

Laws about Private Communications New Jersey

Last Updated: April 2023

Question	Answer
<p>What relationships qualify for privileged communications and how is "privilege" defined?</p>	<p>N.J. Stat. Ann. § 2A:84A-22.15</p> <ul style="list-style-type: none"> • A victim counselor has a privilege not to be examined as a witness in a civil or criminal proceeding with regard to any confidential communication. • A victim counselor or victim cannot be compelled to provide testimony that would identify the name, address, location, or telephone number of a shelter that provided temporary emergency shelter to the victim of the offense that is the subject of the proceeding, unless the facility is a party to the proceeding. • <i>State v. J.G.</i>, 619 A.2d 232, 236 (N.J. Super. Ct. App. Div. 1993) <ul style="list-style-type: none"> • The privilege is broad enough to encompass both direct and indirect victims of crimes of violence. • The person whose statements are protected under this privilege does not have to be the individual upon whom the crime was perpetrated.
<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"> • Privilege must be claimed by the victim counselor, unless otherwise instructed by prior written consent of the victim. N.J. Stat. Ann. § 2A:84A-22.15 <p>Waiver of Privilege: N.J. Stat. Ann. § 2A:84A-22.15</p> <ul style="list-style-type: none"> • Waiver must be in writing, and must be given prior to a proceeding. • Victim, an incompetent victim's guardian, or a deceased victim's executor or administrator may waive the privilege, unless the victim's guardian, executor or administrator is the defendant or has an interest adverse to the victim. • Privilege may be knowingly waived by a juvenile. • If a minor victim is incapable of knowingly waiving the privilege, the victim's parent or guardian may waive the privilege, unless the victim's parent or guardian is the defendant or has an interest adverse to the victim. • <i>State v. J.G.</i>, 619 A.2d 232, 238 (N.J. Super. Ct. App. Div. 1993) <ul style="list-style-type: none"> • The power to waive the privilege rests solely with the victim. • Mistaken release of the confidential files by the victim counselor does not constitute a waiver of the privilege.

	<ul style="list-style-type: none"> • Parent could not waive child’s victim-counselor privilege when parent had interest adverse to the child. <i>State v. C.E.L.</i>, No. A-5783-13T1, 2018 WL 4167729, at *21 (N.J. Super. Ct. App. Div. Aug. 31, 2018)
<p>Are there any exceptions to the privilege?</p>	<ul style="list-style-type: none"> • Disclosure to a defendant of statements or information given by a victim to a victim-witness coordinator, where such disclosure is required by the State or Federal Constitution. N.J. Stat. Ann. § 2A:84A-22.16 • A person waives his or her right or privilege to refuse to disclose or to prevent another from disclosing a specified matter if he or she or any other person while the holder thereof has (a) contracted with anyone not to claim the privilege or (b) without coercion and with knowledge of his or her right or privilege, made disclosure of any part of the privileged matter or consented to such disclosure by anyone. N.J. Stat. Ann. § 2A:84A-29; NJ R EVID N.J.R.E. 530
<p>When and how may a judge review case documents in private?</p>	<p>Generally prohibited</p> <ul style="list-style-type: none"> • <i>State v. J.G.</i>, 619 A.2d 232, 237 (N.J. Super. Ct. App. Div. 1993) <ul style="list-style-type: none"> • Made the victim-counselor privilege absolute and prohibited any in camera inspection (i.e. private review by the judge) of records privileged under this statute absent “compelling circumstances.” • Even a preliminary disclosure of the victim counselor’s records intrudes upon the victim’s rights and dilutes the absolute nature of the statutory privilege. • <i>State v. Chambers</i>, 288 A.3d 12 (N.J. 2023) <ul style="list-style-type: none"> • Heightened discovery standards govern a defendant’s motion for pre-incident mental health records from a sexual assault victim. • The defense may be entitled to request an in camera inspection by the judge of pre-incident mental health records if it can establish by a preponderance of the evidence: <ul style="list-style-type: none"> • a substantial, particularized need for the records; • that the alleged mental illness is both relevant and material to a victim’s ability to perceive, recall or recount the alleged assault or a proclivity to imagine or fabricate it; and • (3) that the information cannot be obtained through less intrusive means. • Records produced pursuant to such a motion will be produced under a protective order.
<p>What other definitions are important to know?</p>	<p>Confidential Communication: N.J. Stat. Ann. § 2A:84A-22.14(b)</p> <ul style="list-style-type: none"> • Any 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 which is disclosed in the course of the counselor’s treatment of the victim for any emotional or psychological condition resulting from an act of violence. • Includes advice, reports, or working papers given or made in the course of counseling, as well as all information received by the victim counselor from the victim. <p>Victim:</p>

- A person who consults a counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by an act of violence. N.J. Stat. Ann. § 2A:84A-22.14(c)

Victim Counseling Center:

- Any office, institution or center that offers assistance to victims and their families through crisis intervention, medical and legal accompaniment, and follow-up counseling. N.J. Stat. Ann. § 2A:84A-22.14(d)

Victim Counselor:

- A person engaged in any office, institution or victim counseling center, who is under the control of a direct services supervisor of the center, and who has a primary function of rendering advice, counseling, and assistance to victims of acts of violence and has undergone 40 hours of training. Includes a rape care advocate as defined by New Jersey law. N.J. Stat. Ann. § 2A:84A-22.14(e)

Training Requirements for Victim Counselors:

- 40 hours of training. N.J. Stat. Ann. § 2A:84A-22.14(e)

Anything else I should know?

N.J. Stat. Ann. § 2A:84A-22.13 et seq. also form the basis of New Jersey Rule of Evidence 517. NJ R EVID N.J.R.E. 517

A disclosure which is itself privileged or otherwise protected by the common law, statutes or rules of court of this State, or by lawful contract, shall not constitute a waiver under this section. The failure of a witness to claim a right or privilege with respect to one question shall not operate as a waiver with respect to any other question. N.J. Stat. Ann. § 2A:84A-29; NJ R EVID N.J.R.E. 530

New Jersey has adopted a Victim’s Rights Amendment (VRA) to the state Constitution. N.J. Const. art 1, ¶ 22.

New Jersey has a Crime Victim’s Bill of Rights. N.J. Stat. Ann. § 52:4B-34 et seq.

New Jersey has enacted a New Jersey Campus Sexual Assault Victim’s Bill of Rights. N.J. Stat. Ann. § 18A:61E-1.

New Jersey has enacted a Sexual Assault Victim’s Bill of Rights, N.J. Stat. Ann. § 52:4B-60.2 et seq.

New Jersey has enacted a Sexual Assault Survivor Protection Act that allows any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness or any attempt at any such conduct to file an application for a temporary protective order. N.J. Stat. Ann. § 2C:14-13 to -21.

When a defendant charged with a sexual offense is released from custody before trial, the victim’s location shall remain confidential and shall not appear on any documents or records to which the defendant has access. N.J. Stat. Ann. § 2C:14-12 (“Nicole’s Law”)

State v. Ramirez, 284 A.3d 839 (N.J. 2022).

- New Jersey has a “robust codified public policy to protect sexual assault victims . . . from undue incursions upon their rights of privacy and solitude.”
- “Neither defense counsel nor any person associated with the defense team has the right to violate a crime victim’s right to privacy.”
- Rule 3:13-3(e) permits a prosecutor to move for a protective order seeking permission to withhold a sexual assault victim’s address from the defense.
- Even though a victim of sexual assault has a right to decline to participate in any investigation of the assault, if the defense asserts that it wants a victim’s address for the purpose of contacting and interviewing the victim, the must consider judicially “supervised pathways” for: (1) conveying to the victim the defense’s reasons for seeking to contact the victim, and (2) verifying that the victim still declines to be interviewed or participate in the defense’s investigation.
- Options include: a written request from the defense that the court presents to the victim, an in camera interview of the victim by the judge, a telephone or video call with the defense team for the limited purpose of explaining why they would like an interview, or any other court-devised option that balances the victim’s rights with the defendant’s rights.
- The decision to participate in or decline an interview with the defense team must be made by the victim-witness rather than dictated or coaxed by the prosecutor.
- If the defense is given a victim’s address, there shall be a presumption that the defense and its investigators will not appear at the victim’s residence without the victim’s advance consent and approval.

In prosecutions for sexual assault, criminal sexual contact, human trafficking involving sexual activity, and certain other crimes, New Jersey law provides that the name, address, and identify of a victim who was under the age of 18 at the time of the alleged commission of the offense shall not appear in the indictment, complaint, or any other public record. N.J. Stat. Ann. § 2A:84A-46

In prosecutions for sexual assault, criminal sexual contact, human trafficking involving sexual activity, and certain other crimes, New Jersey law provides that a court may permit a victim or other witness to testify on closed circuit television outside the presence of the jury, defendant or spectators. N.J. Stat. Ann. § 2A:84A-32.4(a) Defendant’s counsel shall be present in the same room as the victim. N.J. Stat. Ann. § 2A:84A-32.4(d) The court must first conduct an in camera hearing and find clear and convincing evidence that there is a substantial likelihood that the victim or witness would suffer severe emotional or mental distress if required to testify in the presence of spectators, the defendant, the jury or all of them. N.J. Stat. Ann. § 2A:84A-32.4(b)

Doe v. Burke, 2021 WL 3625397 (N.J. Super. Ct. App. Div. August 17, 2021)

- Plaintiff who was alleged victim of sexual assault and domestic violence brought claims against the prosecutor for releasing both her name and the nature of the assault.
- The court found that plaintiff had an independent cause of action for violation of the Crime

Victim's Bill of Rights.

Statutory citation(s):

N.J. Stat. Ann. §§ 2A:84A-22.13 to 2A:84A-22.16, 22.29