



Legally Brief-FACT SHEET:

Protecting the Confidentiality of Survivors: Who is (and is not) a “Victim Advocate” under Indiana law.

The term “victim advocate” is used a lot in our world, but it is critical to know how Indiana law defines a “victim advocate” because this directly impacts the safety of the survivors we serve.

A victim advocateⁱ that works for an ICADV program and is a “victim service provider”ⁱⁱ under Indiana law, has a strict legal obligation to preserve the confidentiality of that individual. Their primary purpose is to provide services to those survivors and any information exchanged during that work is strictly confidential without the express consent of the survivor.

A victim advocate that works for a county prosecutor’s office, the Department of Child Services (or a proxy of DCS), or any other governmental or nongovernmental agency whose primary purpose is not to serve victims of domestic, dating or sexual violence (among others) as defined under Indiana lawⁱⁱⁱ, is not charged with the same legal responsibility to protect a survivor’s information.

These important definitions are below; for more information or with questions, please contact ICADV Legal Counsel Kerry Hyatt Bennett at kbennett@icadvinc.org

ⁱ IC 35-37-6-3.5"Victim advocate"

Sec. 3.5. (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](#)).

ii IC 35-37-6-5 "Victim service provider"

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](#)).

iii IC 35-37-6-3 "Victim"

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](#)).