



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB5976

Introduced 2/10/2010, by Rep. Julie Hamos

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/8-802.1

from Ch. 110, par. 8-802.1

Amends the Code of Civil Procedure. Provides an additional circumstance when the confidential nature of counseling records is not waived: in the case of an adult who has a guardian of his person, if the guardian inspects the records with the victim's consent. Provides that an adult victim who has a guardian of his or her person may knowingly waive the rape crisis statement privilege, but if the adult victim is, in the court's opinion, incapable of knowingly waiving the privilege, the guardian of the adult victim may waive the privilege, unless the guardian is charged with a violent crime against the victim or otherwise has an adverse interest to the victim with respect to the privilege.

LRB096 18474 AJ0 35626 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 12-12 of the Criminal Code of 1961, as amended, including acts  
15 prohibited under Sections 12-13 through 12-16 of the Criminal  
16 Code of 1961, as amended. Because of the fear and stigma that  
17 often results from those crimes, many victims hesitate to seek  
18 help even where it is available at no cost to them. As a result  
19 they not only fail to receive needed medical care and emergency  
20 counseling, but may lack the psychological support necessary to  
21 report the crime and aid police in preventing future crimes.

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

23 (1) "Rape crisis organization" means any organization

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

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

14 (3) "Victim" means a person who is the subject of, or  
15 who seeks information, counseling, or advocacy services as  
16 a result of an aggravated criminal sexual assault,  
17 predatory criminal sexual assault of a child, criminal  
18 sexual assault, sexual relations within families, criminal  
19 sexual abuse, aggravated criminal sexual abuse, sexual  
20 exploitation of a child, indecent solicitation of a child,  
21 public indecency, exploitation of a child, or an attempt to  
22 commit any of these offenses.

23 (4) "Confidential communication" means any  
24 communication between a victim and a rape crisis counselor  
25 in the course of providing information, counseling, and  
26 advocacy. The term includes all records kept by the

1 counselor or by the organization in the course of providing  
2 services to an alleged victim concerning the alleged victim  
3 and the services provided.

4 (c) Waiver of privilege.

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

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

22 (3) When a victim is deceased, ~~or has been adjudged~~  
23 ~~incompetent by a court of competent jurisdiction, the~~  
24 ~~victim's guardian or~~ the executor or administrator of the  
25 victim's estate may waive the privilege established by this  
26 Section, unless the ~~guardian,~~ executor, or administrator

1 has an interest adverse to the victim.

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

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

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

26 (e) A rape crisis counselor may disclose a confidential

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

12 (f) Any rape crisis counselor who knowingly discloses any  
13 confidential communication in violation of this Act commits a  
14 Class C misdemeanor.

15 (Source: P.A. 88-33; 89-428, eff. 12-13-95; 89-462, eff.  
16 5-29-96.)