

CALIFORNIA EVIDENCE CODE

Evidence Code Section 1035.2 – “Sexual Assault Victim Counselor” Defined

As used in this article, “sexual assault victim counselor” means any of the following:

- (a) A person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:
 - (1) Is a psychotherapist as defined in Section 1010; has a master’s degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.
 - (2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, medicine, societal attitudes, crisis intervention and counseling techniques, role playing, referral services, and sexuality.

- (b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting sexual assault victims, and who meets one of the following requirements:
 - (1) Is a psychotherapist as defined in Section 1010; has a master’s degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling.
 - (2) Has the minimum training for sexual assault counseling required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, victimology, counseling techniques, client and system advocacy, and referral services.

Evidence Code Section 1035.4 “Confidential Communication Between Sexual Assault Counselor and Victim” Defined

As used in this article, “confidential communication between the sexual assault counselor and the victim” means information transmitted between the victim and the sexual assault counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the sexual assault counselor is consulted. The term includes all information regarding the facts and circumstances involving the alleged sexual assault and also includes all information regarding the victim’s prior or subsequent sexual conduct, and opinions regarding the victim’s sexual conduct or reputation in sexual matters.

The court may compel disclosure of information received by the sexual assault counselor which constitutes relevant evidence of the facts and circumstances involving an alleged sexual assault about which the victim is complaining and which is the subject of a criminal proceeding if the court determines that the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled.

When a court is ruling on a claim of privilege under this article, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out the presence and hearing of all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged and must not be disclosed, neither he or she nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers.

If the court determines certain information shall be disclosed, the court shall so order and inform the defendant. If the court finds there is a reasonable likelihood that particular information is subject to disclosure pursuant to the balancing test provided in this section, the following procedure shall be followed:

- (1) The court shall inform the defendant of the nature of the information, which may be subject to disclosure.
- (2) The court shall order a hearing out of the presence of the jury, if any, and the hearing allow the questioning of the sexual assault counselor regarding the information which the court has determined may be subject to disclosure.
- (3) At the conclusion of the hearing, the court shall rule which items of information, if any, shall be disclosed. The court may make an order stating what evidence may be introduced by the defendant and the nature of questions to be permitted. The defendant may then offer evidence pursuant to the order of the court. Admission of evidence concerning the sexual conduct of the complaining witness is subject to Sections 352, 782, and 1103.

Evidence Code Section 1035.6 “Holder of the Privilege” Defined

As used in this article, “holder of the privilege” means:

- (a) The victim when such person has no guardian or conservator.
- (b) A guardian or conservator of the victim when the victim has a guardian or conservator.
- (c) The personal representative of the victim if the victim is dead.

Evidence Code Section 1035.8 When Privilege to Refuse to Disclose Confidential Communication May Be Claimed

A victim of a sexual assault, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault victim counselor if the privilege is claimed by:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the sexual assault victim counselor at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

Evidence Code Section 1036 When Counselor Shall Claim Privilege

The sexual assault victim counselor who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) Section 1035.8.

Evidence Code Section 1036.2 “Sexual Assault” Defined

As used in this article, “sexual assault” includes all of the following:

- (a) Rape, as defined in Section 261 of the Penal Code.
- (b) Unlawful sexual intercourse, as defined in Section 261.5 of the Penal Code.
- (c) Rape in concert with force and violence, as defined in Section 264.1 of the Penal Code.
- (d) Rape of a spouse, as defined in Section 262 of the Penal Code.
- (e) Sodomy, as defined in Section 262 of the Penal Code, except a violation of subdivision (e) of that section.
- (f) A violation of Section 288 of the Penal Code.
- (g) Oral copulation, as defined in Section 288a of the Penal Code, except a violation of subdivision (e) of that section.
- (h) Penetration of the genital or anal opening of another person with a foreign object, substance, instrument, or device, as specified in Section 289 of the Penal Code.
- (i) Annoying or molesting a child under 18, as defined in Section 647a of the Penal Code.
- (j) Any attempt to commit any of the above