

Crisis Connection



Criminal Confidentiality Issues

Who is a Victim Advocate?

IC 35-37-6-3

Victim Advocate means an individual employed or appointed by or who volunteers for a victim services provider (includes domestic violence programs, sexual assault programs, rape crisis center, battered women's shelter, transitional housing program for survivors of domestic violence) = Crisis Connection Inc.

Who is NOT a Victim Advocate?

IC 35-37-6-3.5

Prior definition does **NOT** apply to law enforcement officers, employees or agents of law enforcement officers, prosecutors, or employees or agents of prosecutor's office: criminal victim assistants are **NOT** covered/ protected under VAWA and IC 35-37-6 et seq. confidentiality laws effective July 1, 2008

Criminal Advisements to Victims

- Criminal victim assistants should **always** notify victims that what they discuss is **NOT** confidential.

- The information may be read or given to:
 - Police for further investigation
 - Prosecutor and other office staff
 - Defense attorney (and thus possibly to abuser/defendant)
 - Court/jury (as prior consistent or inconsistent statement or as impeachment)
- Referrals are critical!
 - Criminal victim assistants should refer a victim who needs more services or wants to talk in depth about her situation to a DV service provider where she talk in a confidential atmosphere without fear of having the conversation revealed in court = Crisis Connection Inc.

Victim Testimony in Criminal Cases IC 35-37-6-9 (d)

The following does not prohibit a victim from providing testimony concerning an offense.

IC 35-37-6-14

- (a) This section (on non-profit DV agency confidentiality) 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 of 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 s/he used or attempted to use the services of a victim service provider or victim advocate.

There is Little Law Enforcement Confidentiality

To be safe, think of everything in a police or prosecutor's file as subject to being turned over to the defense attorney as either:

- 1) normal discovery
- 2) exculpatory evidence **unless** it can be classified as *attorney work product*

Documents in a prosecutor's or police file that are received from a DV service agency may need to be sent to the defense attorney as part of discovery.