



## ALASKA

### ALASKA STAT. § 18.66.200 to 250

**Type of Privilege:** Qualified by judicial decision

**Privilege:**

- A victim or victim counselor cannot be compelled, without appropriate consent, to testify or produce records concerning confidential communications for any purpose in any criminal, civil, legislative, or administrative proceeding ALASKA STAT. § 18.66.200 (a)
- A victim or victim counselor cannot be compelled to give testimony that would identify the name, address, location, or telephone number of a safe house or shelter that provided temporary emergency housing to the victim of the offense unless the court or hearing officer determines that the information is necessary and relevant to the case ALASKA STAT. § 18.66.200 (c)
- A victim or victim counselor cannot be compelled to give testimony that would identify the name, address, or telephone number of a victim counselor unless the court or hearing officer determines that the information is necessary and relevant to the case ALASKA STAT. § 18.66.200 (c)

**Statutory Exceptions to Privilege:** ALASKA STAT. § 18.66.210 (1)-(8)

- Mandatory reporting of child abuse or neglect
- Victim is about to commit a crime
- Proceeding occurs after victim's death
- Communication is relevant to an issue of breach of duty by the victim counselor
- Communication is admissible under the excited utterance exception in the Alaska Rules of Evidence
- Services of the victim counselor were sought in order to enable anyone to commit a crime or escape detection after the commission of the crime
- Proceeding concerns whether to place a child into the custody of the state
- Victim is charged with a crime against a minor
- Victim is charged with a crime and the physical, mental, or emotional condition of the victim is raised as a defense

**In Camera Review:** Provided for by judicial decision

- *Katelnikoff v. State*, No. A-6848, 1999 LEXIS 43, at \*6 (Alaska Ct. App. June 16, 1999)
  - In camera examination of a sexual assault victim is necessary only upon a threshold showing of good cause
  - Defendant must present the court with a colorable ground to believe that evidence favorable to the defense actually does exist in the privileged records in order to warrant an in camera review of those records
- *Russell v. State*, No. A-7618, 2002 LEXIS 237, at \*56 (Alaska Ct. App. Nov. 27, 2002)
  - Defendant must demonstrate good cause to believe that the privileged records contain relevant impeachment evidence
  - Defendant must show that he is not simply engaging in a fishing expedition

**Holder of Privilege:** Victim

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- Victim counselor may only waive the privilege with consent of the victim or parent, legal guardian, or guardian ad litem of the victim ALASKA STAT. § 18.66.220 (b)

**Waiver of Privilege:**

- A victim does not waive the privilege by testifying in court about the crime
- However, if a victim partially discloses the contents of a confidential communication in the course of testifying, either party may request the court to rule that the privilege be waived to the extent that the privilege applies to that portion of the communication ALASKA STAT. § 18.66.220 (a)
- Privilege can be waived by the victim's parent, legal guardian, or guardian ad litem when the victim is a minor or incompetent to testify ALASKA STAT. § 18.66.200 (a) (2)
- A minor may waive the privilege if the court determines that the minor is capable of knowingly waiving the privilege ALASKA STAT. § 18.66.200 (d) (1)
- However, a parent or legal guardian may not waive the privilege for a minor victim if
  - The parent or legal guardian has been charged with a crime against the minor
  - A restraining order has been entered against the parent or legal guardian on behalf of the minor
  - The interests of the parent or legal guardian are otherwise adverse to those of the minor ALASKA STAT. § 18.66.200 (d) (2)

**DEFINITIONS:**

**Confidential Communication:**

Information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and that is disclosed in the course of victim counseling resulting from a sexual assault or domestic violence ALASKA STAT. § 18.66.250 (1)

**Victim Counseling Center:**

- A private or public organization that provides direct services to victims for trauma resulting from a sexual assault that is not affiliated with a law enforcement agency or a prosecutor's office ALASKA STAT. § 18.66.250 (5)

**Victim Counselor:**

- An employee or supervised volunteer of a victim counseling center that provides counseling to victims of sexual assault ALASKA STAT. § 18.66.250 (6)

**Training Requirements for Victim Counselors:**

- 40 hours of training in sexual assault, crisis intervention, victim support, treatment, and other related areas, or a person whose duties include victim counseling. ALASKA STAT. § 18.66.250 (6) (A)

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