



Indiana Coalition
Against
Domestic Violence

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LEGAL ISSUES for victims of abuse

From Kerry Hyatt Bennett, ICADV Legal Counsel

Victim Confidentiality in Indiana

In 2008, Indiana's Confidentiality Law changed to bring Indiana into compliance with provisions of the Violence Against Women's Act and its federal confidentiality requirements.

- Codified at IC 35-37-6, the new provisions apply to direct victim service providers, rape crisis centers and transitional housing programs.
 - Victim Advocate: IC 35-37-6-3. An individual who works, either as an employee or as a volunteer, for a "victim services provider".
 - Includes domestic violence, sexual assault and rape crisis shelters and programs.
 - These provisions do NOT apply to victim assistance affiliated with a prosecutor's office or law enforcement agency.
 - Victim Services Provider: IC 35-37-6-5. A public agency NOT affiliated with law enforcement and must be not for profit under IRS Section 501.
 - Primary purpose must include services for emotional/psychological services to individuals as a result of DV, SA, dating violence, stalking or trafficking.
 - Releasing a Victim's Information
 - Must be in writing
 - NOTE: Withdrawal of consent to release information CAN be made orally/ by telephone.
 - Must be informed: fully understood and agreed to by victim as to where information is going and possible repercussions.
 - Must be time limited: as specific as possible, for a short a time as possible.
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- DV Facility Location: IC 35-37-6-9 Victim advocate, provider or victim may not be compelled to provide information that would identify the name, address, location or telephone number of provider, facility or shelter unless that facility is a party to the proceeding.
- In Court Testimony Requests
 - IC 35-37-6-9: victim advocate or agency may not be compelled to give testimony. Produce documents or records or release any information without target's complete, dated, written consent.
 - IC 35-37-6-16: Partial disclosure does not waive confidentiality provisions.

Note: Targeted releases of information forms and written rescissions of release available from ICADV upon request.

IC 35-37-6 Chapter 6. Privileged Communications and Victim Counseling

IC 35-37-6-1

"Confidential communication" defined

Sec. 1. (a) As used in this chapter, "confidential communication" means any information:

- (1) exchanged between a victim and a victim advocate in the course of the relationship between the victim and the victim advocate;
- (2) exchanged or disclosed in a support group in which a victim is or was a participant; or
- (3) exchanged in the presence of a third person who facilitates or facilitated communication between a victim and a victim advocate.

(b) The term includes communication that is verbal or written and includes:

- (1) advice;
- (2) notes;
- (3) reports;
- (4) statistical data;
- (5) memoranda;
- (6) working papers;
- (7) records; and
- (8) personally identifying information;

produced in the course of advocating for a victim.

As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.7.

IC 35-37-6-1.5

"Confidential information" defined

Sec. 1.5. (a) As used in this chapter, "confidential information" includes:

- (1) personally identifying information;
- (2) descriptions of physical appearance;
- (3) the case file; and
- (4) the case history;

of a person who seeks, receives, or has received services from a victim advocate.

(b) The term does not include:

(1) information disclosed to a victim service provider or a victim advocate if the victim:

(A) files criminal charges;

(B) institutes a civil lawsuit; or

(C) reports allegations of criminal conduct to a law enforcement agency; against the victim service provider or victim advocate; and

(2) alleged child abuse or neglect that is required to be reported under IC 31-33.

As added by P.L.104-2008, SEC.8.

IC 35-37-6-2.5

"Personally identifying information" defined

Sec. 2.5. (a) As used in this chapter, "personally identifying information" means information that identifies a victim or the location where domestic violence, dating violence, sexual assault, or stalking occurred, including the victim's:

(1) name;

(2) mailing and physical address;

(3) electronic mail address;

(4) Internet protocol address;

(5) telephone numbers, including facsimile numbers;

(6) Social Security number;

(7) date of birth;

(8) racial or ethnic background; and

(9) religious affiliation.

(b) The term includes any other information that, in combination with other nonpersonally identifying information, would identify an individual.

As added by P.L.104-2008, SEC.9.

IC 35-37-6-2.7

"Student advocate office"

As used in this chapter, "student advocate office" means a student services office, victim assistance office, or other victim counselor as designated by a state educational institution or an approved postsecondary educational institution. As added by P.L.70-2016, SEC.2.

IC 35-37-6-3

"Victim" defined

Sec. 3. As used in this chapter, "victim" means:

(1) an individual against whom an act of:

(A) domestic or family violence;

(B) dating violence;

(C) sexual assault (as defined in IC 5-26.5-1-8);

(D) human and sexual trafficking (IC 35-42-3.5); or

(E) stalking (IC 35-45-10-5);

is committed; or

(2) an individual:

(A) who is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and

(B) who:

(i) is a member of the family of an individual described in subdivision (1); but

(ii) is not a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).

As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.10.

IC 35-37-6-3.5

"Victim advocate"

(a) As used in this chapter, "victim advocate" means an individual employed or appointed by or who volunteers for:

- (1) a victim services provider; or
- (2) the student advocate office of a state educational institution or an approved postsecondary educational institution, if the individual provides services to a victim.

(b) The term does not include:

- (1) a law enforcement officer;
- (2) an employee or agent of a law enforcement officer;
- (3) a prosecuting attorney; or
- (4) an employee or agent of a prosecuting attorney's office.

(c) The term includes an employee, an appointee, or a volunteer of a:

- (1) victim services provider;
- (2) domestic violence program;
- (3) sexual assault program;
- (4) rape crisis center;
- (5) battered women's shelter;
- (6) transitional housing program for victims of domestic violence; or
- (7) program that has as one (1) of its primary purposes to provide services to an individual:

(A) against whom an act of: (i) domestic or family violence; (ii) dating violence; (iii) sexual assault (as defined in IC 5-26.5-1-8); (iv) human and sexual trafficking (IC 35-42-3.5); or (v) stalking (IC 35-45-10-5); is committed; or

(B) who: (i) is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and (ii) is a member of the family of an individual described in clause (A) other than a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).

As added by P.L.104-2008, SEC.11. Amended by P.L.70-2016, SEC.3. IC 35-37-6-3.5

IC 35-37-6-5

"Victim service provider" defined

Sec. 5. As used in this chapter, "victim service provider" means a person:

(1) that is:

- (A) a public agency;
- (B) a unit of a public agency; or

(C) an organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code;

(2) that is not affiliated with a law enforcement agency;

(3) that has, as one (1) of its primary purposes, to provide services for emotional and

psychological conditions that occur to an individual:

- (A) against whom an act of:
 - (i) domestic or family violence;
 - (ii) dating violence;
 - (iii) sexual assault (as defined in IC 5-26.5-1-8);
 - (iv) human and sexual trafficking (IC 35-42-3.5); or
 - (v) stalking (IC 35-45-10-5);

is committed; or

(B) who:

- (i) is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and
- (ii) is a member of the family of an individual described in clause (A) other than a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).

As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.12.

IC 35-37-6-7

Application of chapter

Sec. 7. This chapter does not limit any other testimonial privilege available to a person.
As added by P.L.136-1987, SEC.5.

IC 35-37-6-8

Duty of victim advocate to report

Sec. 8. This chapter does not relieve a victim advocate of any duty to report suspected abuse, neglect, battery, or exploitation under IC 12-10-3, IC 31-33, or IC 35-46-1-13.
As added by P.L.136-1987, SEC.5. Amended by P.L.3-1989, SEC.222; P.L.2-1992, SEC.875; P.L.1-1997, SEC.144; P.L.104-2008, SEC.13.

IC 35-37-6-9

Confidential communications; compelling testimony; records; temporary emergency shelters

Sec. 9. (a) The following persons or entities may not be compelled to give testimony, to produce records, or to disclose any information concerning confidential communications and confidential information to anyone or in any judicial, legislative, or administrative proceeding:

(1) A victim.

(2) A victim advocate or victim service provider unless the victim specifically consents to the disclosure in a written authorization that contains the date the consent expires.

(b) A victim advocate, victim service provider, or victim may not be compelled to provide testimony in any judicial, legislative, or administrative proceeding that would identify the name, address, location, or telephone number of any facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(c) A victim service provider or victim advocate may not require a victim to consent to the disclosure of information concerning confidential communications and confidential information as a condition of the victim receiving services.

(d) This section does not prohibit a victim from providing testimony concerning an offense.

(e) The consent to disclose information on behalf of:

- (1) a child who is less than eighteen (18) years of age and is unemancipated; or
- (2) an incapacitated victim;

may be made by a custodial parent, custodian, guardian, or guardian ad litem in a written authorization that contains the date the consent expires.

(f) A consent under subsection (e) may not be given by a custodial parent, custodian, guardian, or guardian ad litem of the victim if the custodial parent, custodian, guardian, or guardian ad litem:

- (1) committed; or
- (2) is alleged to have committed;

an offense against the victim.

As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.14.

IC 35-37-6-10

Waiver by victim of protections of chapter

Sec. 10. (a) A victim does not waive the protections afforded by this chapter by testifying in court about an offense. However, if the victim partially discloses the contents of a confidential communication in the course of testifying, either party may request the court to rule that justice requires the protections of this chapter to be waived, to the extent they apply to that portion of the communication.

(b) A waiver under this section applies only to the extent necessary to require any witness to respond to questions concerning the confidential communication that are relevant to the facts and circumstances of the case.

As added by P.L.136-1987, SEC.5.

IC 35-37-6-11

Waiver by victim advocate of protection of chapter; disclosure of confidential information

Sec. 11. A victim advocate may not waive the protections afforded to a victim under this chapter. However, if:

(1) a victim brings suit against a victim advocate or victim service provider in which the victim advocate was employed or served as a volunteer at the time of the counseling relationship; and

(2) the suit alleges malpractice during the relationship;

the victim advocate may testify or produce records regarding confidential communications with the victim and is not liable for doing so.

As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.15.

IC 35-37-6-13

Authorization of release of confidential information

Sec. 13. (a) Except as provided in subsection (d):

(1) a victim; or

(2) in the case of a deceased victim, the victim's personal representative;

may authorize a victim advocate or victim service provider to release confidential information or other information by signing a written authorization that specifies what information will be released and to whom the information will be released.

(b) The authorization described in subsection (a) must include a date the authorization expires.

(c) A victim advocate shall make reasonable attempts to notify a victim when a victim service provider or victim advocate is required to disclose confidential information or confidential communications.

(d) A consent for release may not be given by a personal representative of the victim if the personal representative:

- (1) abused or killed the victim;
- (2) is alleged to have abused or killed the victim; or
- (3) assisted another person in abusing or killing the victim.

As added by P.L.104-2008, SEC.16.

IC 35-37-6-14

Prosecuting attorney duty to disclose; victim preserves confidentiality

Sec. 14. (a) This section does not:

- (1) relieve a prosecuting attorney of the constitutional and ethical obligation to disclose exculpatory evidence; and
- (2) prohibit impeachment of a victim as permitted by the Indiana Rules of Evidence.

(b) A victim does not waive any privileges or confidentiality protections under this chapter if the victim:

- (1) testifies about underlying acts of domestic violence, dating violence, sexual assault, or stalking; or
- (2) reveals that he or she used or attempted to use the services of a victim service provider or victim advocate.

As added by P.L.104-2008, SEC.17.

IC 35-37-6-15

Partial disclosure

Sec. 15. The partial disclosure of a confidential communication under this chapter does not waive any privilege concerning the remainder of the confidential communication.

As added by P.L.104-2008, SEC.18.

IC 35-37-6-16

Refusal to testify

Sec. 16. The fact that a victim or victim advocate refuses to testify or disclose information because of a privilege under this chapter does not raise any negative inferences or presumptions.

As added by P.L.104-2008, SEC.19.

IC 35-37-6-17

Disclosure of information in aggregate form

Sec. 17. A victim service provider may disclose information in the aggregate that does not identify a victim regarding services and demographic information to comply with federal or state data collection requirements.

As added by P.L.104-2008, SEC.20.

Questions, please contact Kerry Hyatt Bennett, JD at kbennett@icadvinc.org
