can seek temporary refuge 24 hours a day, seven days a week, 365 days a year. This definition includes a "program" which operates a shelter under which safe homes or commercial lodgings are used as a refuge for family violence victims, their children and dependents. Shelter facilities must have confidential locations and be located in separate facilities that exclusively serve family violence victims and their dependents. These shelter programs are required to have written rules, regulations and statement of rights which must be given to shelter residents and made available to non-residents as appropriate as part of the intake process. The written rules for each shelter program must include a confidentiality policy that specifies procedures regarding release of program participant information, to include who may release information, what types of information may be released, to what resources the information may be released, and under what conditions information may be released. The written policy must also provide for confidentiality of a shelter program residents' location. Tenn. Comp. R. & Regs. 0620-03-06-.04

Information about a program participant can be disclosed without prior written consent under four conditions:

1. Disclosure for medical emergency;
2. Disclosure to legal guardian of a program participant who has been legally declared incompetent;

	3. Disclosure for reporting of child abuse or adult abuse; and 4. Disclosure required by subpoena or for monitoring and auditing purposes. Tenn. Comp. R. & Regs. 0620-03-06-.07(5)(b). • **Exceptions to privilege for child sexual abuse.** The privileged quality of communication between husband and wife and between any professional person and the professional person's patient or client, and any other privileged communication, except that between attorney and client, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any situation involving known or suspected child sexual abuse and shall not constitute grounds for failure to report as required, failure to cooperate with the department, or failure to give evidence in any judicial proceeding relating to child sexual abuse. Tenn. Code § **37-1-614**
When and how may a judge review case documents in private?	**Psychiatrist-patient**: When personally identifiable patient information is to be disclosed in a judicial or quasi-judicial proceeding or any other public proceeding, the authority conducting the proceeding shall take reasonable steps to prevent unnecessary exposure of such information to the public and to further the policy of protecting the right of privacy. Such steps may include screening of questions in prehearing conferences and in camera inspection of papers. Tenn. Code § 24-1-207(b). **Support Centers (Confidentiality)**: A court may approve a subpoena for confidential records subject to such restrictions as the court may impose including, but not limited to, in camera review (i.e., private review by the judge). Tenn. Code § 36-3-623(a)(2).
What other definitions are important to know?	N/A
Anything else I should know?	The privilege granted in this statute is somewhat limited, as it applies only to the “records” of rape crisis centers, a term which is undefined in the statute, and does not mention whether a rape crisis counselor can be compelled to testify as a witness. Complete privilege does not exist when it comes to child-victims of sexual assault/abuse. Adults who have knowledge of or are called upon to render aid to any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition shall report such harm immediately if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect or that, on the basis of available information, reasonably appears to have been caused by brutality, abuse or neglect. Tenn. Code § 37-1-403(a)(1)-(2). If any such person knows or has reasonable cause to suspect that a child has been sexually abused, the person shall report such information in accordance with § 37-1-605, relative to the sexual abuse of children, regardless of whether such person knows or believes that the child has sustained any apparent injury as a result of such abuse. Tenn. Code § 37-1-403(a)(3). Any records relating thereto can be released to the child-victim’s parent or guardian upon request (as long as they are not the perpetrator), but the person in receipt of such records must maintain the confidentiality of said records. Tenn. Code § 10-7-504. The reports of harm made and the identity of the reporter are confidential, unless

	a juvenile court in which an investigation report is filed in its discretion determines the testimony of the person reporting to be material to an indictment or conviction. Tenn. Code § 37-1-409(a)(1). Nothing shall prevent the department from sharing information with the district attorney general and law enforcement personnel for the purpose of cooperating with a law enforcement investigation. Information from departmental records that is shared with the district attorney general or law enforcement by the department shall remain confidential to the same extent that information not shared with the district attorney general and law enforcement is confidential. Unless otherwise ordered by a court, or to the extent that such information is used for criminal prosecution, or to the extent required under the Tennessee rules of criminal procedure after criminal charges have been filed, any portion of shared information that does not become part of a court record shall remain confidential to the same extent as information not shared by the department remains confidential. Tenn. Code § 37-1-409 Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in Tenn. Code § 37-1-612 set forth below. Tenn. Code § 37-1-605 To protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records concerning reports of child sexual abuse, including files, reports, records, communications and working papers related to investigations or providing services; video tapes; reports made to the abuse registry and to local offices of the department; and all records generated as a result of such processes and reports, shall be confidential and exempt from other provisions of law, and shall not be disclosed, except as specifically authorized by other provisions in this chapter. Tenn. Code § **37-1-612(a)**
Statutory citation(s):	Tenn. Code § 24-1-204 Tenn. Code § 24-1-207 Tenn. Code § 37-1-411 Tenn. Code § 37-1-612 Tenn. Code § 37-1-614 Tenn. Code § 36-3-623

	Tenn. Code § 63-23-109 Tenn. Code § 63-22-114 Tenn. Code § 37-1-605 Tenn. Code § 36-3-601 Tenn. Code § 37-1-403 Tenn. Code § 10-7-504 Tenn. Code § 37-1-409 Tenn. Comp. R. & Regs. 0620-03-06-.07 Tenn. Comp. R. & Regs. 0620-03-06-.04