

# STATE OF NEW YORK

---

4649

2017-2018 Regular Sessions

## IN SENATE

February 23, 2017

---

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to establishing that domestic violence advocates may not disclose any communication made by a client to the advocate except in certain circumstances

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 4510 of the civil practice law and rules, as added  
2 by chapter 432 of the laws of 1993 and subdivision (d) as amended by  
3 section 49 of part A-1 of chapter 56 of the laws of 2010, is amended to  
4 read as follows:

5 § 4510. Rape crisis counselor or domestic violence advocate. (a)  
6 Definitions. When used in this section, the following terms shall have  
7 the following meanings:

8 1. "Rape crisis program" means any office, institution or center which  
9 has been approved pursuant to subdivision fifteen of section two hundred  
10 six of the public health law, offering counseling and assistance to  
11 clients concerning sexual offenses, sexual abuses or incest.

12 2. "Rape crisis counselor" means any person who has been certified by  
13 an approved rape crisis program as having satisfied the training stand-  
14 ards specified in subdivision fifteen of section two hundred six of the  
15 public health law, and who, regardless of compensation, is acting under  
16 the direction and supervision of an approved rape crisis program.

17 3. "Client" means (i) any person who is seeking or receiving the  
18 services of a rape crisis counselor for the purpose of securing coun-  
19 seling or assistance concerning any sexual offenses, sexual abuse,  
20 incest or attempts to commit sexual offenses, sexual abuse, or incest,  
21 as defined in the penal law; or

22 (ii) any person who is seeking or receiving assistance from a domestic  
23 violence advocate for the purpose of securing services concerning any

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD02029-01-7

1 acts of domestic violence or any other abuse, human trafficking, or  
2 stalking, as defined in the penal law, whether or not the victim seeks  
3 or receives services within the criminal justice system.

4 4. "Domestic violence program" means any office, institution, center  
5 or provider offering services to victims of domestic violence or any  
6 other abuse, human trafficking, or stalking including, but not limited  
7 to, shelter, counseling, a crisis line, emergency and follow-up inter-  
8 vention, information, referral services, and medical, legal, and social  
9 services advocacy.

10 5. "Domestic violence advocate" means an employee or volunteer of a  
11 domestic violence program. "Domestic violence advocate" shall not  
12 include a person employed by, or under the direct supervision of, a law  
13 enforcement agency, the department of law, or any governmental agency or  
14 department while such employee or volunteer is performing duties on  
15 behalf of or acting in the course of employment of such governmental  
16 agency or department.

17 (b) Confidential information privileged. A rape crisis counselor or  
18 domestic violence advocate shall not be required to disclose a communi-  
19 cation made by his or her client to him or her, or advice given thereon,  
20 in the course of his or her services nor shall any clerk, stenographer  
21 or other person working for the same program as the rape crisis counse-  
22 lor or domestic violence advocate or for the rape crisis counselor or  
23 domestic violence advocate be allowed to disclose any such communication  
24 or advice given thereon nor shall any records made in the course of the  
25 services given to the client or recording of any communications made by  
26 or to a client be required to be disclosed, nor shall the client be  
27 compelled to disclose such communication or records, except:

28 1. that a rape crisis counselor or domestic violence advocate may  
29 disclose such otherwise confidential communication to the extent author-  
30 ized by the client;

31 2. that a rape crisis counselor or domestic violence advocate shall  
32 not be required to treat as confidential a communication by a client  
33 which reveals the intent to commit a crime or harmful act;

34 3. in a case in which the client waives the privilege by instituting  
35 charges against the rape crisis counselor or domestic violence advocate  
36 or the rape crisis program or domestic violence program and such action  
37 or proceeding involves confidential communications between the client  
38 and the rape crisis counselor or domestic violence advocate.

39 (c) Who may waive the privilege. The privilege may only be waived by  
40 the client, the personal representative of a deceased client, or, in the  
41 case of a client who has been adjudicated incompetent or for whom a  
42 conservator has been appointed, the committee or conservator.

43 (d) Limitation on waiver. A client who, for the purposes of obtaining  
44 compensation under article twenty-two of the executive law or insurance  
45 benefits, authorizes the disclosure of any privileged communication to  
46 an employee of the office of victim services or an insurance represen-  
47 tative shall not be deemed to have waived the privilege created by this  
48 section.

49 § 2. This act shall take effect immediately.