

CHAPTER 595

WITNESSES

595.02 Testimony of witnesses.

595.04 Repealed.

595.02 TESTIMONY OF WITNESSES.

Subdivision 1. **Competency of witnesses.** Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) A public officer shall not be allowed to disclose communications made to the officer in official confidence when the public interest would suffer by the disclosure.

(f) Persons of unsound mind and persons intoxicated at the time of their production for examination are not competent witnesses if they lack capacity to remember or to relate truthfully facts respecting which they are examined.

(g) A registered nurse, psychologist or consulting psychologist shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity.

(h) An interpreter for a person handicapped in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person handicapped in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(j) Sexual assault counselors may not be compelled to testify about any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

"Sexual assault counselor" for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(k) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation by the common law.

(l) A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.

[For text of subds 2 and 3, see M.S.1986]

Subd. 4. Court order. (a) In a proceeding in which a child less than ten years of age is alleging, denying, or describing an act of physical abuse or an act of sexual contact or penetration performed with or on the child by another, the court may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken

in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding.

(b) At the taking of testimony under this subdivision, only the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 or a dissolution or custody proceeding under chapter 518, the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, determines that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

(1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or

(2) the defendant and child can view each other by video or television monitor from separate rooms.

[For text of subd 5, see M.S.1986]

History: 1987 c 120 s 1; 1987 c 134 s 1; 1987 c 331 s 7

595.04 [Repealed, 1987 c 346 s 18]