

Confidentiality of Communications Between an Advocate and a Victim

Confidentiality is extremely important to sexual assault victims. Laws, regulations, and policies all protect the confidentiality of communications made between a victim and an advocate at a community based sexual assault service provider (SASP), sometimes referred to as a rape crisis center. Protections may include: sexual-assault/domestic violence victim-advocate privilege, funding requirements, agency policies, and federal and state regulations regarding health care privacy and the disclosure of health care and mental health records.

This fact sheet focuses on Wisconsin's sexual assault and domestic violence advocate-victim privilege law. Victims who want to know about other protections can contact the local SASP and ask about its confidentiality policies. For listing of these programs, please see www.wcasa.org and click on "Find Help".

WHAT IS THE SEXUAL ASSAULT ADVOCATE-VICTIM PRIVILEGE?

In general, privilege laws protect the confidentiality of information shared between a professional and a client. Privilege laws recognize that society benefits when certain communications remain confidential. Privilege laws cover communications made between attorneys and clients, medical providers and patients, mental health service providers and patients, and of course, sexual assault advocates and victims.

Privilege laws are rules of evidence. This means that privilege prevents a court from requiring the professional or the client to disclose privileged information in a court proceeding. As you will see, the privilege only applies if the information is confidential. Therefore, even though the privilege rule governs court proceedings, it is important to make sure the information is still confidential when it is sought in a courtroom.

WHAT EXACTLY IS PROTECTED?

Wisconsin law states that "[a] victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated among the victim, an advocate who is acting in the scope of his or her duties as an advocate, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim"

WHAT EXACTLY IS PROTECTED?

It means that if a victim of abusive conduct such as sexual assault goes to a SASP for help, communications made between the victim and the advocate are protected by this law. It also means that information shared with others at the SASP who are helping provide services to the victim is also protected as confidential by this law.

WHEN IS A COMMUNICATION CONFIDENTIAL?

The basic idea behind a confidential communication is that it is made in a way that it is “. . . not intended to be disclosed to 3rd persons . . .” This means that information a victim shares with an advocate in front of a 3rd person who doesn't work at the sexual assault agency-- such as a law enforcement officer, victim witness staff person, or district attorney-- is not confidential and is not protected by privilege. However, privilege does apply when the communication is made between a victim and the advocate in front of persons present to support the victim such as “. . . family members of the person receiving counseling, assistance, or support services and members of any group of individuals with whom the person receives counseling, assistance, or support services.”

In other words, if a victim comes to a SASP, even when the victim brings family for support, the communications shared between the victim and the advocate are still protected by privilege. This includes information shared at a support group for victims run by the SASP. It is very important for these support persons to understand the importance of keeping this information confidential. Remember, if anybody shares this information with a third party, it may be difficult to demonstrate to a court that the information remained confidential.

WHAT IF THE VICTIM WANTS THE ADVOCATE TO SHARE CONFIDENTIAL INFORMATION?

If a victim wants the advocate to share information with the court, the victim can waive privilege. Ideally, a victim should waive privilege only after an advocate has explained to him/her the consequences of waiver. For example, victims should know that it may not be possible to waive privilege for some information but retain confidentiality for other information. Once privilege is waived, the court decides what is relevant to the case and may ask the advocate to share more information than the victim wanted.

ARE THERE ANY EXCEPTIONS?

Occasionally, a court or an attorney will try to order an advocate or a victim to testify about the information the victim shared with the advocate. When this happens, the advocate may receive a legal document called a subpoena. Most sexual assault service providers will try to fight the subpoena on the basis of privilege. Most of the time, these arguments are successful. Rarely, in a criminal case, if the court has obtained information about these communications, the court may order the advocate to testify. When the victim has told nobody about the communications between the victim and the advocate and no support person has shared this information, it will be extremely hard to require the advocate or the victim to testify about the confidential communications.

Is this privilege why advocates won't share information with others about the client? Just as you would never require a lawyer to disclose information about a client due to attorney client privilege, you shouldn't expect an advocate to disclose information about a client. An advocate who did so would violate the privilege statute. The advocate can't share information with others even when those others are working to help the client.

WCASA is a membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 56 sexual assault service provider (SASP) agencies throughout the state that offer support, advocacy and information to victims of sexual assault and their families. For information sheets on other topics and for more information about sexual assault, please visit our website. This sheet may be reproduced in its original format only.

This information does not constitute legal advice.