



PRIVILEGED COMMUNICATION

Definition of Privileged Communications

- **“Those statements made by certain persons within protected relationships such as husband-wife, attorney-client, priest-penitent and the like which the law protects from forced disclosure on the witness stand.”**
(from *Black’s Law Dictionary*)



Privileged Communications

- Our system of law recognizes specific relationships in which the communication between two parties is protected.
- In these relationships, it is assumed the communication is intended to be confidential.
- Until 2006, Washington state law did not recognize a DV victim talking to an advocate in confidence as one of these protected relationships.

Privileged Communications

This is the language in state law that was added to protect legal privilege of DV victim and advocate conversations:

- RCW 5.60.060(8): A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate.
 - Went into effect June 7, 2006.
 - Sexual assault victim/advocate relationship already covered in state law.

Privileged Communications – DV Advocate Definition

RCW 5.60.060(8)(a):

- For purposes of this section, "domestic violence advocate" means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of social and health services as defined in RCW 26.44.020.

Privileged Communications – DV Advocate Definition

- Important to note who is covered as an advocate under this definition.
- Includes anyone working (paid or volunteer) for a non-profit, community-based DV program. Can be a stand-alone agency or part of a larger organization.
- Does not include DV advocates working for a law enforcement agency, prosecutor's office or CPS.

DV Privilege and SA Privilege

- Definition is the same, but who is covered as an advocate is broader for sexual assault
- SA advocate definition: “employee or volunteer from rape crisis center, victim assistance unit, program, or association that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault”

What Does Having Privileged Communication Actually Do?

- Having legal privilege prevents advocates from being ordered to testify in court about conversations they had with a survivor.
- Also makes it more difficult for agency files about program participants to be disclosed as part of a court case.



Key Points About Privileged Communication

ONLY the survivor has the ability and the right to voluntarily waive legal privilege and allow information to be disclosed outside your agency.

It is her information, not yours.

Key Points About Privileged Communication

- In order for communication to be privileged, it must occur between a DV survivor and advocate only, with no one else present.
- However, privilege is maintained among advocates at the same agency, so discussing a case with co-workers does not break it.
 - This should only be done to receive specific assistance with a case. Keep in mind the survivor's privacy, and do not routinely share everything you know about a program participant with other advocates.

Key Points About Privileged Communication

Situations that invalidate legal privilege:

- **Support group** – All participants should respect confidentiality of discussion, but the extra level of legal privilege cannot be sustained with multiple people in a conversation.
- **Relatives or friends of the survivor** – If they are in the room while a survivor talks with an advocate, that conversation cannot be protected under privilege (though it is still considered confidential information held by your agency).

Interpreters and Privileged Communication

- Having an interpreter present when an advocate and survivor are holding a private conversation does not automatically break privilege.
- The interpreter's role must be solely to facilitate communication. That person cannot be someone known to the victim who is also in the room to support her (like a relative).



Interpreters and Privileged Communication

- The best way to be clear about the use of interpreters is for your agency to contract with professional interpreters who sign confidentiality agreements when working with program participants.
- Ideally, interpreters are paid for their work, but could also be volunteers who understand their role and have signed a confidentiality agreement.



Key Points About Privileged Communication

- Sharing information later with others outside a legally protected relationship may break the privilege.
- For example, if a survivor shares her story with a neighbor that she first told a DV advocate, then she is waiving her future right to keep that information from being used in a court case (because now another person outside the protected relationship knows about it).

Privileged Communication and Confidentiality

- Just because a communication may not be privileged, that does not mean it isn't confidential.
- Even if a circumstance occurs that breaks legal privilege, as an advocate you are still obligated to follow other confidentiality laws in handling a survivor's information.
- So if you know a survivor has told other people some of her own personal information, you still cannot disclose it yourself.

Privileged Communication and Confidentiality

- Always follow your agency's confidentiality policies fully in every circumstance.
- Having privilege is just the “icing on the cake” above and beyond your other practices.



Exceptions to Keeping Privilege

Circumstances when a DV advocate must disclose confidential communication:

- With survivor's written permission on a release of information
- "Duty to warn" situation – an imminent risk of serious physical injury or death of the victim or another person
- Mandated report of child abuse or neglect "or to disclose relevant records relating to a child as required by RCW 26.44.030(12)"
[see RCW 5.60.060(8)(b)]
- If required by a court order



“Relevant records relating to a child”

Your agency is not required to turn over all files if there is a CPS investigation about a survivor’s child. You have legal standing to not turn over records about an adult survivor, as well as withhold information that is not relevant for the child abuse case.