ADVOCATES ROLE IN THE CRIMINAL JUSTICE SYSTEM

PRESENTED BY:
PAM ROBERTS
Marilyn Dibonaventuro
Advocates Role in the Criminal Justice System

OBJECTIVES:

Upon completion of this module participant will be able to:

- To understand the history, role and challenges of prosecution based advocates
- An awareness of who the victims of general crimes are and the commonalities and differences of all victims
- To learn how prosecutors approach charging decisions
- To understand how advocates can best navigate victims through the Criminal Justice system
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History of Prosecution-Based Advocates
- Grass roots vs. law and order movements
- Development of prosecution based advocates
Victim Witness Protection Act

- “to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process

Victim Witness Protection Act

- To assist victims, and witnesses of crime w/o infringing on the constitutional rights of defendants...

The Criminal Justice Process

STATE
V.
ACCUSED
Offender Rights - Victim Rights

◆ Grand Jury
◆ Double Jeopardy
◆ Compelled to testify Against Himself

More Offender Rights

◆ Due Process
◆ Confront and face accusers
◆ To be Informed of Charges Against Him

Even More Offender Rights

◆ Compel Witnesses
◆ Assist Counsel in His Defense
◆ Bail
Yet More Offender Rights

- Cruel & Unusual Punishment
- To remain silent

BURDEN OF PROOF

Standard of Proof

Reasonable Doubt

- State not required to prove guilt beyond any doubt or to mathematical certainty.
- Based on reason and thought, not a whimsical or frivolous doubt.
- Must convince jury charge is almost certainly true.
- Most stringent standard on this planet.
Preponderance of the Evidence

◆ (Balance of Probabilities)
◆ (more than 50%)
◆ More likely than not
  ▪ Depending on the evidence/issues, may be used in certain criminal motions.
  ▪ Used in civil actions, i.e. Protection from abuse orders

Probable Cause

◆ Grand Jury: Rules of evidence don’t apply. Crime PROBABLY occurred the way it is presented to the GJ, elements of crime are PROBABLY met

Exculpatory Information

◆ Information describing any matter known to the prosecutor which may not be known to the defendant and which tends to create a reasonable doubt of the defendants guilt

◆ Advocates must report exculpatory information to the prosecuting attorney who must convey this information to the defense attorney.
Plea Agreement Procedure

MAINE

Victims have the right to know of plea agreements prior to “being brought before the Court” NOT prior to being presented to the defendant

Victim Impact Statements

◆ Chance to have true voice in the system.

◆ Very difficult to do

◆ Any advocate may help
What is the Same

◆ TRAUMA
  • Childhood/Adult

◆ SECONDARY INJURY/BETRAYAL TRAUMA
  • Childhood/Adult

What We All Can Do

◆ Treat as a WHOLE PERSON
◆ Education
◆ Information about reactions
◆ Emotional Support: encouragement to seek support (all kinds)

◆ Anxiety Management/skill development
◆ Identify anxious thoughts. Replace with realistic ones (honesty)
◆ Recognize/label and modulate behavior and emotions
◆ Must feel safe, encourage to learn
◆ Don’t assume victim is aware of physical responses.

◆ Help identify cause and effect
  Anxiety = imagine betrayal

◆ Help organize thoughts

Reflective Questions
◆ To yourself. What is she thinking:
  What is she feeling that she is aware of, what are the disconnects between what she wants—what she can tolerate—what she is actually experiencing.

Role Model
◆ Mindful ways to recognize, verbalize emotions and goals
◆ Problem solving
◆ Processing
◆ How to organize thought
- Written Materials
- Children & play-say out loud each step of a process you are engaged in
- Pay attention to physical cues
- Maximize Engagement

Balance Home and Work

No, I don't need a warrant.
16 §53-A. PRIVILEGED COMMUNICATIONS TO SEXUAL ASSAULT COUNSELORS

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. Rape crisis center. "Rape crisis center" means any publicly or privately funded agency, institution or facility existing in this State, having as its purpose to reduce the trauma of sexual assault to sexual assault victims and their families through crisis intervention, counseling, medical and legal information and dissemination of educational information pertaining to sexual assault. [1983, c. 319, (NEW).]

B. Sexual assault counselor. "Sexual assault counselor" means a person who has:

(1) Undergone a program of training from a rape crisis center which shall include, but not be limited to: Law, medicine, societal attitudes, crisis intervention, counseling techniques and referral services; and

(2) Is either a staff member, paid or unpaid, or under the supervision of a staff member of a rape crisis center. [1983, c. 319, (NEW).]

2. Privileged communications. Except with regard to reporting, cooperating in an investigation or giving evidence pursuant to Title 22, chapter 958-A or 1071, or except at the request, or with the consent of, the victim of sexual assault, a sexual assault counselor may not be required to testify in any civil or criminal action, suit or proceeding at law or in equity about any information that the sexual assault counselor may have acquired in providing sexual assault counseling services. A sexual assault counselor or a rape crisis center may not be required to disclose to the court any records, notes, memoranda or documents containing MRS Title 16, Chapter 1: WITNESSES

4 | 16 §53-B. Privileged communications to victim advocate; family violence confidential communications. When a court in the exercise of sound discretion determines the disclosure necessary to the proper administration of justice, information communicated to, or otherwise learned by, that sexual assault counselor in connection with the provision of sexual assault counseling services is not privileged and disclosure may be required.

[ 2007, c. 577, §1 (AMD) .]

SECTION HISTORY

16 §53-B. PRIVILEGED COMMUNICATIONS TO VICTIM ADVOCATE; FAMILY VIOLENCE

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advocate" means an employee of or volunteer for a nongovernmental program for victims of domestic or family violence who:

(1) Has undergone at least 30 hours of training; and

(2) As a primary function with the program gives advice to, counsels or assists victims, supervises employees or volunteers who perform that function or administers the program. [1995, c. 128, §1 (NEW).]
A-1. "Confidential communications" means all information, whether written or oral, transmitted between a victim and a domestic violence advocate in the course of the working relationship. "Confidential communications" includes, but is not limited to, information received or given by the advocate in the course of the working relationship, advice, records, reports, notes, memoranda, working papers, electronic communications, case files, history and statistical data, including name, date of birth and social security number, that personally identify the victim. [2005, c. 388, §1 (NEW).]

B. "Victim" means a victim of domestic or family violence. [1995, c. 128, §1 (NEW).]

2. Privileged communication. Communications are privileged from disclosure as follows.

A. A victim may refuse to disclose and may deny permission to an advocate to disclose confidential written or oral communications between the victim and the advocate and written records, notes, memoranda or reports concerning the victim. [1995, c. 128, §1 (NEW).]

B. Except as provided in subsection 3, a victim, advocate or advocate's agency may not be required through oral or written testimony or through production of documents to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate. [1995, c. 128, §1 (NEW).]

3. Exceptions. A person may not be required to publicly disclose the address or location of a domestic or family violence shelter or safe house, except that privileged communications may be disclosed in the following cases:

A. When disclosure is required under Title 22, chapter 958-A or 1071 and that disclosure is in accordance with the provisions of either chapter; [2007, c. 577, §2 (AMD).]

B. When a court in the exercise of its discretion determines the disclosure of the information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court; or [1995, c. 128, §1 (NEW).]

C. When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation. [1995, c. 128, §1 (NEW).]

SECTION HISTORY

16 §53-C. Privileged communications to governmental victim witness advocates or coordinators

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Crime" means a criminal offense in which there is a victim, as defined in this section. [1999, c. 369, §1 (NEW).]

B. "Victim" means:

(1) A person against whom a crime has been committed;

(2) The immediate family of a victim of a crime if:

(a) The underlying crime is one of domestic violence or sexual assault or one in which the family suffered serious physical trauma or serious financial loss; or

(b) Due to death, age or physical or mental disease, disorder or defect, the victim is unable to participate as allowed under this chapter. [1999, c. 369, §1 (NEW).]

C. "Victim witness advocate" or "victim witness coordinator" means an employee of or volunteer for a district attorney, the Attorney General or the United States Attorney whose primary job function is to advise, counsel or assist victims or witnesses of crimes, to supervise other employees or volunteers who
perform that function or to administer the program. [1999, c. 369, §1 (NEW).]

1999, c. 369, §1 (NEW).

2. Privileged communications. Communications are privileged from disclosure as follows:
A. A victim may refuse to disclose and may deny permission to a victim witness advocate or coordinator to disclose confidential written or oral communications between the victim and the advocate or coordinator and written records, notes, memoranda or reports concerning the victim. [1999, c. 369, §1 (NEW).]

B. Except as provided in subsection 3, a victim, advocate or coordinator or the victim advocate's or coordinator's employer may not be required, through oral or written testimony or through production of documents, to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate or coordinator. [1999, c. 369, §1 (NEW).]

2007, c. 577, §3 (AMD).

3. Exceptions. Privileged communications may be disclosed in the following cases:

MRS Title 16, Chapter 1: WITNESSES

6 16 §54. Attestation of wills and instruments not affected
A. Disclosure may be made to the district attorney, Attorney General or the United States Attorney or their assistants; [1999, c. 369, §1 (NEW).]

B. When disclosure is required under Title 22, chapter 958-A or 1071 and that disclosure is in accordance with either chapter; [2007, c. 577, §3 (AMD).]

C. When a court in the exercise of its discretion determines the disclosure of information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court; [1999, c. 369, §1 (NEW).]

D. When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation; or [1999, c. 369, §1 (NEW).]

E. Evidence of an exculpatory nature must be disclosed to the criminal defendants pursuant to the Maine Rules of Criminal Procedure, Rule 16. [1999, c. 369, §1 (NEW).]

[1999, c. 369, §1 (NEW); 2007, c. 577, §3 (AMD).]