

## Victim-Advocate Privilege Interpreted for First Time

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On July 15, 2010, the Indiana Court of appeals issued a decision in *Crisis Connection, Inc. v. Ronald K. Fromme*, Case No. 19A05-0910-CR-602, which interpreted Indiana Code § 35-37-6-9, which establishes the victim-advocate privilege, for the first time.

Fromme sought records from Crisis Connection as discovery in a criminal case. Crisis Connection cited the victim-advocate privilege, characterized the privilege as "absolute," and refused to provide the requested records. The trial court ordered that Crisis Connection submit its records for an *in camera* inspection and Crisis Connection appealed from that order.

On appeal, the Court held that the privilege applied to Crisis Connection's records, but disagreed with Crisis Connection's characterization of that privilege as "absolute," noting that the privilege can be waived and that certain information must be disclosed to comply with abuse-reporting laws. It then considered the constitutional implications of applying the privilege to a criminal defendant seeking discovery in a criminal case under the confrontation and compulsory process clauses of the Sixth Amendment and the due process clause of the Fourteenth Amendment. The Court held the three-step analysis for determining whether information is discoverable in a criminal case outlined in *In re WTHR-TV*, 693 N.E.2d 1, 6 (Ind. 1998), applied to Crisis Connection's claim of privilege under Indiana Code § 35-37-6-9.

While we acknowledge that the three-step test has not always been applied to privileged information, we now conclude that it provides a useful framework for balancing the victim's interest in privacy with a defendant's constitutional rights.

The Court's ultimate resolution of the constitutional question will resonate beyond the strict application of the victim-advocate privilege when a criminal defendant seeks privileged information because the Court's rationale and language on this issue are not limited to that specific privilege. However, this decision also informs how the victim-advocate privilege will be applied outside of this limited scope and provides insight into the methods that courts will use in order to construe a "clumsily drafted" statute *in pari materia*, so that all of its sections make sense and are in accordance with the rest of the Indiana Code.



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## Lessons:

1. Do not expect to base a winning legal argument on an inability to harmonize the various sections of a statute; the court will likely find a way to harmonize them.
2. Be aware of the victim-advocate privilege and consider whether it will apply in your litigation.



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