

Laws about Private Communications Virginia

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Question	Answer
<p>What relationships qualify for privileged communications and how is "privilege" defined?</p>	<p>Confidentiality between programs and individuals providing services to victims of sexual assault or domestic violence and victims</p> <ul style="list-style-type: none"> • In order to ensure the safety of adult and child victims (and their families) of domestic violence, dating violence, sexual assault, or stalking, or victims of abduction with intent to extort money or for immoral purposes, prostitution, human trafficking, or commercial sex trafficking, programs and individuals providing services to such victims must protect the confidentiality and privacy of persons receiving services. Va. Code § 63.2-104.1(A) • Programs and individuals providing services to victims of domestic violence, dating violence, sexual assault, or stalking, or victims of abduction with intent to extort money or for immoral purposes, prostitution, human trafficking, or commercial sex trafficking, programs may not disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through programs, or reveal individual client information. Code § 63.2-104.1 (B)(1) and (2)
<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"> • The victim, or in the case of an unemancipated minor victim, the minor and the parent or guardian, or the guardian of an incapacitated victim may waive the privilege related to individual client information; provided, that waiver may not be given by a person that is the abuser or alleged abuser of the minor or incapacitated person, or the abuser or alleged abuser of the other parent of the minor. Va. Code § 63.2-104.1(B)(2) <p>Waiver of Privilege:</p> <ul style="list-style-type: none"> • Consent to disclosure must be informed, written, and reasonably time-limited. Va. Code § 63.2-104.1(B)(2)
<p>Are there any exceptions to the privilege?</p>	<p>Va. Code § 63.2-104.1(D)(1)-(3)</p> <ul style="list-style-type: none"> • Sexual assault programs and individuals providing services to victims of domestic violence, dating violence, sexual assault, or stalking, or victims of abduction with intent to extort money or for immoral purposes, prostitution, human trafficking, or commercial sex trafficking may share: <ul style="list-style-type: none"> • nonpersonally identifying aggregate data regarding services to their clients and nonpersonally

	<p>identifying demographic information, in order to comply with federal, state, tribal, or territorial reporting, evaluation, or data collection requirements;</p> <ul style="list-style-type: none"> • court- and law enforcement-generated information contained in secure governmental registries for protection order enforcement purposes; and • information necessary for law enforcement and prosecution purposes. <ul style="list-style-type: none"> • Applicability of Mandatory Reporting of Child Abuse and Neglect to Sexual Assault Advocates, Op. Va. Att’y Gen. 09-097, 2010 WL 132545 (Jan. 5, 2010). Generally, advocates working in sexual assault crisis centers are not statutorily mandated to report child abuse and neglect. Exceptions: <ul style="list-style-type: none"> • If advocate performs activities placing him or her in Va. Code § 63.2-1509(A) categories, he or she is required to report suspected child abuse or neglect. • Va. Code § 63.2-1509(A) categories include doctors, hospital residents and interns, nurses, social workers and family-services specialists, probation officers, teachers and other public or private school employees, child care providers, emergency medical services personnel, mental health professionals, law enforcement officers, and court-appointed special advocates. • Patient-counselor privilege. Virginia law providing that programs and individuals providing services to victims of sexual assault shall protect the confidentiality and privacy of persons receiving services did not create a patient-counselor privilege that protected a university student's communications with a university official, who was head of the university's sexual misconduct board, and the university, concerning the student's alleged gang rape at a fraternity house. <i>Eramo v. Rolling Stone LLC</i>, 2016, 314 F.R.D. 205. But further case law suggests that (i) the court in <i>Eramo</i> did not find that no patient-counselor privilege existed, but rather that it was waived through the voluntary disclosure of information, and (ii) communications between sexual assault victims and their advocates are privileged because they promote sufficiently important interests that outweigh the need for probative evidence, but the privilege can be overcome if a court determines that the theoretical relevance of the communications outweighs the public policy in favor of keeping them confidential. <i>Doe v. Old Dominion University</i>, 2018, 289 F.Supp.3d 744.
<p>When and how may a judge review case documents in private?</p>	<p>Provided for by statute. Va. Code § 63.2-104.1(C)(1)-(2)</p> <ul style="list-style-type: none"> • The release of personally identifiable or individual client information may be compelled by statutory or court mandate. • If the release of personally identifiable or individual client information is compelled, the program or individual providing services to victims of sexual violence must: <ul style="list-style-type: none"> • Make reasonable attempts to provide notice to victims affected by the disclosure of the information; and • Take steps necessary to protect the privacy and safety of the people affected by the disclosure. • In determining whether communications otherwise protected by this privilege may be released, the court must determine that their theoretical relevance outweighs the public policy in favor of keeping them confidential, and it's the court's duty to review in camera the content of the communications

	<p>before making this determination. A Virginia state court considering whether victim-advocate communications will be produced must first make a determination that such communications' probative value outweighs the public and private interests in keeping them confidential. <i>Doe v. Old Dominion Univ.</i>, 289 F. Supp. 3d 744, 2018 WL 653797 (E.D. Va. 2018) Virginia courts interpreting these requirements have opined that to permit the general discovery rules to usurp the confidentiality requirements would significantly curtail privacy protections recognized by the legislature. <i>Patton v. Patton</i>, 108 Va. Cir. 175, 2021 WL 8314541 (2021)</p>
<p>What other definitions are important to know?</p>	<p>Programs:</p> <ul style="list-style-type: none"> • Includes public and not-for-profit agencies with the primary mission of providing services to victims of domestic violence, dating violence, sexual assault, or stalking, or victims of abduction with intent to extort money or for immoral purposes, prostitution, human trafficking, or commercial sex trafficking. Va. Code. § 63.2-104.1(D)(3) <p>Victim:</p> <ul style="list-style-type: none"> • A person may be a victim of domestic violence, dating violence, sexual assault, or stalking, or a victim of abduction with intent to extort money or for immoral purposes, prostitution, human trafficking, or commercial sex, regardless of whether any person has been charged with or convicted of any offense. Code § 63.2-104.1 (E). <p>Health Records:</p> <ul style="list-style-type: none"> • “Health record” means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. “Health record” also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual. Va. Code § 32.1-127.1:03(B).
<p>Anything else I should know?</p>	<p>Virginia law also recognizes an individual’s right to privacy in the content of their health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records. Va. Code § 32.1-127.1:03A.</p>
<p>Statutory citation(s):</p>	<p>Va. Code § 32.1-127.1:03 Va. Code § 63.2-104.1 Va. Code § 63.2-1509</p>