



## FLORIDA

FLA. STAT. § 90.5035

**Type of Privilege:** Qualified by judicial decision

**Privilege:**

- A victim may refuse to disclose, and prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or a trained volunteer, or any record made in the course of counseling or assisting the victim FLA. STAT. § 90.5035 (2)

**Statutory Exceptions to Privilege:** None specified

**In Camera Review:** Provided for by judicial decision

- State v. Pinder, 678 So. 2d 410, 417 (Fla. Dist. Ct. App 1996)
  - To obtain in camera review of confidential communications or records, a defendant must establish a reasonable probability that the privileged matters contain material information necessary to his defense
  - If defendant meets this requirement, the trial court may conduct an in camera hearing to determine if the privileged records do, in fact, contain necessary information
- The *Pinder* decision has been criticized in at least two cases (State v. Famiglietti, 817 So. 2d 901 (Fla. Dist. Ct. App. 2002), State v. Roberson, 884 So. 2d 406 (Fla. Dist. Ct. App. 2004)), which hold that the legislature made the sexual assault counselor privilege absolute, and it therefore should not be subject to a balancing test, but *Pinder* has not yet been overruled

**Holder of Privilege:**

- Privilege may be claimed by victim, victim's attorney, a guardian or conservator of victim, a personal representative of a deceased victim, or the sexual assault counselor or trained volunteer on behalf of the victim FLA. STAT. § 90.5035 (3)

**Waiver of Privilege:**

- Consent must be given in writing FLA. STAT. § 90.5035 (2)

**DEFINITIONS:**

**Confidential Communication:**

- A communication between a sexual assault counselor or trained volunteer and a victim not intended to be disclosed to third persons other than those persons present to further the interest of the victim in the consultation, examination, or interview, those persons necessary for the transmission of the communication, or those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted. FLA. STAT. § 90.5035 (1) (e)

**Rape Crisis Center:**

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- Any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families FLA. STAT. § 90.5035 (1) (a)

**Sexual Assault Counselor:**

- Any employee of a rape crisis center who counsels and assists victims of sexual assault or sexual battery FLA. STAT. § 90.5035 (1) (b)
- Pinnell v. State, 838 So.2d 596, 597 (Fla.App. 3 Dist.,2003)
  - Definition is broad enough to include social workers for at-risk youth

**Trained Volunteer:**

- A person who volunteers at a rape crisis center who is supervised by members of the staff of the rape crisis center and who is included on a list of volunteers maintained by the rape crisis center FLA. STAT. § 90.5035 (1) (c)

**Training Requirements for Trained Volunteers:**

- 30 hours of training in assisting victims of sexual violence and related topics FLA. STAT. § 90.5035 (1) (c)

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