

Laws about Private Communications Georgia

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Question	Answer
<p>What relationships qualify for privileged communications and how is "privilege" defined?</p>	<p>Confidentiality between an agent and a victim</p> <ul style="list-style-type: none"> • An agent of a program cannot be compelled to disclose any evidence in a judicial proceeding that the agent acquired while providing services to a victim, so long as such evidence was necessary to enable the agent to render services, unless the privilege has been waived or a court determines otherwise by a preponderance of the evidence (as specified in the in camera review section below). Ga. Code Ann. § 24-5-509(b) • The mere presence of a third party during communications between an agent and a victim does not void the privilege, provided the communications occurred in a setting when or where the victim had a reasonable expectation of privacy. Ga. Code Ann. § 24-5-509(f)
<p>Is the privilege qualified or absolute?</p>	<p>Qualified by statute.</p>
<p>Who holds the privilege and has the right to waive it? What are the standards for waiver of the privilege?</p>	<p>Holder of Privilege:</p> <ul style="list-style-type: none"> • Victim. Ga. Code Ann. § 24-5-509(b) • If the victim is or has been judicially determined to be incompetent, the victim's guardian may waive the victim's privilege. Ga. Code Ann. § 24-5-509(g) • The privilege terminates upon the death of the victim. Ga. Code Ann. § 24-5-509(d) <p>Waiver of Privilege:</p> <ul style="list-style-type: none"> • Victim can waive the privilege. Ga. Code Ann. § 24-5-509(b)
<p>Are there any exceptions to the privilege?</p>	<ul style="list-style-type: none"> • The agent was a witness or party to the family violence or sexual assault or other crime that occurred in the agent's presence. Ga. Code Ann. § 24-5-509(e) • Court makes a determination after a pre-trial hearing or an in camera review (i.e. private review by the judge, as described below) that the evidence sought is subject to disclosure (based on one of the conditions noted below in the in camera review section). Ga. Code Ann. § 24-5-509(c) <ul style="list-style-type: none"> • In criminal proceedings, if a party intends to compel evidence, it must file and serve notice of its intention on the opposing party at least ten days prior to trial, or as otherwise directed by the court. The court will then hold a pretrial hearing and determine the issue. Ga. Code Ann. § 24-5-509(h)

When and how may a judge review case documents in private?

Provided for by statute. Ga. Code Ann. § 24-5-509(b)-(c)

- An agent can be compelled to disclose evidence if the court makes a determination based on a preponderance of the evidence at a pretrial hearing or hearing outside the presence of a jury that one of the following is present:
- In a civil proceeding if it is determined by a preponderance of the evidence that:
 - the evidence sought is material and relevant to factual issues to be determined;
 - the evidence is not sought solely for the purpose of referring to the victim's character for truthfulness or untruthfulness. However, this exception does not apply to evidence of a victim's prior inconsistent statements;
 - the evidence sought is not available or already obtained by the party seeking disclosure; or
 - the probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.
- In a criminal proceeding if it is determined by a preponderance of the evidence that:
 - 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;
 - the evidence is not sought solely for the purpose of referring to the victim's character for truthfulness or untruthfulness. However, this exception does not apply to evidence of a victim's prior inconsistent statements;
 - the evidence sought is not available or already obtained by the party seeking disclosure; or
 - the probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.
- In the case of a civil or a criminal proceeding, if a court makes a determination that the evidence sought may be subject to disclosure (based on one of the conditions above), the court under seal is required to examine the evidence in camera (i.e. private review by the judge), and may allow disclosure of those portions of the evidence that the court finds are subject to disclosure. Ga. Code Ann. § 24-5-509(c)

What other definitions are important to know?

Agent:

- A current or former employee or volunteer of a program who has successfully completed the minimum training requirements (see below for minimum training requirements). Ga. Code Ann. § 24-5-509(a)(1)

Program:

- A family violence shelter or rape crisis center. Ga. Code Ann. § 24-5-509(a)(7)

Rape Crisis Center:

- 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. Ga. Code Ann. § 24-5-509(a)(8)

Services

- Any services provided to a victim by a program including but not limited to crisis hotlines, 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. The term "services" as used here does not include mandatory reporting of child abuse or the abuse of disabled or elderly persons. Ga. Code Ann. § 24-5-509(a)(9)

Sexual Assault Victim:

- 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. Ga. Code Ann. § 24-5-509(a)(11)

Training Requirements for Trained Agents:

- 20 hours of training in family violence and sexual assault intervention and prevention at a Criminal Justice Coordinating Council certified victim assistance program. Ga. Code Ann. § 24-5-509(a)(1)

Anything else I should know?

N/A

Statutory citation(s):

Ga. Code Ann., § 24-5-509