

Domestic Violence Counselor-Victim Privilege

California Evidence Code §§ 1037, et seq.

(as of January 1, 2012)

§ 1037. "Victim"

As used in this article, "victim" means any person who suffers domestic violence, as defined in Section 1037.7.

§ 1037.1. "Domestic violence counselor"

(a) (1) As used in this article, "domestic violence counselor" means a person who is employed by a domestic violence victim service organization, as defined in this article, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence and who has at least 40 hours of training as specified in paragraph (2).

(2) The 40 hours of training shall be supervised by an individual who qualifies as a counselor under paragraph (1), and who has at least one year of experience counseling domestic violence victims for the domestic violence victim service organization. The training shall include, but need not be limited to, the following areas: history of domestic violence, civil and criminal law as it relates to domestic violence, the domestic violence victim-counselor privilege and other laws that protect the confidentiality of victim records and information, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of domestic violence victims, and referral services available to domestic violence victims.

(3) A domestic violence counselor who has been employed by the domestic violence victim service organization for a period of less than six months shall be supervised by a domestic violence counselor who has at least one year of experience counseling domestic violence victims for the domestic violence victim service organization.

(b) As used in this article, "domestic violence victim service organization" means a nongovernmental organization or entity that provides shelter, programs, or services to victims of domestic violence and their children, including, but not limited to, either of the following:

(1) Domestic violence shelter-based programs, as described in Section 18294 of the Welfare and Institutions Code.

(2) Other programs with the primary mission to provide services to victims of domestic violence whether or not that program exists in an agency that provides additional services.

§ 1037.2. "Confidential communication"; Compelling disclosure

(a) As used in this article, "confidential communication" means any information, including, but not limited to, written or oral communication, transmitted between the victim and the counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the domestic violence counselor is consulted. The term includes all information regarding the facts and circumstances involving all incidences of domestic violence, as well as all information about the children of the victim or abuser and the relationship of the victim with the abuser.

(b) The court may compel disclosure of information received by a domestic violence counselor which constitutes relevant evidence of the facts and circumstances involving a crime allegedly perpetrated against the victim or another household member and which is the subject of a criminal proceeding, if the court determines that the probative value of the information outweighs the effect of disclosure of the information on the victim, the counseling relationship, and the counseling services. The court may compel disclosure if the victim is either dead or not the complaining witness in a criminal action against the perpetrator. The court may also compel disclosure in proceedings related to child abuse if the court determines that the probative value of the evidence outweighs the effect of the disclosure on the victim, the counseling relationship, and the counseling services.

(c) When a court rules on a claim of privilege under this article, it may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege consents to have present. If the judge determines that the information is privileged and shall not be disclosed, neither he nor she nor any other person may disclose, without the consent of a person authorized to permit disclosure, any information disclosed in the course of the proceedings in chambers.

(d) If the court determines that information shall be disclosed, the court shall so order and inform the defendant in the criminal action. If the court finds there is a reasonable likelihood that any information is subject to disclosure pursuant to the balancing test provided in this section, the procedure specified in subdivisions (1), (2), and (3) of Section 1035.4 shall be followed.

§ 1037.3. Effect of article on obligation to report child abuse

Nothing in this article shall be construed to limit any obligation to report instances of child abuse as required by Section 11166 of the Penal Code.

§ 1037.4. "Holder of the privilege"

As used in this article, "holder of the privilege" means:

- (a) The victim when he or she has no guardian or conservator.
- (b) A guardian or conservator of the victim when the victim has a guardian or conservator, unless the guardian or conservator is accused of perpetrating domestic violence against the victim.

§ 1037.5. Who may claim privilege

A victim of domestic violence, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a domestic violence counselor in any proceeding specified in Section 901 if the privilege is claimed by any of the following persons:

- (a) The holder of the privilege.
- (b) A person who is authorized to claim the privilege by the holder of the privilege.
- (c) The person who was the domestic violence counselor at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

§ 1037.6. When domestic violence counselor must claim privilege

The domestic violence counselor who received or made a communication subject to the privilege granted by this article shall claim the privilege whenever he or she is present when the communication is sought to be disclosed and he or she is authorized to claim the privilege under subdivision (c) of Section 1037.5.

§ 1037.7. "Domestic violence"

As used in this article, "domestic violence" means "domestic violence" as defined in Section 6211 of the Family Code.

§ 1037.8. Informing victim of limitations on confidentiality of communications

A domestic violence counselor shall inform a domestic violence victim of any applicable limitations on confidentiality of communications between the victim and the domestic violence counselor. This information may be given orally.