



DISTRICT OF COLUMBIA

D.C. CODE § 7-1201.01 to 7-1203.05 District of Columbia Mental Health Information Act

Type of Privilege: Qualified by statute

Note:

- While a rape crisis counselor's records or testimony are not subject to in camera review under this statute, there are so many exceptions to the privilege that it cannot reasonably be described as absolute
- A rape crisis or sexual assault counselor falls under the very broad category of mental health professional for the purposes of this statute

Privilege:

- No rape crisis counselor or mental health facility shall disclose or permit the disclosure of mental health information to anyone without the consent of the client D.C. CODE § 7-1201.02 (a)
- The personal notes of a rape crisis counselor regarding a client shall not be disclosed to anyone without the consent of the client D.C. CODE § 7-1201.03
- There are civil and criminal penalties for violations of confidentiality D.C. CODE § 7-1207.01 and 7-1207.02

Statutory Exceptions to Privilege:

- Client initiates a proceeding against the rape crisis counselor for professional malpractice D.C. CODE § 7-1201.03
- Disclosure is necessary to determine the client's entitlement to payment benefits for professional services rendered, but disclosure must be limited to administrative information, diagnostic information, the reason for treatment, and a prognosis D.C. CODE § 7-1202.07 (a)
- Disclosure to other individuals employed at the mental health facility, or to other participating providers, is necessary to deliver professional services to the client D.C. CODE § 7-1203.01 (a) and (b)
- Mandatory reporting of child abuse or neglect D.C. CODE § 7-1203.02
- Disclosure is necessary in order to seek emergency hospitalization or otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury D.C. CODE § 7-1203.03 (a)
- To qualified personnel for the purpose of conducting scientific research, audits, or program evaluation of the rape crisis counselor or the mental health facility, as long as the personnel does not directly or indirectly identify the client in any report D.C. CODE § 7-1203.05
- Disclosure is necessary to initiate or seek civil commitment proceedings D.C. CODE § 7-1204.02
- In any civil or administrative proceeding in which the client asserts his mental or emotional condition as an element of the claim or defense D.C. CODE § 7-1204.03

In Camera Review: Prohibited

Holder of Privilege:

- Who may waive the privilege:
 - Client,
 - Joint waiver of a client between 14 and 18 and the client's parent or legal guardian, or
 - Parent or legal guardian of a client under 14
- However, if a minor client's parent or legal guardian has not consented to the services the client is receiving from the rape crisis counselor, the privilege may be waived without authorization from the client's parent or legal guardian D.C. CODE § 7-1202.05 (a) and (b)

Waiver of Privilege:



- Waiver must be written, signed, and must be given voluntarily
- Waiver must:
 - Specify the nature of the information to be disclosed, who is authorized to disclose, and the specific purposes for which the information may be used at any time in the future,
 - State that the waiver is subject to revocation
 - Contain the date of disclosure as well as the date of expiration, which shall be no longer than 60 days after disclosure is authorized D.C. CODE § 7-1202.02
- The person to whom the privileged information is disclosed may not re-disclose the information without further consent to do so D.C. CODE § 7-1202.03
- Waiver can be revoked by providing a written revocation to the recipient of the privileged information D.C. CODE § 7-1202.04
- A rape crisis counselor has the authority to limit disclosure despite waiver if such limitation is necessary to protect the mental or physical well-being of the client D.C. CODE § 7-1202.06

DEFINITIONS:

Personal Notes:

- Mental health information regarding a client including the rape crisis counselor's speculations D.C. CODE § 7-1201.01 (13)

Professional Services:

- Any form of diagnosis or treatment relating to a mental or emotional condition provided by a rape crisis counselor D.C. CODE § 7-1201.01 (14)

Mental Health Facility:

- Any clinic, office, or similar entity where professional services are provided

Rape Crisis or Sexual Assault Counselor:

- A person who is under the supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist, and who provides professional services to victims of sexual assault D.C. CODE § 7-1201.01 (11) (E)

Training Requirements for Rape Crisis Counselors:

- At least 40 hours D.C. CODE § 7-1201.01 (11) (E)

D.C. CODE § 14-307

Type of Privilege: Qualified by statute

Note:

- Washington D.C. has another statute that also protects information transmitted between a rape crisis counselor and a client; it is unclear how the two statutes interact with each other

Privilege:

- A rape crisis counselor, as defined above, may not, without consent from the client, disclose any information that he has acquired in attending a client in a professional capacity that was necessary to enable him to act in that capacity D.C. CODE § 14-307 (a)

Statutory Exceptions to Privilege: D.C. CODE § 14-307 (b) (2)-(4)

- Privileged information relates to the mental competency of an accused in a criminal trial where the accused raises the defense of insanity

- Privileged information relates to the mental competency of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court
- In any criminal or civil case where a person is alleged to have defrauded the District of Columbia or federal government in relation to receiving social security

In Camera Review: Provided for by statute

- Court may compel disclosure of privileged information where the accused is charged with killing or injuring another human being, and the disclosure is required in the interests of public justice
D.C. CODE § 14-307 (b) (1)
- *Brown v. United States*, 567 A.2d 426, 428 (D.C. 1989):
 - Prior leave of the trial court is required before any subpoenas may be served by anyone for the production of material covered by this privilege statute
 - In order to serve a subpoena to produce privileged information, defendant must show that:
 - The information is evidentiary and relevant,
 - The information is not otherwise procurable by the exercise of due diligence,
 - Defendant cannot adequately prepare for trial without producing the information,
 - The application is not a fishing expedition, and
 - Disclosure of the privileged information is in the interest of public justice
 - It will often be appropriate to give the holder of the records an opportunity to be heard before the subpoena is served
- *Graham v. United States*, 746 A.2d 289, 293-95 (D.C. 2000):
 - In applying the “interests of public justice” exception, a trial court must balance the interest of encouraging those with mental health problems to seek treatment against the defendant’s right to have a fair trial
 - When a rape crisis counselor has made a mandatory report of suspected child abuse, the trial court may admit into evidence the testimony of that rape crisis counselor because the interests of public justice are served by protecting children from abuse
- *In re N.H.*, 569 A.2d 1179, 1184 (D.C. 1990):
 - Protecting children from neglect also serves the interests of public justice; therefore, in child neglect proceedings, the privilege does not apply

Holder of Privilege:

- *Brown v. United States*, 567 A.2d 426, 427 (D.C. 1989)
 - The privilege belongs primarily to the client

Waiver of Privilege: No procedure specified

DEFINITIONS:

Confidential Communication: No definition specified

Rape Crisis Center: No definition specified

Rape Crisis or Sexual Assault Counselor:

- A person who is under the supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist, and who provides professional services to victims of sexual assault
D.C. CODE § 7-1201.01 (11) (E)

Training Requirements for Rape Crisis Counselors:

At least 40 hours D.C. CODE § 7-1201.01 (11) (E)