

# Sexual Violence Legal News Online

## Commonwealth v. Makara, Superior Court of Pennsylvania (appeal from Court of Common Pleas)

**980 A.2d 138**

**Topic:**

Discovery/Production, Privacy, Victim's Rights

**Nature of the case:**

Defendant is charged with twenty-five counts of sexual violence against two victims. This is an interlocutory appeal by a private third-party.

**Facts and Issues on Appeal:**

Defendant filed a motion to compel disclosure of the privileged counseling and educational records of two minor victims. The trial court granted the motion without a hearing. One of the institutions ordered to disclose records appealed the decision prior to trial asserting that the records are not subject to disclosure because they are privileged and confidential under the Mental Health Procedures Act and the Psychologist-Patient Privilege Act. On appeal, the court addressed the procedural question whether a third-party, or someone on their behalf, has standing to appeal a court's order requiring disclosure of a victim's privileged records.

**Ruling & Rationale:**

The order requiring disclosure of records must be reversed because neither the third-party record holder nor the victims were awarded due process of law since they were given neither notice of the defendant's request nor the opportunity to defend themselves. Therefore, the court ruled the issue was properly before them on appeal under the collateral order doctrine. In previous cases the court had found that a victim's rights to privacy and confidentiality would be lost if the review of such court orders were to postponed until after trial. Therefore, orders requiring disclosure of such confidential and private records are immediately appealable as of right because the issues are collateral to the main issues in the underlying trial.

**EDITORIAL COMMENT:** This case is interesting because unlike most jurisdictions, the court expressly affords victims and interested third-parties due process protection. Most states allow only discretionary interlocutory appeals by non-parties parties to the criminal litigation. It is also interesting that the court ordered guardians ad litem to be appointed to the minor victims to protect their rights in this controversy. Most states refuse to expend public resources to compensate attorneys for third-parties in criminal cases.

**Submitted By:** Kathryn Schwartz -- Law Student