



MONTANA

MONT. CODE § 26-1-812

Type of Privilege: Absolute

Privilege:

- An advocate may not be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing counseling or crisis intervention services MONT. CODE § 26-1-812 (1)
- Privilege terminates upon the death of the victim MONT. CODE § 26-1-812 (2)

Statutory Exceptions to Privilege:

- “Unless a report is otherwise required by law” MONT. CODE § 26-1-812 (1)

In Camera Review: Prohibited

- There is not yet any case law interpreting the advocate-victim privilege, although other statutory privileges in Montana are subject to judicial in camera review in order to protect the constitutional rights of criminal defendants; *see* State v. Donnelly, 798 P.2d 89 (Mont. 1990)
- State v. Duffy, 6 P.3d 453, 458-59 (Mont. 2000)
 - In the context of privileged medical and counseling records, judicial in camera review of a victim’s confidential records adequately protects a defendant’s confrontation rights
 - The best way to balance a defendant’s need for exculpatory evidence against the privacy interest of the victim is to have the court review the victim’s confidential records in camera
- Although there is no case law applying this analysis to the crisis worker-victim privilege, it is possible that, in the future, the Court will extend its holding to the crisis worker-victim privilege as well

Holder of Privilege:

- Only victim may waive the privilege MONT. CODE § 26-1-812 (2)

Waiver of Privilege:

- Privilege can only be waived by express consent MONT. CODE § 26-1-812 (2)
- Privilege is not waived just because victim is unreachable MONT. CODE § 26-1-812 (2)

DEFINITIONS:

Confidential Communication: No definition specified

Sexual Assault Crisis Center: No definition specified

Advocate:

- An employee or volunteer of a crisis line or victim’s services provider who provides services for victims of sexual assault, stalking, or any assault on a partner or family member MONT. CODE § 26-1-812 (3) (a)

Training Requirements for Advocates: None specified