

Laws about Private Communications Minnesota

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Question	Answer
What relationships qualify for privileged communications and how is "privilege" defined?	Sexual assault counselors may not disclose any opinion or information received from or about the victim without consent of the victim. Minn. Stat. § 595.02, subdivision 1(k).
Is the privilege qualified or absolute?	Absolute
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 victim may give consent to disclosure. Minn. Stat. § 595.02, subdivision 1(k) <p>Waiver of Privilege: No procedure specified.</p>
Are there any exceptions to the privilege?	A sexual assault 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. Minn. Stat. § 595.02, subdivision 1(k)
When and how may a judge review case documents in private?	<p>Provided for by statute.</p> <ul style="list-style-type: none"> • Sexual assault counselors may be compelled to disclose information in investigations or proceedings related to neglect or termination of parental rights. <ul style="list-style-type: none"> • Court must determine that good cause exists for disclosure of privileged information. • In determining whether to compel disclosure, the court must weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. • There is no specific mention within the statute that this review will be “in camera.” Minn. Stat. § 595.02, subdivision 1(k) • <i>In re Hope Coalition, 977 N.W.2d 651 (Minn. 2022)</i> <ul style="list-style-type: none"> • <i>Defendant sought in camera review of records from sexual assault counseling organization.</i> • <i>Court held that the plain language of the privilege prohibits disclosure of records without consent of the victim even for in camera review unless the matter involves neglect or termination of parental rights.</i> • <i>Court held that application of the sexual-assault-counselor privilege did not violate defendant’s constitutional rights to due process or to confront his accuser.</i> • <i>Court distinguished in camera review of private or confidential records using the</i>

	<p><i>rules set out in Paradee from a request for review of privileged records.</i></p> <ul style="list-style-type: none"> • <i>State v. Caldwell</i>, 2024 WL 3564546 (Minn. Ct. App., July 29, 2024) <ul style="list-style-type: none"> • Absolute privilege protecting against disclosure of records without victim’s consent prevents the defendant from asking questions such as whether the prosecution asked the victim to provide a waiver and whether the victim declined to provide a waiver. • The court concluded that a contrary ruling “might chill the assertion of the privilege and subject a witness to unfair attacks on the witness’s credibility.” • Both parties’ interests in ensuring a fair trial can be protected by an in camera review of confidential records to determine whether they contain favorable and material information. Defense counsel does not need access to the records. <i>State v. Paradee</i>, 403 N.W.2d 640 (Minn. 1987)
<p>What other definitions are important to know?</p>	<p>Sexual Assault Counselor:</p> <ul style="list-style-type: none"> • 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. Minn. Stat. § 595.02, subdivision 1(k) <p>Training Requirements for Sexual Assault Counselors:</p> <p>At least 40 hours of crisis counseling training. Minn. Stat. § 595.02, subdivision 1(k)</p>
<p>Anything else I should know?</p>	<p>Nothing in Minn. Stat. § 595.02, subdivision 1(k) exempts sexual assault counselors from compliance with § 626.557 (Reporting of maltreatment of vulnerable adults) and chapter 260E (Reporting of maltreatment of minors).</p> <p>If a defendant prevails on a motion for review of records from a sexual assault counselor, the proper method to obtain production of the records to the court is the issuance of a subpoena to the record holder. <i>In re Program to Aid Victims of Sexual Assault</i>, 943 N.W. 2d 673 (Minn. App. 2020)</p>
<p>Statutory citation(s):</p>	<p>Minn. Stat. § 595.02</p>