



ALABAMA

ALA. CODE § 15-23-40 to -46 “Victim Counselor Confidentiality Act of 1987”

Type of Privilege: Qualified by judicial decision

Note:

- Privilege is limited to criminal proceedings only

Privilege:

- Limited to criminal proceedings only—a victim or victim counselor, without the consent of victim, cannot be compelled to give testimony or produce records concerning confidential communications for any purpose in any criminal proceeding ALA. CODE § 15-23-42 (a)
- In both civil and criminal proceedings—a victim counselor or victim cannot be compelled to provide testimony that would identify the name, address, location, or telephone number of a facility providing temporary emergency shelter to the victim of the offense that is the subject of the proceeding ALA. CODE § 15-23-42 (b)
- Privilege terminates upon the death of the victim ALA. CODE § 15-23-42 (c)

Statutory Exceptions to Privilege:

- Limited to criminal proceedings ALA. CODE § 15-23-42 (a)
- Mandatory reporting of child abuse or neglect ALA. CODE § 15-23-45
- Victim is about to commit a crime ALA. CODE § 15-23-45
- Victim brings suit against a victim counselor or the organization for which the victim counselor works or volunteers ALA. CODE § 15-23-43 (b)

In Camera Review: Provided for by judicial decision

- *Schaefer v. State*, 676 So. 2d 947, 948 (Ala. Crim. App. 1995)
 - When a witness’ credibility is challenged, the trial court must conduct an in camera examination of the privileged records in order to determine whether the records contain exculpatory or impeachment evidence that must be disclosed
 - Access to the privileged records is left to the discretion of the trial court
 - Standard of review is abuse of discretion

Standard for In Camera Review

- *D.P. v. State*, 850 So. 2d 370, 374-75 (Ala. Crim. App. 2002)
 - In order for a court to conduct an in camera inspection of privileged records, defendant must show that the privileged documents may contain evidence relevant and material to an issue in the case
- A trial court must first make findings regarding whether the privileged documents contain evidence relevant to a witness’ credibility, and then, if they do, must weigh the benefits of keeping the records confidential against a defendant’s right to confrontation and cross-examination in order to determine whether the records should be disclosed
- *Brooks v. State*, 2007 WL 2459230 (Ala. Crim. App.)

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- The court overturned trial court's decision not to conduct an in camera review of child's statements to a counselor where defendant had evidence of contradictory statements given to the Alabama Department of Human Resources. Issue was complicated by the fact that a representative of the counselor's employer testified that the organization—Rape Response—did not provide counseling services but rather provided referral services.

Holder of Privilege:

- Only victim may waive the privilege ALA. CODE § 15-23-43

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 privileged communication while testifying, either party may request the court to rule that the privilege afforded by this statute be waived to the extent that the privilege applies to that portion of the communication ALA. CODE § 15-23-43 (a)
- Jordan v. State, 607 So. 2d 333, 337 (Ala. Crim. App. 1992)
 - The victim counselor privilege is only waived if a victim objectively manifested the intent to waive it

DEFINITIONS:

Confidential Communication:

- Any 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 which is disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from a sexual assault or family violence. ALA. CODE § 15-23-41 (1)

Victim Counseling Center:

- A private or public organization, which has as one of its primary purposes the treatment of victims for any emotional or psychological condition resulting from a sexual assault ALA. CODE § 15-23-41 (7)

Victim Counselor:

- An employee or supervised volunteer of a victim counseling center or other agency, business, or organization that provides counseling to victims of sexual assault who is not affiliated with a law enforcement agency or a prosecutor's office ALA. R. EVID. RULE 503A (a)(7)
- Duties of a victim counselor must include treating victims for any emotional or psychological condition resulting from a sexual assault or family violence. ALA. CODE § 15-23-41 (8)

Training Requirements for Victim Counselors:

- Counselor does not need to be licensed for privilege to apply. R.D. v. State, 706 So.2d 770 (Ala. Crim. App. 1997).

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