

STATE OF NEW YORK

2224

2019-2020 Regular Sessions

IN SENATE

January 23, 2019

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.

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1 acts of domestic violence, which shall include acts that would consti-
2 tute a violent felony offense as enumerated in section 70.02 of the
3 penal law or a family offense as enumerated in subdivision one of
4 section eight hundred twelve of the family court act that is alleged to
5 have been committed by a member of the same family or household, as
6 defined in subdivision one of section eight hundred twelve of the family
7 court act, whether or not the victim seeks or receives services within
8 the criminal justice system.

9 4. "Domestic violence program" means a residential program for victims
10 of domestic violence or a non-residential program for victims of domes-
11 tic violence as defined in section four hundred fifty-nine-a of the
12 social services law.

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

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

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

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

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

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

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

52 § 2. This act shall take effect immediately.