

Laws about Private Communications Pennsylvania

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 sexual assault counselor may not disclose the victim's confidential oral or written communications to the counselor or consent to be examined in any court or criminal proceeding without the written consent of the victim. 42 Pa. Cons. Stat. Ann. § 5945.1(b)(1); But see also, <i>Commonwealth v. Davis</i>, 674 A.2d 214, 216 (Pa. 1996) (holding that the victim waived the applicable privilege when he and his family gave the prosecution access to the confidential information) • A domestic violence counselor/advocate may not disclose the victim's confidential communications made to or by the counselor/advocate by or to the victim, unless a victim waives the privilege in a signed writing prior to testimony or disclosure. 23 Pa. Cons. Stat. Ann. § 6116 • The confidentiality obligation also extends to an interpreter or coparticipant who is present during counseling. 42 Pa. Cons. Stat. Ann. § 5945.1(b) and 23 Pa. Cons. Stat. Ann. § 6116 • The privilege created by the statute governing confidential communications with sexual assault counselors is an absolute privilege, which is not overcome even by the constitutional rights of a criminal defendant. See <i>Commonwealth v. Wilson</i>, 602 A. 2d 1290 (Pa. 1992)
<p>Is the privilege qualified or absolute?</p>	<p>Absolute</p> <p>"Sexual assault counselor privilege" is absolute, and prohibits disclosure of both oral communications and records created during course of confidential relationship, absent victim's consent. <i>Commonwealth v. Davis</i>, 674 A.2d 214, 216 (Pa. 1996) and 442 Pa. Cons. Stat. Ann. § 5945.1(b)</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 victim may waive the privilege. 42 Pa. Cons. Stat. Ann. § 5945.1(b)(1) <p>Waiver of Privilege:</p> <ul style="list-style-type: none"> • Consent to disclosure must be in writing. 42 Pa. Cons. Stat. Ann. § 5945.1(b)(1) • <i>V.B.T. v. Family Services of Western Pennsylvania</i>, 705 A.2d 1325 (Pa. Super. Ct. 1998) • Although foster child testified about facts surrounding her abuse by her father in criminal trial, this did not result in the waiver of confidentiality of information otherwise protected under the sexual assault counselor privilege (such as confidential records) because waiver of those privileges must be in writing.

	<ul style="list-style-type: none"> • <i>Commonwealth v. Askew</i>, 666 A.2d 1062, 1065 (Pa. Super. Ct. 1995) <ul style="list-style-type: none"> • The sexual assault counselor-victim privilege was not waived when a minor victim’s mother allowed the sexual assault counselor to report allegations of child abuse to the police, as the sexual assault counselor has a statutory duty to make this report. • The privilege was also not waived when a sexual assault counselor reported allegations of child abuse and disclosed statements made by the victim during the counseling sessions to the Commonwealth’s medical expert—again, the sexual assault counselor has a duty to report suspected child abuse to cause medical tests to be performed on the child, and the report to the medical expert was only in furtherance of this goal. • <i>Commonwealth v. Davis</i>, 674 A.2d 214, 215 (Pa. 1996) <ul style="list-style-type: none"> • Privilege is waived when the victim allows the prosecution to have access to the protected records. • <i>Commonwealth v. Gibbs</i>, 642 A.2d 1132, 1135 (Pa. Super. Ct. 1994) <ul style="list-style-type: none"> • Because the prosecution called the counselor as a witness, defendant was entitled to confront his accuser and access the counselor’s records.
Are there any exceptions to the privilege?	<ul style="list-style-type: none"> • Because of the mandatory reporting statute, the statutory privilege between sexual assault counselors and victims does not apply in situations involving known or suspected child abuse. 23 Pa. Cons. Stat. Ann. § 6311(a) and § 6311.1(a) • <i>Commonwealth v. Askew</i>, 666 A.2d 1062, 1065 (Pa. Super. Ct. 1995) <ul style="list-style-type: none"> • Sexual assault counselors have a statutory duty to report allegations of child abuse to the police. The court held that the victim had not waived her statutory privilege when the counselor reported the victim’s allegations to the police and a medical professional.
When and how may a judge review case documents in private?	<p>Prohibited.</p> <ul style="list-style-type: none"> • <i>Commonwealth v. Wilson</i>, 602 A.2d 1290, 1295-96 (Pa. 1992) <ul style="list-style-type: none"> • The sexual assault counselor-victim privilege set forth in 42 Pa. Cons. Stat. Ann. § 5945.1(b)(1) is absolute, and applies to both the testimony of sexual assault counselors and the records of rape crisis centers. • The absolute nature of the privilege does not violate a defendant’s constitutional rights.
What other definitions are important to know?	<p>Confidential Communication:</p> <ul style="list-style-type: none"> • All oral and written information transmitted between a victim of sexual assault and a sexual assault counselor in the course of their relationship. 42 Pa. Cons. Stat. Ann. § 5945.1(a) • Includes, but is not limited to, any advice, reports, statistical data, memoranda, working papers, or records given or made during the sexual assault counselor-victim relationship (including matters transmitted between the sexual assault counselor and the victim through the use of an interpreter). 42 Pa. Cons. Stat. Ann. § 5945.1(a) <p>Rape Crisis Center:</p>

- Any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal accompaniment, and follow-up counseling. 42 Pa. Cons. Stat. Ann. § 5945.1(a)

Sexual Assault Counselor:

- A person who is engaged in any office, institution or center defined as a rape crisis center, who has undergone 40 hours of sexual assault training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault. 42 Pa. Cons. Stat. Ann. § 5945.1(a)

Training Requirements for Sexual Assault Counselors:

- 40 hours of sexual assault training. 42 Pa. Cons. Stat. Ann. § 5945.1(a)
- A “sexual assault counselor” must be under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.” 42 Pa. Cons. Stat. Ann. § 5945.1(a)

Victim:

- A person who consults a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by a sexual assault. Includes those persons who have a significant relationship with a victim of sexual assault and who seek advice, counseling or assistance from a sexual assault counselor concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault of a victim. 42 Pa. Cons. Stat. Ann. § 5945.1(a)
- *Commonwealth v. Kunkle*, 623 A.2d 336, 340-41 (Pa. Super. Ct. 1993)
 - Even though the sexual assault counselor determined that the complainant’s allegations were fabricated, the complainant was still considered a victim for purposes of this statute, and her communications with the sexual assault counselor were still privileged.
 - A complainant’s status as a victim is not dependent upon the sexual assault counselor’s evaluation of the situation.

Anything else I should know?

N/A

Statutory citation(s):

42 Pa. Cons. Stat. Ann. § 5945.1, 23 Pa. Cons. Stat. Ann. §§ 6116 and 6311