



## KENTUCKY

**KY. R. EVID. 506**

**KY. REV. STAT. § 211.608**

**Type of Privilege:** Qualified by statute

**Privilege:**

- A client may refuse to disclose and prevent another from disclosing confidential communications between the client and his sexual assault counselor, made for the purpose of counseling the client  
KY. R. EVID. 506 (b)
- All client records and reports of a rape crisis center that directly or indirectly identify a client or former client of the rape crisis center are confidential and shall not be disclosed by any person except as provided by law  
KY. REV. STAT. § 211.608

**Statutory Exceptions to Privilege:** KY. R. EVID. 506 (d) (1)

- Client is asserting his physical, mental, or emotional condition as an element of a claim or defense
- Any party is relying upon a deceased client's physical, mental, or emotional condition as an element of a claim or defense

**In Camera Review:** Provided for by statute

- A court may compel disclosure of confidential communication if the judge finds that the following conditions are satisfied after conducting an in camera hearing of the requested information:
  - The substance of the communication is relevant to an essential issue in the case
  - There are no available alternate means of obtaining the communication or a substantial equivalent
  - The need for the information outweighs the interest protected by the privilege  
KY. R. EVID. 506 (d) (2)
- *Brown v. Com.*, 2008 WL 1850618 (Ky. Apr. 24, 2008)
  - Applies standard that may be relevant to rape crisis communications
  - If psychotherapist records of crucial prosecution witness contain evidence probative of the witness' ability to recall, comprehend, and accurately relate the subject matter of testimony, defendant's right to compulsory process must prevail over the witness' psychotherapist-patient privilege.
  - In connection with such disclosure, certain processes must be followed: only upon a preliminary showing of "evidence sufficient to establish a reasonable belief that the records contain exculpatory evidence" are subject to production. Even then, disclosure is limited to in camera inspection by the trial court to determine whether the records, in fact, contain exculpatory evidence relevant to the witness' credibility.

**Holder of Privilege:**

- Client, client's guardian or conservator, or the personal representative of a deceased client may claim the privilege

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- Sexual assault counselor may claim the privilege in the absence of the client, but only on behalf of the client KY. R. EVID. 506 (c)

**Waiver of Privilege:** No procedure specified

**DEFINITIONS:**

**Confidential Communication:**

- Any communication not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client's family KY. R. EVID. 506 (a) (3)

**Rape Crisis Center:**

- An organization that provides services that include, but are not limited to, crisis counseling, mental health and related support services, advocacy, consultation, public education, and the provision of training programs for professionals KY. REV. STAT. § 211.600 (3)

**Sexual Assault Counselor:**

- A person engaged in a rape crisis center working under the control of a supervisor of a rape crisis center, who gives advice, counseling, or assistance to victims of sexual assault KY. R. EVID. 506 (a) (1) (B)

**Training Requirements for Sexual Assault Counselors:**

- 40 hours of training KY. R. EVID. 506 (a) (1) (B)

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