



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3308

Introduced 2/14/2014, by Sen. Jennifer Bertino-Tarrant

SYNOPSIS AS INTRODUCED:

735 ILCS 5/8-802.1
750 ILCS 60/227

from Ch. 110, par. 8-802.1
from Ch. 40, par. 2312-27

Amends the Code of Civil Procedure and the Illinois Domestic Violence Act of 1986. Provides that if a victim of rape or domestic violence is deceased, has been adjudged by a court to be a person under legal disability, or has been reported missing for more than 6 months, a judge may inspect in camera the records of a rape crisis organization or domestic violence program to determine whether those records contain relevant information about the victim's death, legal disability, or disappearance and may order the disclosure of information the court determines is necessary for: (1) an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death, legal disability, or disappearance; or (2) a guardianship or custody proceeding involving the victim's minor child or children.

LRB098 19434 HEP 54596 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Section 8-802.1 as follows:

6 (735 ILCS 5/8-802.1) (from Ch. 110, par. 8-802.1)

7 Sec. 8-802.1. Confidentiality of Statements Made to Rape
8 Crisis Personnel.

9 (a) Purpose. This Section is intended to protect victims of
10 rape from public disclosure of statements they make in
11 confidence to counselors of organizations established to help
12 them. On or after July 1, 1984, "rape" means an act of forced
13 sexual penetration or sexual conduct, as defined in Section
14 11-0.1 of the Criminal Code of 2012, including acts prohibited
15 under Sections 11-1.20 through 11-1.60 or 12-13 through 12-16
16 of the Criminal Code of 1961 or the Criminal Code of 2012.
17 Because of the fear and stigma that often results from those
18 crimes, many victims hesitate to seek help even where it is
19 available at no cost to them. As a result they not only fail to
20 receive needed medical care and emergency counseling, but may
21 lack the psychological support necessary to report the crime
22 and aid police in preventing future crimes.

23 (b) Definitions. As used in this Act:

1 (1) "Rape crisis organization" means any organization
2 or association the major purpose of which is providing
3 information, counseling, and psychological support to
4 victims of any or all of the crimes of aggravated criminal
5 sexual assault, predatory criminal sexual assault of a
6 child, criminal sexual assault, sexual relations between
7 siblings, criminal sexual abuse and aggravated criminal
8 sexual abuse.

9 (2) "Rape crisis counselor" means a person who is a
10 psychologist, social worker, employee, or volunteer in any
11 organization or association defined as a rape crisis
12 organization under this Section, who has undergone 40 hours
13 of training and is under the control of a direct services
14 supervisor of a rape crisis organization.

15 (3) "Victim" means a person who is the subject of, or
16 who seeks information, counseling, or advocacy services as
17 a result of an aggravated criminal sexual assault,
18 predatory criminal sexual assault of a child, criminal
19 sexual assault, sexual relations within families, criminal
20 sexual abuse, aggravated criminal sexual abuse, sexual
21 exploitation of a child, indecent solicitation of a child,
22 public indecency, exploitation of a child, promoting
23 juvenile prostitution as described in subdivision (a)(4)
24 of Section 11-14.4, or an attempt to commit any of these
25 offenses.

26 (4) "Confidential communication" means any

1 communication between a victim and a rape crisis counselor
2 in the course of providing information, counseling, and
3 advocacy. The term includes all records kept by the
4 counselor or by the organization in the course of providing
5 services to an alleged victim concerning the alleged victim
6 and the services provided.

7 (c) Waiver of privilege.

8 (1) The confidential nature of the communication is not
9 waived by: the presence of a third person who further
10 expresses the interests of the victim at the time of the
11 communication; group counseling; or disclosure to a third
12 person with the consent of the victim when reasonably
13 necessary to accomplish the purpose for which the counselor
14 is consulted.

15 (2) The confidential nature of counseling records is
16 not waived when: the victim inspects the records; or in the
17 case of a minor child less than 12 years of age, a parent
18 or guardian whose interests are not adverse to the minor
19 inspects the records; or in the case of a minor victim 12
20 years or older, a parent or guardian whose interests are
21 not adverse to the minor inspects the records with the
22 victim's consent, or in the case of an adult who has a
23 guardian of his or her person, the guardian inspects the
24 records with the victim's consent.

25 (3) When a victim is deceased, the executor or
26 administrator of the victim's estate may waive the

1 privilege established by this Section, unless the executor
2 or administrator has an interest adverse to the victim.

3 (4) A minor victim 12 years of age or older may
4 knowingly waive the privilege established in this Section.
5 When a minor is, in the opinion of the Court, incapable of
6 knowingly waiving the privilege, the parent or guardian of
7 the minor may waive the privilege on behalf of the minor,
8 unless the parent or guardian has been charged with a
9 violent crime against the victim or otherwise has any
10 interest adverse to that of the minor with respect to the
11 waiver of the privilege.

12 (5) An adult victim who has a guardian of his or her
13 person may knowingly waive the privilege established in
14 this Section. When the victim is, in the opinion of the
15 court, incapable of knowingly waiving the privilege, the
16 guardian of the adult victim may waive the privilege on
17 behalf of the victim, unless the guardian has been charged
18 with a violent crime against the victim or otherwise has
19 any interest adverse to the victim with respect to the
20 privilege.

21 (d) Confidentiality. Except as provided in this Act, no
22 rape crisis counselor shall disclose any confidential
23 communication or be examined as a witness in any civil or
24 criminal proceeding as to any confidential communication
25 without the written consent of the victim or a representative
26 of the victim as provided in subparagraph (c).

1 (e) A rape crisis counselor may disclose a confidential
2 communication without the consent of the victim if failure to
3 disclose is likely to result in a clear, imminent risk of
4 serious physical injury or death of the victim or another
5 person. Any rape crisis counselor or rape crisis organization
6 participating in good faith in the disclosing of records and
7 communications under this Act shall have immunity from any
8 liability, civil, criminal, or otherwise that might result from
9 the action. In any proceeding, civil or criminal, arising out
10 of a disclosure under this Section, the good faith of any rape
11 crisis counselor or rape crisis organization who disclosed the
12 confidential communication shall be presumed.

13 (e-5) If a victim is deceased, has been adjudged by a court
14 to be a person under legal disability, or has been reported
15 missing for more than 6 months, a judge may inspect in camera
16 the records of a rape crisis organization to determine whether
17 those records contain relevant information about the victim's
18 death, legal disability, or disappearance and may order the
19 disclosure of information the court determines is necessary
20 for:

21 (1) an official law enforcement investigation or
22 criminal proceeding regarding the cause of that victim's
23 death, legal disability, or disappearance; or

24 (2) a guardianship or custody proceeding involving the
25 victim's minor child or children.

26 (f) Any rape crisis counselor who knowingly discloses any

1 confidential communication in violation of this Act commits a
2 Class C misdemeanor.

3 (Source: P.A. 96-1010, eff. 1-1-11; 96-1551, eff. 7-1-11;
4 97-1150, eff. 1-25-13.)

5 Section 10. The Illinois Domestic Violence Act of 1986 is
6 amended by changing Section 227 as follows:

7 (750 ILCS 60/227) (from Ch. 40, par. 2312-27)

8 Sec. 227. Privileged communications between domestic
9 violence counselors and victims.

10 (a) As used in this Section:

11 (1) "Domestic violence program" means any unit of local
12 government, organization, or association whose major
13 purpose is to provide one or more of the following:
14 information, crisis intervention, emergency shelter,
15 referral, counseling, advocacy, or emotional support to
16 victims of domestic violence.

17 (2) "Domestic violence advocate or counselor" means
18 any person (A) who has undergone a minimum of forty hours
19 of training in domestic violence advocacy, crisis
20 intervention, and related areas, and (B) who provides
21 services to victims through a domestic violence program
22 either on an employed or volunteer basis.

23 (3) "Confidential communication" means any
24 communication between an alleged victim of domestic

1 violence and a domestic violence advocate or counselor in
2 the course of providing information, counseling, or
3 advocacy. The term includes all records kept by the
4 advocate or counselor or by the domestic violence program
5 in the course of providing services to an alleged victim
6 concerning the alleged victim and the services provided.
7 The confidential nature of the communication is not waived
8 by the presence at the time of the communication of any
9 additional persons, including but not limited to an
10 interpreter, to further express the interests of the
11 domestic violence victim or by the advocate's or
12 counselor's disclosure to such an additional person with
13 the consent of the victim when reasonably necessary to
14 accomplish the purpose for which the advocate or counselor
15 is consulted.

16 (4) "Domestic violence victim" means any person who
17 consults a domestic violence counselor for the purpose of
18 securing advice, counseling or assistance related to one or
19 more alleged incidents of domestic violence.

20 (5) "Domestic violence" means abuse as defined in the
21 Illinois Domestic Violence Act.

22 (b) No domestic violence advocate or counselor shall
23 disclose any confidential communication or be examined as a
24 witness in any civil or criminal case or proceeding or in any
25 legislative or administrative proceeding without the written
26 consent of the domestic violence victim except (1) in

1 accordance with the provisions of the Abused and Neglected
2 Child Reporting Act or (2) in cases where failure to disclose
3 is likely to result in an imminent risk of serious bodily harm
4 or death of the victim or another person.

5 (c) A domestic violence advocate or counselor who knowingly
6 discloses any confidential communication in violation of this
7 Act commits a Class A misdemeanor.

8 (d) When a domestic violence victim is deceased or has been
9 adjudged incompetent by a court of competent jurisdiction, the
10 guardian of the domestic violence victim or the executor or
11 administrator of the estate of the domestic violence victim may
12 waive the privilege established by this Section, except where
13 the guardian, executor or administrator of the estate has been
14 charged with a violent crime against the domestic violence
15 victim or has had an Order of Protection entered against him or
16 her at the request of or on behalf of the domestic violence
17 victim or otherwise has an interest adverse to that of the
18 domestic violence victim with respect to the waiver of the
19 privilege. In that case, the court shall appoint an attorney
20 for the estate of the domestic violence victim.

21 (d-5) If a victim is deceased, has been adjudged by a court
22 to be a person under legal disability, or has been reported
23 missing for more than 6 months, a judge may inspect in camera
24 the records of a domestic violence program to determine whether
25 those records contain relevant information about the victim's
26 death, legal disability, or disappearance and may order the

1 disclosure of information the court determines is necessary
2 for:

3 (1) an official law enforcement investigation or
4 criminal proceeding regarding the cause of that victim's
5 death, legal disability, or disappearance; or

6 (2) a guardianship or custody proceeding involving the
7 victim's minor child or children.

8 (e) A minor may knowingly waive the privilege established
9 by this Section. Where a minor is, in the opinion of the court,
10 incapable of knowingly waiving the privilege, the parent or
11 guardian of the minor may waive the privilege on behalf of the
12 minor, except where such parent or guardian has been charged
13 with a violent crime against the minor or has had an Order of
14 Protection entered against him or her on request of or on
15 behalf of the minor or otherwise has any interest adverse to
16 that of the minor with respect to the waiver of the privilege.
17 In that case, the court shall appoint an attorney for the minor
18 child who shall be compensated in accordance with Section 506
19 of the Illinois Marriage and Dissolution of Marriage Act.

20 (f) Nothing in this Section shall be construed to limit in
21 any way any privilege that might otherwise exist under statute
22 or common law.

23 (g) The assertion of any privilege under this Section shall
24 not result in an inference unfavorable to the State's cause or
25 to the cause of the domestic violence victim.

26 (Source: P.A. 87-1186.)