

Laws about Private Communications New York

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Question	Answer
<p>What relationships qualify for privileged communications and how is "privilege" defined?</p>	<ul style="list-style-type: none"> • A rape crisis counselor or victim shall not be required to disclose a communication made by a victim or advice given by the rape crisis counselor in the course of the counselor's services. • A rape crisis counselor or victim shall not be required to disclose any records made in the course of the services given to the client. • Persons working for a rape crisis counselor or for the same program as the rape crisis counselor (e.g., clerk, stenographer, etc.) shall not be allowed to disclose any communication made by a victim or advice given by the rape crisis counselor in the course of the counselor's services. • Persons working for a rape crisis counselor or for the same program as the rape crisis counselor (e.g., clerk, stenographer, etc.) shall not be allowed to disclose any records made in the course of the services given to the client.
<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"> • Only the victim, the personal representative of a deceased victim, or the conservator of an incompetent victim may waive the privilege. N.Y. CPLR § 4510(c) <p>Waiver of Privilege:</p> <ul style="list-style-type: none"> • A victim who authorizes disclosure of any privileged communication to an employee of victim services or an insurance representative in order to obtain compensation from an insurance company or under article 22 of the executive law shall not be deemed to have waived the privilege created by this section. N.Y. CPLR § 4510(d)
<p>Are there any exceptions to the privilege?</p>	<p>N.Y. CPLR § 4510(b)(1)-(3)</p> <ul style="list-style-type: none"> • Victim authorizes disclosure. • Victim reveals the intent to commit a crime or harmful act in the course of counseling. • Victim institutes charges against the rape crisis counselor or rape crisis program for malpractice which concern the confidential communications. <p>Case Law Exception:</p> <ul style="list-style-type: none"> • Although there are no cases discussing the rape crisis counselor privilege under N.Y. CPLR § 4510, <i>People v. Bridges</i>, 142 Misc. 2d 789, 538 N.Y.S.2d 701 (N.Y. Co. Ct. 1989) held that

	<p>because a rape crisis volunteer was not a “certified social worker” under N.Y. CPLR § 4508, the communications with the victim were not privileged. By analogy, if a volunteer is not a certified “Rape Crisis Counselor” as defined in N.Y. CPLR § 4510(a)(2), then communications between the volunteer and the victim would likely not be privileged either.</p>
<p>When and how may a judge review case documents in private?</p>	<ul style="list-style-type: none"> • When disclosure of a communication privileged pursuant to N.Y. CPLR § 4510 is sought on the grounds that the privilege has been waived or disclosure is required pursuant to the New York constitution, the party seeking disclosure must file a written motion supported by an affidavit containing specific factual allegations providing grounds that disclosure is required. The court shall then conduct an in camera review (i.e. private review by the judge) of the communication outside the presence of the jury and counsel for all parties in order to determine whether disclosure of any portion of the communication is required. N.Y. Crim. Proc. § 60.76
<p>What other definitions are important to know?</p>	<p>Confidential Communication:</p> <ul style="list-style-type: none"> • Any communication made by a victim to a rape crisis counselor, any advice given by a rape crisis counselor to a victim, and any records or recordings made in the course of the services given to the victim. N.Y. CPLR § 4510(b) <p>Rape Crisis Program:</p> <ul style="list-style-type: none"> • Any office or center that offers counseling and assistance to clients concerning sexual offenses, sexual abuses, or incest. • In order to fall under this statute, a rape crisis program must be approved by the Commissioner of the New York Department of Health pursuant to subdivision 15, section 206 of New York’s Public Health Law, which means that it must provide the requisite training for its rape crisis counselors (see below for details). N.Y. CPLR § 4510(a)(1) <p>Rape Crisis Counselor:</p> <ul style="list-style-type: none"> • A person who has been certified by an approved rape crisis program as having satisfied the training standards specified in subdivision 15, section 206 of New York’s Public Health Law (see below for details), and who works under the supervision of an approved rape crisis program. N.Y. CPLR § 4510(a)(2) <p>Training Requirements for Rape Crisis Counselors: N.Y. Pub. Health Law § 206(15)(b)(i)-(x)</p> <ul style="list-style-type: none"> • At least 30 hours of pre-service training • Within the first year of service, at least 10 hours of in-service training • Training shall include, but not be limited to, instruction on the following topics: <ul style="list-style-type: none"> • The dynamics of sexual offenses, sexual abuse, and incest; • Crisis intervention techniques; • Client-counselor confidentiality requirements; • Communication skills and intervention techniques; • An overview of the state’s criminal justice system;

	<ul style="list-style-type: none"> • An update and review of state laws on sexual offenses, sexual abuse or incest; • Availability of state and community resources for clients; • Working with diverse populations; • An overview of child abuse and maltreatment identification and reporting responsibilities; and • Information on the availability of medical and legal assistance for victims of sexual crimes.
<p>Anything else I should know?</p>	<p>Because rape crisis counselors must work or volunteer at a rape crisis program approved by the New York Department of Health in order for this privilege to apply, communication between RAINN's Online Hotline counselors and victims would most likely not be privileged under the New York confidentiality statute.</p> <p>However, a proposed rule change that was first introduced in February 2017 and later reintroduced in June 2018 and May 2019 would extend the privilege to any person who is seeking or receiving assistance from a domestic violence advocate for the purpose of securing services concerning any acts of domestic violence or any other abuse, human trafficking, or stalking. Under the proposed rule, a "domestic violence advocate" is anyone who is an employee or volunteer of a domestic violence program, which would include any organization offering services to victims of domestic violence or any other abuse, human trafficking, or stalking including, but not limited to, shelter, counseling, a crisis line, emergency and follow-up intervention, information, referral services, and medical, legal, and social services advocacy. See New York Senate Bill No. 2224.</p>
<p>Statutory citation(s):</p>	<p>N.Y. CPLR § 4510</p>