



NEW HAMPSHIRE

N.H. REV. STAT. § 173-C:1 to 173-C:10

Type of Privilege: Qualified by statute

Note:

- In camera review of records privileged under this statute is limited to criminal proceedings only

Privilege:

- A victim has the privilege to refuse to disclose and to prevent anyone else from disclosing a confidential communication made by the victim to a sexual assault counselor without prior written consent from the victim in any civil, administrative, or criminal proceeding
- Includes any records made in the course of counseling or assisting the victim
- Privilege terminates upon the death of the victim N.H. REV. STAT. § 173-C:2 (I)
- The location and address of a rape crisis center are absolutely privileged N.H. REV. STAT. § 173-C:6

Statutory Exceptions to Privilege:

- Sexual assault counselor knows that the victim has given perjured testimony N.H. REV. STAT. § 173-C:7
- Mandatory reporting of child abuse or neglect N.H. REV. STAT. § 173-C:10

In Camera Review: Provided for by statute

- Limited to criminal proceedings only
- Procedure:
 - Defendant files a motion for disclosure of the privileged information
 - Defendant must demonstrate by a preponderance of the evidence that:
 - The probative value of the requested information outweighs its prejudicial effect on the victim's recovery, privacy, or relationship with the sexual assault counselor
 - The requested information is unavailable from any other source
 - There is a substantial probability that the failure to disclose the requested information will interfere with the defendant's right to confront the witnesses against him and his right to a fair trial
 - The court reviews each motion for disclosure to determine whether the information sought falls under the sexual assault counselor-victim privilege
 - If the information is privileged, the trial judge will review the records in camera to determine whether the privileged information is admissible N.H. REV. STAT. § 173-C:5
- Victim has a right to interlocutory appeal to the supreme court from any decision by a court to require the disclosure of privileged records or communication under this chapter N.H. REV. STAT. § 173-C:9

Holder of Privilege:

- Victim
- An attorney on the victim's behalf
- Guardian of an incompetent victim N.H. REV. STAT. § 173-C:3

Waiver of Privilege:

- Waiver must be in writing, and must be given prior to a proceeding N.H. REV. STAT. § 173-C:2 (I)
- A minor victim who is emancipated, married, or over 15 may waive the privilege unless the court finds that the minor is incapable of knowingly waiving the privilege N.H. REV. STAT. § 173-C:3 (c)



- Waiver as to a specific portion of a confidential communication does not constitute a waiver of the entire communication N.H. REV. STAT. § 173-C:4

DEFINITIONS:

Confidential Communication:

- Information transmitted between a victim and a sexual assault counselor in the course of that relationship in confidence
- Includes any information received by the sexual assault counselor in the course of the counseling relationship N.H. REV. STAT. § 173-C:1 (I)

Rape Crisis Center:

- Any public or private agency or center that assists victims of sexual assault and their families and provides:
 - 24-hour crisis intervention
 - Support services to victims during hospital examination, police investigation, and court proceedings
 - Referrals
 - Peer counseling services
 - Training programs and standardization of procedures for law enforcement, hospital, legal, and social service personnel to enable them to better respond to the needs of sexual assault victims
 - Public education about the nature and scope of sexual assault, as well as the services that are available
 - Services that meet the needs of special populations
 - Court advocacy N.H. REV. STAT. § 173-C:1 (IV)

Sexual Assault Counselor:

- A person who is employed or who volunteers in a rape crisis center who supports, counsels, and assists victims of sexual assault or attempted sexual assault N.H. REV. STAT. § 173-C:1 (V)

Training Requirements for Sexual Assault Counselors:

30 hours of training in a bona fide program developed by a rape crisis center N.H. REV. STAT. § 173-C:1 (V)