



State of Wisconsin
2015 - 2016 LEGISLATURE

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2015 SENATE BILL 323

October 14, 2015 - Introduced by Senators COWLES, DARLING, LASEE, LASSA, OLSEN, PETROWSKI and SHILLING, cosponsored by Representatives MURTHA, A. OTT, BALLWEG, BERCEAU, BILLINGS, BRANDTJEN, EDMING, GENRICH, HEATON, JACQUE, KLEEFISCH, KNODL, KNUDSON, KULP, JOHNSON, T. LARSON, MACCO, MASON, MURPHY, NERISON, NOVAK, PETRYK, ROHRKASTE, SARGENT, SINICKI, SPIROS, SUBECK, TITTL, TRANEL and VANDERMEER. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to renumber and amend* 905.045 (1) (b); *to amend* 905.045 (1) (a) and
2 (c) and 905.045 (2), (3) and (4); and *to create* 50.378, 146.82 (4) (b) 3., 950.02
3 (4g) and 950.045 of the statutes; **relating to:** granting victims of certain crimes
4 the right to be accompanied by a victim advocate.

Analysis by the Legislative Reference Bureau

This bill gives a victim of sexual assault, human trafficking, or child abuse (victim) the right to request accompaniment by a victim advocate to an examination or consultation. The bill also gives a victim of certain crimes the right to be accompanied by an advocate to certain interviews or proceedings relating to the crime.

EXAMINATIONS AND CONSULTATIONS

Under the bill, a victim advocate is an individual who is an employee of or volunteer for an organization that provides counseling, assistance, or support services free of charge to a victim. A victim, whether adult or minor, or a parent, guardian, or legal custodian of a minor victim, may request accompaniment by a victim advocate for a victim. The bill requires the hospital to notify the victim, or parent, guardian, or legal custodian of a minor victim, of the right to be accompanied by a victim advocate. The victim also may exclude the victim advocate at any examination or consultation at the hospital, and the victim advocate must comply with that request. The hospital is not required to delay examining or treating the victim pending the arrival of a victim advocate, if the delay would endanger the

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health or safety of the victim or risk the loss of evidence. The hospital may also exclude a victim advocate for reasons specified in the bill, but if the hospital excludes a specific victim advocate, the hospital must allow a different victim advocate to accompany the victim. The bill provides immunity from civil liability for hospitals and their employees or agents for allowing a victim advocate to accompany a victim, for failure to comply with certain requirements, and for any act or omission by a victim advocate.

Patient health records are confidential under current law unless the patient has given informed consent to the release of the records or except in certain limited circumstances. Current law allows a health care provider to release a portion of a patient health care records to certain individuals under certain circumstances. This bill adds a victim advocate who is accompanying a victim as an individual to whom a health care provider may release a portion of the patient health care record.

CRIMINAL PROCEEDINGS

Under current law, a victim of a crime is afforded certain rights while his or her case proceeds through the criminal justice system, including the right to be present at certain hearings, the right to make statements regarding the disposition of the case, and the right to be notified of additional proceedings after the case has been adjudicated. Current law allows a victim of certain crimes, including domestic abuse or certain acts of child abuse, harassment, sexual assault, or sexual exploitation by a therapist, to be accompanied by a victims' advocate or counselor at criminal hearings, depositions, court proceedings, and at meetings related to the hearings, depositions, and court proceedings if the crime is a factor in a child custody case involving the victim or if the crime is a factor in the victim's ability to represent his or her own interests in the proceedings.

Current law allows a victim of child abuse, interspousal battery, domestic abuse, or sexual assault (abusive conduct) and an individual (a victim advocate) who works with an organization that provides counseling, assistance, or support services to such victims a privilege in court to refuse to disclose, and to prevent any other person from disclosing, confidential communications made or information obtained or disseminated among the victim, a victim advocate who is acting in the scope of his or her duties as an advocate, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.

Under this bill, in addition to the rights he or she enjoys under current law, a victim of sexual assault, human trafficking, or child abuse has the right generally to be accompanied by an advocate of his or her choosing at any interview or proceeding related to the crime that the victim attends, or is requested to attend by any law enforcement agency, district attorney, or court, or the Department of Justice or Department of Corrections. The bill requires the victim advocate to comply with the victim's requests and to abide by any rules or policies established by a law enforcement agency regarding confidentiality of information. The bill allows a law enforcement officer or agency to exclude a victim advocate from law enforcement interviews if the victim advocate fails to comply but allows the officer or agency to

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allow a different victim advocate to accompany the victim, if the victim so requests. The bill provides immunity from civil liability for law enforcement agencies and their employees or agents for allowing a victim advocate to accompany a victim, for failure to comply with certain requirements, and for any act or omission by a victim advocate. The bill allows the victim the privilege of refusing to disclose, and to prevent the advocate who accompanied him or her from disclosing, any communication the victim disclosed or information the victim received during an interview or proceeding related to the crime.

The bill also extends, to victims of any crime, the privilege to keep confidential communications that are made or information obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 50.378 of the statutes is created to read:
- 2 **50.378 Victim advocates. (1) DEFINITIONS.** In this section:
- 3 (a) “Victim advocate” has the meaning given in s. 905.045 (1) (e).
- 4 (b) “Victim of sexual assault, human trafficking, or child abuse” means a person
- 5 who alleges or for whom it is alleged that he or she suffered from a violation of s.
- 6 940.22, 940.225, or 940.302, involving a commercial sex act, or ss. 948.01 to 948.11
- 7 and who, as a result of the alleged violation, presents as a patient at a hospital that
- 8 provides emergency services.
- 9 **(2) RIGHT TO ACCOMPANIMENT BY A VICTIM ADVOCATE.** (a) Except as provided in
- 10 par. (f) or (g), a hospital that provides emergency services to a victim of sexual
- 11 assault, human trafficking, or child abuse shall, at the request of the victim, permit
- 12 a victim advocate to accompany the victim to any examination or consultation that
- 13 is performed at the hospital as a result of the violation.

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1 (b) A parent, guardian, or legal custodian of a minor who is a victim of sexual
2 assault, human trafficking, or child abuse may make a request under par. (a) for a
3 victim advocate to accompany the minor victim of sexual assault, human trafficking,
4 or child abuse.

5 (c) A minor who is a victim of sexual assault, human trafficking, or child abuse
6 may make a request under par. (a) for a victim advocate to accompany him or her
7 without the consent of his or her parent, guardian, or legal custodian.

8 (d) The hospital shall notify the victim and, if the victim is a minor, the victim's
9 parent, guardian, or legal custodian, of his or her right to be accompanied by a victim
10 advocate and of his or her rights under par. (h). The hospital may make notification
11 under this paragraph using a form provided by the department under sub. (4) (c).

12 (e) A victim may request exclusion of a victim advocate at any examination or
13 consultation that is performed at the hospital as a result of the sexual assault,
14 human trafficking, or child abuse. The victim advocate shall comply with a request
15 under this paragraph.

16 (f) The hospital need not delay examining or treating the victim pending the
17 arrival of a victim advocate, if the delay would endanger the health or safety of the
18 victim or risk the loss of evidence.

19 (g) The hospital may exclude the victim advocate if any of the following occurs:

20 1. The presence or continued presence of the victim advocate obstructs the
21 provision of necessary medical care to the victim.

22 2. The victim advocate fails to comply with hospital policies governing the
23 conduct of individuals accompanying patients in the hospital.

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1 3. The hospital has knowledge that the victim advocate, in his or her role as a
2 victim advocate at any hospital, has taken one of the following actions and is more
3 likely than not to take that action again:

4 a. Failing to agree to or comply with confidentiality requirements relating to
5 another individual at a hospital.

6 b. Failing to comply with a request by a victim under par. (e).

7 (h) If a hospital has excluded a specific victim advocate under par. (g), the
8 hospital shall, at the request of the victim, permit a different victim advocate to
9 accompany the victim.

10 **(3) IMMUNITY FROM LIABILITY.** A hospital and its employees or agents are
11 immune from civil liability for allowing a victim advocate to accompany a victim, for
12 any failure to comply with any requirement in sub. (2), and for any act or omission
13 by a victim advocate.

14 **(4) DUTIES OF THE DEPARTMENT.** (a) The department shall respond to any
15 complaint received by the department concerning noncompliance by a hospital with
16 the requirements of sub. (2).

17 (b) The department, in cooperation with the department of justice, shall
18 develop guidelines for, and provide assistance to, hospitals that are subject to the
19 requirements of sub. (2).

20 (c) The department shall prescribe a form to be used by hospitals that provide
21 emergency services to victims of sexual assault, human trafficking, or child abuse to
22 provide notification to victims and, if a victim is a minor, the victim's parent,
23 guardian, or legal custodian, of his or her right to be accompanied by a victim
24 advocate under sub. (2). The form shall include all of the following information:

25 1. The right to request accompaniment under sub. (2) (a) to (c).

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1 2. The right to exclude a victim advocate under sub. (2) (e).

2 3. The procedure to make a complaint to the department under sub. (4) (a).

3 **SECTION 2.** 146.82 (4) (b) 3. of the statutes is created to read:

4 146.82 (4) (b) 3. A victim advocate, as defined in s. 50.378 (1) (a), who is
5 accompanying a victim of sexual assault, human trafficking, or child abuse under s.
6 50.378 (2).

7 **SECTION 3.** 905.045 (1) (a) and (c) of the statutes are amended to read:

8 905.045 (1) (a) “Abusive conduct” means abuse, as defined in s. 813.122 (1) (a),
9 of a child, as defined in s. 48.02 (2), interspousal battery, as described under s. 940.19
10 or 940.20 (1m), domestic abuse, as defined in s. 813.12 (1) (am), or sexual exploitation
11 by a therapist under s. 940.22, sexual assault under s. 940.225, human trafficking
12 involving a commercial sex act under s. 940.302, or child abuse under ss. 948.01 to
13 948.11.

14 (c) A communication or information is “confidential” if not intended to be
15 disclosed to 3rd persons other than persons present to further the interest of the
16 person receiving counseling, assistance, or support services, persons reasonably
17 necessary for the transmission of the communication or information, and persons
18 who are participating in providing counseling, assistance, or support services under
19 the direction of an a victim advocate, including family members of the person
20 receiving counseling, assistance, or support services and members of any group of
21 individuals with whom the person receives counseling, assistance, or support
22 services.

23 **SECTION 4.** 905.045 (1) (b) of the statutes is renumbered 905.045 (1) (e) and
24 amended to read:

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1 905.045 (1) (e) “Advocate” “Victim advocate” means an individual who is an
2 employee of or a volunteer for an organization the purpose of which is to provide
3 counseling, assistance, or support services free of charge to a victim.

4 **SECTION 5.** 905.045 (2), (3) and (4) of the statutes are amended to read:

5 905.045 (2) GENERAL RULE OF PRIVILEGE. A victim has a privilege to refuse to
6 disclose and to prevent any other person from disclosing confidential
7 communications made or information obtained or disseminated among the victim,
8 an a victim advocate who is acting in the scope of his or her duties as an a victim
9 advocate, and persons who are participating in providing counseling, assistance, or
10 support services under the direction of an a victim advocate, if the communication
11 was made or the information was obtained or disseminated for the purpose of
12 providing counseling, assistance, or support services to the victim.

13 (3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the victim,
14 by the victim’s guardian or conservator, or by the victim’s personal representative if
15 the victim is deceased. The victim advocate may claim the privilege on behalf of the
16 victim. The victim advocate’s authority to do so is presumed in the absence of
17 evidence to the contrary.

18 (4) EXCEPTIONS. Subsection (2) does not apply to any report concerning child
19 abuse that an a victim advocate is required to make under s. 48.981, or the report of
20 an offense under ss. 948.015 to 948.11.

21 **SECTION 6.** 950.02 (4g) of the statutes is created to read:

22 950.02 (4g) “Victim advocate” has the meaning given in s. 905.045 (1) (e).

23 **SECTION 7.** 950.045 of the statutes is created to read:

24 **950.045 Accompaniment by a victim advocate.** (1) RIGHT TO
25 ACCOMPANIMENT AT LAW ENFORCEMENT INTERVIEWS; EXCEPTIONS. (a) In addition to all

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1 rights afforded to victims under s. 950.04, an individual who is a victim of a violation
2 of s. 940.22, 940.225, 940.302, or 948.015 to 948.11 has the right to be accompanied
3 by a victim advocate at law enforcement interviews, subject to par. (b) and except as
4 provided in par. (c).

5 (b) A victim advocate may not obstruct or delay a law enforcement interview,
6 shall comply with the victim's requests or instructions, and shall comply with any
7 rule, policy, or requirement established by a law enforcement agency regarding the
8 confidentiality of information relating to an investigation. A victim advocate may
9 not disclose information not previously disclosed to the general public to any person
10 except that the victim advocate may disclose information to an individual or to an
11 agency that is providing counseling, assistance, or support services to the victim to
12 the extent that disclosure is reasonably necessary to assist in the provision of
13 counseling, assistance, or support services.

14 (c) A victim advocate who violates the provisions of par. (b) may be excluded
15 from a law enforcement interview. At the request of the victim, a different victim
16 advocate may be allowed to accompany the victim.

17 **(2) RIGHT TO ACCOMPANIMENT AT PROCEEDINGS.** In addition to all rights afforded
18 to victims under s. 950.04, an individual who is a victim of a violation of s. 940.22,
19 940.225, 940.302, or 948.015 to 948.11 has a right to be accompanied by a victim
20 advocate at interviews and proceedings at which he or she is requested or allowed
21 to attend that are related to the crime committed against him or her, including
22 prosecution interviews, department of corrections proceedings, court proceedings,
23 and postconviction proceedings.

24 **(3) CIVIL IMMUNITY.** A law enforcement agency and its employees or agents are
25 immune from civil liability for allowing a victim advocate to accompany a victim, for

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1 any failure to comply with any requirement in this section, and for any act or
2 omission by a victim advocate.

3 **SECTION 8. Initial applicability.**

4 (1) This act first applies to violations that are committed against a victim on
5 the effective date of this subsection.

6 **SECTION 9. Effective date.**

7 (1) This act takes effect on the first day of the 4th month beginning after
8 publication.

9 (END)