

78B-10-105 Waiver and preclusion of privilege.

- (1) A privilege under Section 78B-10-104 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation, and:
 - (a) in the case of the privilege of a mediator, it is expressly waived by the mediator; and
 - (b) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.
- (2) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under Section 78B-10-104, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.
- (3) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under Section 78B-10-104.

Renumbered and Amended by Chapter 3, 2008 General Session