



Advocates Owe a Duty of Confidentiality to the Victim/Survivors With Whom They Work

Sexual Assault Advocates have a privilege against disclosing confidential victim/survivor information. In Minnesota, Sexual Assault Counselors may not be allowed to disclose any opinion or information received from or about the victim of a sexual assault. Minnesota Statute §595.02 subd. 1(k). Other duties of confidentiality also apply.

What does it take to have a privilege as an advocate?

A sexual assault counselor must meet all of the following:

- have undergone at least forty hours of crisis counseling training
- work under the direction of a supervisor in a crisis center,
- the crisis center's primary purpose must be to render advice, counseling or assistance to victims of sexual assault.

If you meet the definition, then communication is deemed privileged unless that privilege is waived. Waiver of the privilege may occur in more than one way:

HOW PRIVILEGE IS WAIVED:

Victim/Survivor Consent

- If the victim/survivor consents to having the advocate testify, the communication that has occurred will no longer be deemed privileged.
- The privilege belongs to victim/survivors and it is their right to waive that privilege if they choose.
- It would be a good idea to discuss with the victim all the ramifications of permitting an advocate to testify – including that all information the advocate possesses will be available for questioning, and that it might affect the reputation of the program within the community to have advocates testify, even with permission.
- If the victim/survivor does in fact wish to have the advocate testify, the waiver should be stated on the court record so the advocate is clear that (s)he is granted permission to testify.
- It would be wise for the advocate to communicate with the prosecutor on the case to verify that the waiver has in fact been made before they testify.

Child Abuse or Neglect or Termination of Parental Rights

- The advocate's privilege could be waived if the private information relates to child abuse or neglect or termination of parental rights
- The court must do a balancing of the public interest and need for the disclosure against the effect on the victim, the relationship between the advocate and the victim, and the services provided if disclosure occurs.

Third Party Conversations

- Conversations between victim/survivor and advocate are no longer privileged if they occur in the presence of a third party. For example, a meeting between the advocate, victim/survivor and law enforcement, or with the victim/survivor's mother in the room.
- The privilege could also be waived if the conversations are purposefully relayed to a third party. For example, after victim/survivor meets with an

advocate, the victim/survivor then tells someone else about the content of the meeting.

- Once the information is disclosed to someone else even though it was by choice, the victim/survivor may not later assert privilege when disclosure is sought by someone else.

Other Confidentiality Requirements

Data Practices Statute

- If your sexual assault services program is funded by the Minnesota Office of Justice Programs, there has been a contract signed regarding the funding.
- In that contract, the program has agreed to fully comply with the provisions of the Minnesota Data Practices Act – Chapter 13 of Minnesota Statutes.
- This is the statute that makes government information and data private – and it applies to your sexual assault services program, too. Thus, information received by employees at the program is protected by the Data Practices Act.

Agency By-Laws

- Check the by-laws of your sexual assault program. It is likely that they require the board and staff to maintain the confidentiality of information received from and about victim/survivor's who access services of the program.

WHAT CAN I DO:

- If you meet with a victim/survivor and they are being interviewed by law enforcement, remember the role of the advocate is to provide support for the survivor. Do not speak or take notes; the officer will likely be recording the conversation. This reinforces the notion that the advocate is a support person and not an investigator. It also prevents the advocate from having to disclose those notes.
- Discuss with the victim/survivor the ways in which the cloak of confidentiality may be waived so that they have knowledge of this issue from the beginning of the working relationship.
- Talk to the local prosecutors in the jurisdiction in which you work. Discuss the potential ramifications within your community if victim/survivors do not have a confidential resource to talk to concerning sexual assault.
- Let your local prosecutor know that you would be willing to testify as an expert witness on the issue of sexual assault. This may alleviate some of the issue of having advocates testify concerning case specific information.
- If you are going to meet with the victim/survivor and someone else, ask that a fourth person be present as well. That additional person may then be called as a witness. This will not be an absolute bar to you being called to testify, but it provides a strong argument that your testimony would be duplicative and thus unnecessary.

**Sexual Violence Justice Institute
Minnesota Coalition Against Sexual Assault
161 St Anthony Ave Suite 1001
St Paul, MN 55103**