



CALIFORNIA

CAL. EVID. CODE § 1035-1036.2

Type of Privilege: Qualified by statute

Privilege:

- A victim of a sexual assault has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault counselor, as long as the privilege is claimed by either the victim, a guardian or conservator of the victim, the personal representative of the victim if the victim is deceased, or the sexual assault counselor to whom the communication was made. The privilege exists whether or not the victim is a party to an action CAL. EVID. CODE § 1035.8
- City of Fresno v. Superior Court, 253 Ca. Rptr. 296, 304 (Cal. Ct. App. 1988); CAL. EVID. CODE § 912
 - The holder of the privilege must actively claim the privilege in order to prevent disclosure

Statutory Exceptions to Privilege: None specified

In Camera Review: Provided for by statute

- The court may compel disclosure of privileged information if the court determines that the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled
- The court may conduct an in camera review of the privileged records in order to determine whether or not they should be disclosed
- If the court determines that certain information is relevant to the case and must be disclosed, the following procedure must be followed:
 - The court must inform defendant of the nature of the information that is subject to disclosure
 - The court will hold a hearing to allow the defense counsel to question the sexual assault counselor regarding the information the court has determined is subject to disclosure
 - At the end of the hearing, the court will rule which items of information can be disclosed CAL. EVID. CODE § 1035.4

Standard for In Camera Review:

- People v. Gilbert, 7 Cal. Rptr. 2d 660, 671 (Cal. Ct. App. 1992)
 - Court may compel disclosure of the privileged records if the information given to the sexual assault counselor is relevant evidence of facts material to a criminal proceeding, and the benefits of disclosing the information outweigh the detriment to the victim of the sexual assault
 - Trial court must use a balancing test to determine when justice requires disclosure of privileged records

Holder of Privilege:

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- Victim when there is no guardian or conservator, victim's guardian or conservator if victim has a guardian or conservator, or the personal representative of a deceased victim CAL. EVID. CODE § 1035.6

Waiver of Privilege:

- Privilege waived if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or conduct indicating consent, including failure to claim the privilege in any proceeding CAL. EVID. CODE § 912

DEFINITIONS:

Confidential Communication:

- Information transmitted between the victim and the sexual assault counselor in the course of their relationship, and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the sexual assault counselor is consulted.
- All information regarding the facts and circumstances about the alleged sexual assault, and all information about the victim's prior or subsequent sexual conduct or sexual reputation CAL. EVID. CODE § 1035.4

Sexual Assault Counselor:

- A person engaged in a rape crisis center, office, hospital, or institution, whose primary purpose is to give advice or assistance to victims of sexual assault
- Must have received a certificate demonstrating completion of a training program issued by one of the following types of centers:
 - 1) a counseling center that meets criteria for grant funding under § 13837 of the Penal Code, which means that it must have crisis intervention, 24 hours per day, seven days a week; follow up counseling services, in-person counseling, including group counseling, accompaniment services, advocacy services, information and referrals to victims and the general public, and community education presentations; or
 - 2) a center that receives funding under § 13835.2 of the Penal Code, which means that it provides comprehensive services to victims and witnesses, is recognized by the board of supervisors as the major provider of comprehensive services to victims in the county, and assists with the presentation of claims to and cooperates with the California Victim Compensation Government Claims Board
- Must be supervised by a certified counselor if not a psychotherapist CAL. EVID. CODE § 1035.2

Training Requirements for Sexual Assault Counselors:

- 40 hours of training including, but not limited to, the areas of law, medicine, societal attitudes, crisis intervention, counseling techniques, role playing, referral services, and sexuality CAL. EVID. CODE § 1035.2 (a)(2); or

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- Is a psychotherapist as defined in under CA law; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling; or
- The minimum training for sexual assault counseling required by guidelines established by the employing agency which includes law, victimology, counseling, client and system advocacy, and referral services CAL. EVID. CODE § 1035.2 (b)(2)

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