

# Laws about Private Communications Alaska

*Last Updated: March 2020*

Question	Answer
What relationships qualify for privileged communications and how is "privilege" defined?	<ul style="list-style-type: none"> <li>• A victim or victim counselor cannot be compelled, without appropriate consent, to testify or produce records concerning confidential communications for any purpose in any criminal, civil, legislative, or administrative proceeding. Alaska Stat. §18.66.200(a)</li> <li>• A victim or victim counselor cannot be compelled to provide testimony that would identify the name, address, location, or telephone number of a safe house or abuse shelter or other facility that provided temporary emergency housing to the victim of the offense unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case. Alaska Stat. § 18.66.200(c)</li> <li>• A victim or victim counselor cannot be compelled to give testimony that would identify 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. Alaska Stat. § 18.66.200(c)</li> </ul>
Is the privilege qualified or absolute?	Qualified by statute and judicial decision.
Who holds the privilege and has the right to waive it? What are the standards for waiver of the privilege?	<p><b>Holder of Privilege:</b></p> <ul style="list-style-type: none"> <li>• Victim. Alaska Stat. § 18.66.220(a)</li> <li>• Victim counselor may only waive the privilege with consent of the victim or parent, legal guardian, or guardian ad litem of the victim. Alaska Stat. § 18.66.220(b)</li> </ul> <p><b>Waiver of Privilege:</b></p> <ul style="list-style-type: none"> <li>• A victim does not waive the privilege by testifying in court about the crime. Alaska Stat. § 18.66.220(a)</li> <li>• However, if a victim partially discloses the contents of a confidential communication in the course of testifying, either party may request the court to rule that the privilege be waived to the extent that the privilege applies to that portion of the communication. Alaska Stat. § 18.66.220(a)</li> <li>• A waiver applies only to the extent necessary to require a witness to respond to counsel's questions regarding confidential communications that were disclosed only to the extent relevant to the facts of the case. Alaska Stat. § 18.66.220(a)</li> <li>• A minor may waive the privilege 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. Alaska Stat. § 18.66.200(d)(1)</li> </ul>

	<ul style="list-style-type: none"> <li>• Privilege can be waived by the victim's parent, legal guardian, or guardian ad litem when the victim is a minor or incompetent to testify. Alaska Stat. §18.66.200(a)(2)</li> <li>• A parent or legal guardian may not waive the privilege for a minor victim if: <ul style="list-style-type: none"> <li>• The parent or legal guardian has been charged with a crime against the minor;</li> <li>• A protective order or restraining order has been entered against the parent or legal guardian on behalf of the minor; or</li> <li>• The interests of the parent or legal guardian are otherwise adverse to those of the minor with respect to the waiver of privilege. Alaska Stat. § 18.66.200(d)(2)</li> </ul> </li> </ul>
Are there any exceptions to the privilege?	<p>Alaska Stat. § 18.66.210(1)-(8)</p> <ul style="list-style-type: none"> <li>• Mandatory reporting of child abuse or neglect.</li> <li>• Evidence victim is about to commit a crime.</li> <li>• Proceeding occurs after victim's death.</li> <li>• Communication is relevant to an issue of breach by the victim or counselor of a duty arising out of the victim-victim counselor relationship.</li> <li>• Communication is admissible under the excited utterance hearsay exception in the Alaska Rules of Evidence.</li> <li>• Services of the victim counselor were sought in order to enable anyone to commit a crime or escape detection or apprehension after the commission of the crime.</li> <li>• Proceeding concerns whether to place a child into the custody of the state.</li> <li>• Victim is charged with a crime against a minor.</li> <li>• Victim is charged with a crime and the physical, mental, or emotional condition of the victim is raised as a defense.</li> </ul>
When and how may a judge review case documents in private?	<p>Provided for by judicial decision</p> <ul style="list-style-type: none"> <li>• <i>Katelnikoff v. State</i>, No. A-6848, 1999 WL 396885, at *3-4 (Alaska Ct. App. June 16, 1999) <ul style="list-style-type: none"> <li>• A defendant must show good cause for piercing the privilege. The defendant's general desire to "fish" the privileged records for favorable information is not a sufficient reason to pierce the privilege.</li> <li>• In camera examination (i.e. private review by the judge) of a sexual assault victim is necessary only upon a threshold showing of good cause.</li> <li>• Defendant must present the court with a colorable ground to believe that character evidence favorable to the defense actually does exist in the privileged records in order to warrant an in camera review of those records</li> </ul> </li> <li>• <i>Russell v. State</i>, No. A-7618, 2002 WL 31667313, at *21 (Alaska Ct. App. Nov. 27, 2002) <ul style="list-style-type: none"> <li>Defendant must demonstrate good cause to believe that the privileged records contain relevant impeachment evidence.</li> <li>• Defendant must show that he is not simply engaging in a fishing expedition.</li> </ul> </li> </ul>

What other definitions are important to know?

**Appropriate Consent:**

- The consent of the victim with respect to the testimony of (i) an adult victim; and (ii) a victim counselor when the victim is an adult.
- The consent of the victim's parent, legal guardian, or guardian ad litem with respect to the testimony of (i) a victim who is a minor or incompetent to testify; and (ii) a victim counselor when the victim is a minor or incompetent to testify. Alaska Stat. § 18.66.200(a)(1)-(2)

**Confidential Communication:**

- 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. Alaska Stat. § 18.66.250(1)

**Sexual Assault:**

- Any sexual offense under specified sections of Alaska law (Alaska Stat. § 11.41.410-11.41.470) or an offense in another jurisdiction whose elements are similar to those sexual offenses. Alaska Stat. § 18.66.250(2)

**Victim:**

- A person who consults a victim counselor for assistance in overcoming adverse effects of sexual assault or domestic violence. Alaska Stat. § 18.66.250(3)

**Victim Counseling:**

- Support, assistance, advice, or treatment to alleviate the adverse effects of a sexual assault or domestic violence on the victim. Alaska Stat. § 18.66.250(4)

**Victim Counseling Center:**

- A private organization, an organization operated by or contracted by a branch of the U.S. armed forces, or local government agency that has, as one of its primary purposes, the provision of direct services to victims for trauma resulting from a sexual assault or domestic violence that is not affiliated with a law enforcement agency or a prosecutor's office, and is not on contract with the state to provide services. Alaska Stat. § 18.66.250(5)

**Victim Counselor:**

- An employee or supervised volunteer of a victim counseling center that provides counseling to victims.
  - Who has undergone a minimum of 40 hours of training in sexual assault or domestic violence, crisis intervention, victim support, treatment, and other related areas; or
  - Whose duties include victim counseling. Alaska Stat. § 18.66.250(6)

	<b>Training Requirements for Victim Counselors:</b> <ul style="list-style-type: none"> <li>• 40 hours of training in sexual assault, crisis intervention, victim support, treatment, and other related areas, or a person whose duties include victim counseling. Alaska Stat. § 18.66.250(6)(A)</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• The claim of privilege 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. Alaska Stat. §18.66.230(a)</li> <li>• In jury cases, proceedings should be conducted to facilitate the making of a claim of privilege without the knowledge of the jury. Alaska Stat. § 18.66.230(b)</li> <li>• Upon request, a party against whom a jury might draw an adverse inference from a claim of privilege is entitled to a jury instruction stating that an inference may not be drawn from the claim of privilege. Alaska Stat. § 18.66.230(c)</li> </ul>
Statutory citation(s):	Alaska Stat. §§ 18.66.200 to .250