



INDIANA

IND. CODE § 35-37-6-1 to -11

Type of Privilege: Absolute

Privilege:

- No victim or victim counselor can be compelled to give testimony or produce records concerning confidential communications in any judicial, legislative, or administrative proceeding IND. CODE § 35-37-6-9
- No victim, victim advocate, or victim service provider can be compelled to give testimony in any 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 that is the subject of the proceeding IND. CODE § 35-37-6-9.
- 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. IND. CODE § 35-37-6-9
-

Statutory Exceptions to Privilege:

- Victim brings a suit alleging malpractice against the victim advocate or the victim service provider. IND. CODE § 35-37-6-11
- The consent to disclose information on behalf of a child who is less than eighteen years of age and is unemancipated; or 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, provided the person giving the consent did not commit an offense against the victim. IND. CODE § 35-37-6-9.
- A victim; or 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. A personal representative cannot give a consent for release if the representative abused or killed, or assisted in abusing or killing, the victim. IND. CODE § 35-37-6-13.

In Camera Review: Prohibited

- The privilege is absolute on its face, and no state court has directly interpreted the statute otherwise
- *Hulett v. State*, 552 N.E.2d 47, 48-49 (Ind. Ct. App. 1990)
 - Privileges in Indiana are generally statutory; therefore, in the absence of legislation privileging requested information, an in camera review of the records is required in order to give defendant access to relevant and material information
 - This case suggests that once the legislature has deemed it necessary to protect a certain class of evidence with a statutory privilege, the intent of the legislature with respect to that privilege must be carried out

Holder of Privilege:

- Only victim may waive the privilege IND. CODE § 35-37-6-11.

Waiver of Privilege:

- A victim does not waive the privilege by testifying in court about the crime
- However, if a victim partially discloses the contents of a privileged communication while testifying, either party may request the court to rule that the privilege afforded by this statute be waived to the extent that the privilege applies to that portion of the communication IND. CODE § 35-37-6-15.



DEFINITIONS:

Confidential Communication:

- Any information exchanged between a victim and a victim advocate in the course of the relationship between the victim and the victim advocate, exchanged or disclosed in a support group in which a victim is or was a participant, or exchanged in the presence of a third person who facilitates or facilitated communication between a victim and a victim advocate. Includes verbal or written communication, and includes advice, notes, reports, statistical data, memoranda, working papers, records, personally identifying information produced in the course of advocating for a victim, descriptions of physical appearance, the case file, and case history.. IND. CODE § 35-37-6-1, 1.5.
- Does not include information disclosed if the victim files criminal charges, institutes a civil lawsuit, or reports allegations of criminal conduct to a law enforcement agency against the victim service provider or victim advocate. Also does not include alleged child abuse or neglect. IND. CODE § 35-37-6-1.5.

Victim Service Provider:

- Public agency or unit thereof or a tax exempt organization that is not affiliated with a law enforcement agency, which has as one of its primary purposes to provide service for emotional and psychological conditions that occur to an individual who suffers an act of domestic/family violence, dating violence, sexual assault, human and sexual trafficking, or stalking, or who is a family member of such a person and is not accused of committing any of these offenses. IND. CODE § 35-37-6-5.

Victim Advocate

Individual employed or appointed by or who volunteers for a victim services provider. IND. CODE § 35-37-6-3.5