

(1) A “victim” is any person who suffered direct physical or emotional harm as the result of a sexual or violent offense.

(2) A “victim advocate” is a person who is:

(A) designated in writing as a victim advocate;

(B) authorized to perform victim advocate duties in accordance with service regulations, and is acting in the performance of those duties;
or

(C) certified as a victim advocate pursuant to Federal or State requirements.

(3) A communication is “confidential” if made to a victim advocate acting in the capacity of a victim advocate and if not intended to be disclosed to third persons other than:

(A) those to whom disclosure is made in furtherance of the rendition of advice or assistance to the victim or

(B) an assistant to a victim advocate reasonably necessary for such transmission of the communication.

(4) An “assistant to a victim advocate” is a person directed by or assigned to assist a victim advocate in providing victim advocate services, or is reasonably believed by the victim to be such.

(5) “Evidence of a victim’s records or communications” is testimony of a victim advocate, or records that pertain to communications by a victim to a victim advocate, for the purposes of advising or providing supportive assistance to the victim.

(c) *Who may claim the privilege.* The privilege may be claimed by the victim or any guardian or conservator of the victim. A person who may claim the privilege may authorize trial counsel or a defense counsel representing the victim to claim the privilege on his or her behalf. The victim advocate who received the communication may claim the privilege on behalf of the victim. The authority of such a victim advocate, guardian, conservator, or a defense counsel representing the victim to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) *Exceptions.* There is no privilege under this rule:

(1) when the victim is dead;

(2) when Federal law, State law, or service regulation imposes a duty to report information contained in a communication;

(3) if the communication clearly contemplated the future commission of a fraud or crime or if the services of the victim advocate are sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud;

(4) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission;

(5) when necessary to ensure the safety of any other person (including the victim) when a victim advocate believes that a victim's mental or emotional condition makes the victim a danger; or

(6) when admission or disclosure of a communication is constitutionally required.