

### **916.2 Military victim advocate privilege.**

1. A military victim advocate shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the advocate, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of an advocate be required to produce evidence of any such confidential communication, unless the victim waives this privilege in writing or disclosure of the information is compelled by a court pursuant to [subsection 6](#). However, under no circumstances shall the identity of the advocate be disclosed in any civil or criminal proceeding.

2. If a victim is deceased or has been declared to be incompetent, the privilege specified in [subsection 1](#) may be waived by the guardian of the victim or by the personal representative of the victim's estate.

3. A minor who is a member of the national guard or a branch of the armed forces of the United States may waive the privilege under [subsection 1](#).

4. A privilege under [this section](#) does not apply in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the advocate's first contact with the victim after the injury, or if the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

5. The failure of an advocate to testify due to [this section](#) shall not give rise to an inference unfavorable to the cause of the state or the cause of a defendant.

6. Upon the motion of a party, accompanied by a written offer of proof, a court may compel disclosure of certain information if the court determines that all of the following conditions are met:

a. The information sought is relevant and material evidence of the facts and circumstances involved in an alleged criminal act which is the subject of a criminal proceeding.

b. The probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the advocacy relationship, and the treatment services.

c. The information cannot be obtained by reasonable means from any other source.

7. In ruling on a motion under [subsection 6](#), the court, if the motion was filed in a criminal proceeding to be tried to the court, or a different judge, shall adhere to the following procedure:

a. The court may require the advocate from whom disclosure is sought or the victim claiming the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the victim and any other persons the victim is willing to have present.

b. If the court determines that the information is privileged and not subject to compelled disclosure, the information shall not be disclosed by any person without the consent of the victim.

c. If the court determines that certain information may be subject to disclosure, as provided in [subsection 6](#), the court shall so inform the party seeking the information and shall order a subsequent hearing out of the presence of the jury, if applicable, at which time the parties shall be allowed to examine the advocate regarding the information that the court has determined may be subject to disclosure. The court may accept other evidence at the hearing.

d. At the conclusion of a hearing under paragraph "c", the court shall determine which information, if any, shall be disclosed and may enter an order describing the evidence which may be introduced by the moving party and prescribing the line of questioning which may be permitted. The moving party may then offer evidence pursuant to the court order. A victim advocate is not subject to exclusion under rule of evidence 5.615.

8. [This section](#) does not relate to the admission of evidence of the victim's past sexual behavior which is strictly subject to rule of evidence 5.412.

[2015 Acts, ch 28, §2](#)

NEW section