



TEXAS

TEX. GOV'T CODE § 420.051 and 420.071-420.075

TEX. HEALTH & SAFETY CODE § 44.051 and 44.071-44.075

Type of Privilege: Qualified by statute

Notes:

- The same privilege exists in two different sections of the Texas Code
- Because the sexual assault advocate training program must be certified by the Texas Department of Health in order for this privilege to apply, communication between RAINN's Online Hotline counselors and victims would not be privileged under the Texas confidentiality statute unless the Texas Department of Health is willing to certify a training program for RAINN's Online Hotline volunteers
- In addition, because a sexual assault program is described as local in the statute, RAINN's Online Hotline would probably not fall under the definition of a sexual assault program for purposes of the Texas confidentiality statute

Privilege:

- A communication between an advocate and a survivor that is made in the course of providing sexual assault advocacy services to the survivor is confidential TEX. GOV'T CODE § 420.071 (a)
- A record of the identity, personal history, or background information of a survivor, or information concerning the victimization of the survivor that is created by or provided to an advocate is confidential TEX. GOV'T CODE § 420.071 (b)
- The privilege exists regardless of when the sexual assault survivor received the services of the advocate or sexual assault program TEX. GOV'T CODE § 420.071 (c)
- A violation of the privilege is a Class C misdemeanor TEX. GOV'T CODE § 420.075

Statutory Exceptions to Privilege: TEX. GOV'T CODE § 420.072 (a) (1) and (b) (1)-(3)

- Sexual assault survivor brings a proceeding against an advocate or a sexual assault program
- Advocate determines that there is a probability of imminent physical danger to any person for whom the communication or record is relevant
- Advocate determines that there is a probability of immediate mental or emotional injury to the survivor
- Mandatory reporting of child abuse or neglect
- Disclosure is necessary to complete a management audit, financial audit, program evaluation, or research, but any report completed under this provision may not directly or indirectly identify a sexual assault survivor

In Camera Review: Provided for by statute

- Communications privileged under this provision must be disclosed in response to a subpoena issued in accordance with the law in any criminal investigation or proceeding TEX. GOV'T CODE § 420.074

Holder of Privilege:

- Survivor, parent or guardian of a minor survivor, a legal guardian of an incompetent survivor, or personal representative of a deceased survivor may waive the privilege TEX. GOV'T CODE § 420.073 (a)
- The parent or legal guardian of a minor survivor may not consent to disclosure if a sexual assault advocate or program knows or has reason to believe that the parent or legal guardian is a suspect in the sexual assault of the survivor TEX. GOV'T CODE § 420.072 (c)

Waiver of Privilege:



- Consent for disclosure must be in writing, and must specify
 - The information or records covered by the release,
 - The reason or purpose for the release, and
 - The person to whom the information is to be released TEX. GOV'T CODE § 420.073 (a) (1)-(3)
- Anyone authorized to waive the privilege may withdraw the waiver by submitting a written notice of withdrawal to the person or program to which consent was provided TEX. GOV'T CODE § 420.073 (b)

DEFINITIONS:

Confidential Communication:

- Communication between a sexual assault advocate and a survivor made in the course of providing sexual assault advocacy services to the survivor
- A record of the identity, personal history, or background information of a survivor
- Information concerning the victimization of a survivor that is created by or provided to a sexual assault advocate TEX. GOV'T CODE § 420.071 (a)-(b)

Sexual Assault Program:

- Any local public or private nonprofit corporation that provides the minimum services established by statute TEX. GOV'T CODE § 420.003 (7)
- The attorney general may adopt rules regarding what services a sexual assault program must provide in order to get certified TEX. GOV'T CODE § 420.011 (b)

Sexual Assault Advocate:

- An individual who is employed by a sexual assault program, or who provides services through a sexual assault program as a volunteer under the supervision of an advocate TEX. GOV'T CODE § 420.051

Training Requirements for Sexual Assault Advocates:

- Training program must be certified by the Texas Department of Health TEX. GOV'T CODE § 420.051