



ILLINOIS

735 ILL. COMP. STAT. 5/8-802.1

Type of Privilege: Absolute

Privilege:

- No rape crisis counselor shall disclose any confidential communication or be examined as a witness in any civil or criminal proceeding as to any confidential communication without the written consent of the victim 735 ILL. COMP. STAT. 5/8-802.1 (d)
- A rape crisis counselor who knowingly discloses any confidential communication commits a class C misdemeanor 735 ILL. COMP. STAT. 5/8-802.1 (f)

Statutory Exceptions to Privilege:

- Failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person 735 ILL. COMP. STAT. 5/8-802.1 (e)
- Any rape crisis counselor or rape crisis organization participating in good faith in the disclosing of records and communications shall have immunity from any liability, civil, criminal, or otherwise that might result from the action. 735 ILL. COMP. STAT. 5/8-802.1 (e)
- In any proceeding, civil or criminal, arising out of a disclosure under this Section, the good faith of any rape crisis counselor or rape crisis organization who disclosed the confidential communication shall be presumed. 735 ILL. COMP. STAT. 5/8-802.1 (e)

In Camera Review: Prohibited

- *People v. Foggy*, 521 N.E.2d 86, 92 (Ill. 1988)
 - The absolute privilege provided by the statute is not unconstitutional
 - The absolute privilege did not violate defendant's constitutional rights because defendant offered no proof that the privileged records would provide impeachment evidence unavailable from any other source
 - Although the *Foggy* court left open the issue of whether in camera review would be permitted if a defendant showed reason to believe that the privileged records contained impeachment material relevant to his defense, state courts have generally interpreted the statute as being absolute (*see, e.g. People v. Harlacher*, 634 N.E.2d 366, 372 (Ill. App. Ct. 1994))

Holder of Privilege:

- Only the victim or a personal representative of the victim may waive the privilege 735 ILL. COMP. STAT. 5/8-802.1 (d)

Waiver of Privilege:

- Privilege is not waived when the victim or the victim's parent or guardian inspects the records 735 ILL. COMP. STAT. 5/8-802.1 (c) (2)
- When the victim is deceased or incompetent, the victim's guardian or executor of the victim's estate may waive the privilege unless the guardian or executor has an interest adverse to victim 735 ILL. COMP. STAT. 5/8-802.1 (c) (4)
- A minor victim over 12 may knowingly waive the privilege 735 ILL. COMP. STAT. 5/8-802.1 (c) (4)
- When the court decides that a minor victim over 12 is incapable of knowingly waiving the privilege, the victim's parent or guardian may waive the privilege on behalf of the minor victim, unless the parent or guardian has an interest adverse to the minor victim 735 ILL. COMP. STAT. 5/8-802.1 (c) (4)

DEFINITIONS:

Confidential Communication:



- Any communication between a victim and a rape crisis counselor in the course of counseling
- Includes all records kept by the rape crisis counselor or the rape crisis organization concerning the victim and the services provided 735 ILL. COMP. STAT. 5/8-802.1 (b) (4)

Rape Crisis Organization:

- Any organization the major purpose of which is providing information, counseling, and psychological support to victims of any sexual crime 735 ILL. COMP. STAT. 5/8-802.1 (b) (1)

Rape Crisis Counselor:

- A psychologist, social worker, employee, or volunteer at any rape crisis organization who is under the control of a direct services supervisor at the rape crisis organization 735 ILL. COMP. STAT. 5/8-802.1 (b) (2)

Training Requirements for Rape Crisis Counselors:

- 40 hours of training 735 ILL. COMP. STAT. 5/8-802.1 (b) (2)