

Laws about Private Communications New York

Last Updated: April 2023

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, domestic violence advocate or victim shall not be required to disclose a communication made by a victim or advice given by the rape crisis counselor or domestic violence advocate in the course of the counselor's services. N.Y. CPLR § 4510(b) • A rape crisis counselor, domestic violence advocate or victim shall not be required to disclose any records made in the course of the services given to the client. N.Y. CPLR § 4510(b) • Persons working for a rape crisis counselor or domestic violence advocate or for the same program as the rape crisis counselor or domestic violence advocate (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. N.Y. CPLR § 4510(b) • Persons working for a rape crisis counselor or domestic violence advocate or for the same program as the rape crisis counselor or domestic violence advocate (e.g., clerk, stenographer, etc.) shall not be allowed to disclose any records made in the course of the services given to the client. N.Y. CPLR § 4510(b)
<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 by providing the rape crisis counselor or domestic violence advocate with informed, written and reasonably time-limited consent. 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)-(4)</p> <ul style="list-style-type: none"> • With respect to a rape crisis counselor or domestic violence advocate, the victim authorizes disclosure, reveals the intent to commit a crime or harmful act, or institutes charges against the rape crisis counselor or domestic violence advocate or rape crisis program or domestic violence program for malpractice which concern the confidential communications.

	<ul style="list-style-type: none"> • With respect to a domestic violence advocate, the victim reveals a case of suspected child abuse or maltreatment. <p>Case Law Exception:</p> <ul style="list-style-type: none"> • <i>People v. Bridges</i>, 142 Misc. 2d 789, 538 N.Y.S.2d 701 (N.Y. Co. Ct. 1989) held that 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>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 or domestic violence advocate, any advice given by a rape crisis counselor or domestic violence advocate 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 approved office, institution or center that offers counseling and assistance to clients concerning sexual offenses, sexual abuses, or incest. N.Y. CPLR § 4510(a)(1) • 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:
 - 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;
 - An update and review of state laws on sexual offenses, sexual abuse or incest;
 - The availability of state and community resources for clients;
 - Working with a diverse population;
 - 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.

Domestic Violence Program:

- Any residential program for victims of domestic violence or a non-residential program for victims of domestic violence as defined in the social services law or any similar program operated by an Indian tribe N.Y. CPLR § 4510(a)(4)

Domestic Violence Advocate:

- Any person who is acting under the direction and supervision of a licensed and approved domestic violence program and has satisfied the training standards required by the office of children and family services. N.Y. CPLR § 4510(a)(5)

Training Requirements for Domestic Violence Advocates:

- At least 15 hours within the first 6 months of employment
- At least 30 hours every 2 years of employment

Anything else I should know?

The Address Confidentiality Program protects victims of domestic violence, victims of human trafficking, victims of kidnapping, victims of a sexual offense, victims of stalking, reproductive healthcare providers and patients and allows them to keep their physical address hidden from perpetrators by using a substitute mailing address provided by the New York Department of State in lieu of their actual home, school or work address. N.Y. Exec § 108

Statutory citation(s):

N.Y. CPLR § 4510; N.Y. Crim. Proc. § 60.76; N.Y. Exec § 108