

Laws about Private Communications

Maine

Last Updated: April 2023

Question	Answer
What relationships qualify for privileged communications and how is "privilege" defined?	<p>Confidentiality between sexual assault counselor/ advocate/rape crisis center and victim</p> <ul style="list-style-type: none"> • No sexual assault counselor may be required to testify in any civil or criminal proceeding about any information acquired during the provision of sexual assault counseling services without the consent of the victim of the sexual assault. Me. Rev. Stat. tit. 16, § 53-A(2) • 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. Me. Rev. Stat. tit. 16, § 53-A(2)
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?	<p>Holder of Privilege:</p> <ul style="list-style-type: none"> • Only the victim may waive the privilege. Me. Rev. Stat. tit. 16, § 53-A(2) <p>Waiver of Privilege: No procedure specified.</p>
Are there any exceptions to the privilege?	<ul style="list-style-type: none"> • Mandatory reporting if a sexual assault counselor (when acting in a professional capacity) knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred. Me. Rev. Stat. tit. 22, § 4011-A <ul style="list-style-type: none"> • <i>However</i>, a mandated report of suspected abuse by a provider does not create a waiver of the confidentiality of records by a patient. <i>State v. Olah</i>, 184 A.3d 360 (Me. 2018). • Consent of the victim. Me. Rev. Stat. tit. 16, § 53-A(2) • Judicial determination of necessity. Exception relates to information communicated to or otherwise learned by a sexual assault counselor in connection with the provision of sexual assault counseling services. Applies if court determines that disclosure is necessary to the proper administration of justice. Me. Rev. Stat. tit. 16, § 53-A(2)
When and how may a judge review case documents in private?	<p>Provided for by statute.</p> <ul style="list-style-type: none"> • When a court deems disclosure of privileged information necessary in order to achieve justice, the court may require disclosure of any information privileged under this statute. Me. Rev. Stat. tit. 16, § 53-A(2) <p><i>State v. Watson</i>, 726 A.2d 214, 216 (Me. 1999)</p>

	<ul style="list-style-type: none"> • Although this case deals with the social worker-client privilege, the portion of that privilege that allows for in camera review (i.e. private review by the judge) of the privileged records is substantially similar to the same provision in the sexual assault counselor-victim privilege discussed here. • A party seeking in camera review of privileged records and communications must make a preliminary showing to the court that such a motion is justified. • The motion must be more than a simple fishing expedition into privileged records. • The decision whether to grant a motion to produce privileged records and communications rests in the discretion of the trial court.
<p>What other definitions are important to know?</p>	<p>Rape Crisis Center:</p> <ul style="list-style-type: none"> • Any public or private agency, institution or facility in the state that provides crisis intervention, counseling, medical and legal information, and education about sexual assault to sexual assault victims and their families. Maine. Me. Rev. Stat. tit. 16, § 53-A(1)(A) • Must be in Maine. Me. Rev. Stat. tit. 16, § 53-A(1)(A) <p>Sexual Assault Counselor:</p> <ul style="list-style-type: none"> • A person who is (1) a paid or unpaid staff member of a rape crisis center, or a person under the supervision of a staff member of a rape crisis center and (2) has undergone training from a rape crisis center which must include, but not be limited to, law medicine, societal attitudes, crisis intervention, counseling techniques, and referral services. Me. Rev. Stat. tit. 16, § 53-A (1)(B)(1)-(2) <p>Training Requirements for Sexual Assault Counselors:</p> <ul style="list-style-type: none"> • Training from a rape crisis center must include, but not be limited to, law, medicine, societal attitudes, crisis intervention, counseling techniques, and referral services. Me. Rev. Stat. tit. 16, § 53-A(1)(B)(1)
<p>Anything else I should know?</p>	<ul style="list-style-type: none"> • Because a rape crisis center must be an in-state entity in order for this privilege to apply, communication between RAINN’s Online Hotline counselors and victims would most likely not be privileged under the Maine confidentiality statute. • Separate provision (Me. Rev. Stat. tit. 16, § 53-B) addresses privileged communications between an advocate and victim of domestic or family violence.
<p>Statutory citation(s):</p>	<p>Me. Rev. Stat. tit. 16, § 53-A</p>