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Court Weighs Confidentiality for Domestic-Violence Victims

The state Supreme Court hears a case on whether all information on people who seek help is shielded or only their statements.

By Elizabeth Aguilera and John Ingold, Denver Post Staff Writers

The Colorado Supreme Court is considering a case on domestic-violence victim confidentiality that could drastically change how much anonymity victims receive when seeking help.

On Tuesday, the court heard arguments questioning whether a state statute allows shelters to keep all communication with victims and their records secret. Advocates have long credited the privilege with keeping victims of domestic abuse safe from those who hurt them.

But defense attorneys argued in court Tuesday that such a protection creates a “special class” of witnesses in criminal cases and possibly obscures abuse of the domestic violence support system.

Nationwide, victim advocates are looking to Colorado because this is the first time a state Supreme Court has been set to define the scope of a domestic violence confidentiality statute. County judges usually dismiss or quash requests for records based on the statute.

Colorado is one of 38 states that protect the communication between domestic violence victims and victim advocates, according to a brief filed by advocate organizations.

At issue is a misdemeanor case out of Chaffee County. The alleged victim told investigators that Robert R. Turner Jr. abused her. But defense attorneys said in the hearing Tuesday that the victim originally told people her injuries were from falling down the stairs. The attorneys said the victim changed her story after a meeting with her probation officer, who noticed the injuries and called the Alliance Against Domestic Abuse, in Salida.

The trial judge has ordered the alliance to hand over general information about the type of assistance the woman received, such as money or housing. Defense attorneys argued that the information could allow them to ask the victim whether such assistance gave her an incentive to make the abuse accusations.

The alliance refused the request and has not even said whether the woman received treatment there.

The case, advocates say, reaches beyond the victim in this case and has the potential to affect shelters and victims across the state.

“Ordering the release of that confidential information places the victim at risk for serious emotional and physical harm,” said Sarah Nickels, membership services director at the Colorado Coalition Against Domestic Violence.

Pamela Dayton, an attorney with the Colorado Criminal Defense Bar who sat in on Tuesday’s hearing, said she is concerned about protecting the rights of everyone involved.

“The defense is not taking an anti-victim stance in this case,” she said. “It’s more about protecting the defendant’s right to a fair trial and the ability to present evidence that bears on a witness’ credibility.”

Attorney Cynthia Sheehan, arguing for Turner, said the state statute provides only for the confidentiality of the victim’s statements to advocates – not advocates’ help to victims.

But Molly Chilson, arguing for the alliance, said the statute protects all communication between the victim and the advocate. Merely acknowledging that an advocate helped a victim, Chilson said, reveals details of the victim’s communication by showing that the victim asked for help.

Chilson said it happens rarely that people may use the system to gain assistance while only pretending to be victims of domestic abuse.

More than 40 organizations signed a brief supporting the advocates, including the National Coalition Against Domestic Violence and the National Center on Domestic and Sexual Violence, said Julie Field, attorney for Colorado coalition.

The Colorado District Attorney's Council also supports the advocates, calling the trial court's decision "erroneous."

Giving abusers information about their victims is tantamount to betrayal in the advocate community, said Nancy Duke, an advocate in Colorado Springs and a survivor of domestic abuse.

"Being able to come somewhere and talk to somebody confidentially and have the reassurance that this information isn't going anywhere and feel that safety is a huge thing," said Duke, who works for TESSA, a domestic violence and sexual assault center.

Attorneys on the other side said advocates are hoping for a statute more protective than the one Colorado actually has.

"We're saying it has to be interpreted as written," said Jonathan Reppucci, one of Turner's lawyers.

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