



PENNSYLVANIA

42 PA. CONS. STAT. § 5945.1

Type of Privilege: Absolute

Privilege:

- A sexual assault counselor may not disclose the victim's confidential communications to the counselor or consent to be examined in any court or criminal proceeding without the written consent of the victim 42 PA. CONS. STAT. § 5945.1 (b) (1)
- Commonwealth v. Gibbs, 642 A.2d 1132, 1135 (Pa. Super. Ct. 1994)
 - Neither the prosecution nor the defense may call a sexual assault counselor to testify absent consent from the victim
 - The absolute nature of the statutory privilege means that it applies to both the prosecution and the defense

Statutory Exceptions to Privilege:

- Commonwealth v. Askew, 666 A.2d 1062, 1065 (Pa. Super. Ct. 1995)
 - Sexual assault counselors have a statutory duty to report allegations of child abuse to the police
 - According to the mandatory reporting statute, the statutory privilege between sexual assault counselors and victims does not apply in situations involving known or suspected child abuse 23 PA. CONS. STAT. § 6311 (a)

In Camera Review: Prohibited

- The Pennsylvania legislature enacted the sexual assault counselor-victim privilege statute in response to *In re Pittsburgh Action Against Rape*, 428 A.2d 126 (Pa. 1981), in which the court only recognized a limited common law privilege for communications between sexual assault counselors and victims
- The statute as originally enacted prohibited the examination of sexual assault counselors as witnesses in civil and criminal proceedings, but failed to protect the confidentiality of rape crisis center records
- Several subsequent cases held that the privilege was only applicable when the defense sought to examine a sexual assault counselor as a witness, and not when the defense requested records of a rape crisis center or statements in the possession of the prosecution (e.g. Commonwealth v. Samuels, 511 A.2d 221, 231 (Pa. Super. Ct. 1986), aff'd in part and rev'd in part, 516 Pa. 300 (Pa. S. Ct. 1987); Commonwealth v. Hyatt, 584 A.2d 956, 959 (Pa. Super. Ct. 1990))
- In 1990, the Pennsylvania legislature amended the sexual assault counselor-victim privilege statute to protect the confidentiality of rape crisis center records as well
- Commonwealth v. Wilson, 602 A.2d 1290, 1295-96 (Pa. 1992)
 - The sexual assault counselor-victim privilege is absolute, and applies to both the testimony of sexual assault counselors and the records of rape crisis centers
 - The absolute nature of the privilege does not violate a defendant's constitutional rights

Holder of Privilege:

- Only victim may waive the privilege 42 PA. CONS. STAT. § 5945.1 (b) (1)

Waiver of Privilege:

- Consent to disclosure must be in writing 42 PA. CONS. STAT. § 5945.1 (b) (1)
- Commonwealth v. Askew, 666 A.2d 1062, 1065 (Pa. Super. Ct. 1995)
 - The sexual assault counselor-victim privilege was not waived when a minor victim's mother allowed the sexual assault counselor to report allegations of child abuse to the police, as the sexual assault counselor has a statutory duty to make this report

- The privilege was also not waived when a sexual assault counselor reported allegations of child abuse and disclosed statements made by the victim during the counseling sessions to the Commonwealth's medical expert—again, the sexual assault counselor has a duty to report suspected child abuse to cause medical tests to be performed on the child, and the report to the medical expert was only in furtherance of this goal
- Commonwealth v. Davis, 674 A.2d 214, 215 (Pa. 1996)
 - Privilege is waived when the victim allows the prosecution to have access to the protected records

DEFINITIONS:

Confidential Communication:

- All oral and written information transmitted between a victim of sexual assault and a sexual assault counselor in the course of their relationship
- Includes any advice, reports, statistical data, memoranda, working papers, or records given or made during the sexual assault counselor-victim relationship 42 PA. CONS. STAT. § 5945.1 (a)

Rape Crisis Center:

- Any office or institution offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal accompaniment, and follow-up counseling 42 PA. CONS. STAT. § 5945.1 (a)

Sexual Assault Counselor:

- A person who is engaged in any office, institution, or center defined as a rape crisis center, who works under the control of a supervisor of a rape crisis center, and who renders advice, counseling, or assistance to victims of sexual assault 42 PA. CONS. STAT. § 5945.1 (a)

Victim:

- A person who consults a sexual assault counselor for the purpose of securing advice or counseling concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by a sexual assault, or anyone who has a significant relationship with a victim of a sexual assault 42 PA. CONS. STAT. § 5945.1 (a)
- Commonwealth v. Kunkle, 623 A.2d 336, 340-41 (Pa. Super. Ct. 1993)
 - Even though the sexual assault counselor determined that the complainant's allegations were fabricated, the complainant was still considered a victim for purposes of this statute, and her communications with the sexual assault counselor were still privileged
 - A complainant's status as a victim is not dependent upon the sexual assault counselor's evaluation of the situation

Training Requirements for Sexual Assault Counselors:

- 40 hours of training 42 PA. CONS. STAT. § 5945.1 (a)