

March 5, 2002

MEMORANDUM

TO: Members of the Senate Judiciary Committee

FROM: Patti Seger, Wisconsin Coalition Against Domestic Violence, Policy Development Coordinator, 608/255-0539

RE: Senate Bill 439

“A successful prosecution often relies on the cooperation of the crime victim. Yet, in many cases of sexual assault or domestic violence, a woman who has been attacked frequently finds herself victimized a second time when her case goes to court. This is particularly true when the victim receives counseling from a domestic violence or rape crisis program advocate who often is not a licensed psychologist or psychotherapist, and lacks the testimonial privilege afforded other professionals. In far too many cases, defense attorney’s subpoena records from domestic abuse or sexual assault programs and call advocates as witnesses. The attorney’s use the records to shift the court’s focus from the crime to the victim’s thoughts and comments regarding the traumatic incident. Often, victims face the threat that their most intimate feelings will be disclosed in open court and become a matter of public record.”

These words, by past Violence Against Women Office Director Bonnie Campbell, summarize the dilemmas faced by victims of physical and sexual violence when they seek counseling and advocacy from domestic abuse or rape crisis programs in their local communities. Lack of confidentiality ultimately undermines a proactive criminal justice response to domestic and sexual violence. If victims cannot trust that the conversations they have with the advocates at the programs aimed at serving them, they will become reluctant to use the services, and ultimately, they will become hesitant to report crimes and aid in their prosecution.

Recognizing the need to protect the confidentiality of domestic violence and sexual assault victims, the U.S. Attorney General’s Task Force on Family Violence developed model legislation to protect confidentiality between victims and their advocate/counselors in 1995. This model legislation recommended by the U.S. Department of Justice is similar to the proposal offered in Senate Bill 439. This Wisconsin Coalition Against Domestic Violence (WCADV) supports this legislation and urges you to pass this bill.





Wisconsin Coalition Against Sexual Assault

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Good afternoon Senator George and members of the Senate Judiciary, Consumer Affairs and Campaign Finance Reform. Thank you for the opportunity to speak to you in favor of Senate Bill 439, which deals with the issue of confidentiality between advocates and their clients.

Victims of sexual assault have a very difficult time reporting and divulging what has happened to them. When a victim talks with an advocate at a sexual assault providers facility, they do so believing what they are sharing with the advocate is confidential.

Wisconsin needs this legislation to ensure that victims of sexual assault continue to come forward and talk about this crime. Unfortunately, sexual assault is already one of the lowest reported crimes because of the shame and guilt our society places on victims. If we do not provide those victims with a safe place to work through the issues of their assault, victims will go further underground. They will not receive the treatment they need and as a society we lose. We have formerly productive members unable to function and perpetrators not held accountable for their crimes.

Wisconsin also risks losing funding if we do not pass this legislation. Many of the federal programs require sexual assault providers to ensure that they are offering confidentiality to their clients. If they are unable to do so, they risk losing their funding. That will end up costing Wisconsin money. VOCA and VAWA are two such programs that provide funding to our state.

The many members of WCASA ask that you support this legislation. Thank you again for the opportunity to speak to you in favor of Senate Bill 439.

Jenny Fiss
Education Resources Coordinator
Former Advocate & Crisis Line Counselor
Testimony: Advocate Confidentiality

Safety. An elusive thing. Something that may be hard to put into words exactly, but something you miss desperately when it's gone. How can we help those who have had this sense of well being and protection violently stolen from them? For a survivor of sexual assault, this can be a long and difficult process. It begins with those on the "frontline" – the people who first offer services to a survivor.

An advocate's job is multifaceted and requires an individual to be fully present for another who is experiencing pain and trauma. An advocate not only provides emotional support, but facilitates a survivor's interaction with the other important systems who also respond during a crisis, such as medical professionals and law enforcement.

All have vital roles to play in the recovery and healing of survivors. These systems work when the priority of all who encounter the survivor is to assist in the recovery of her/his sense of safety. When the survivor is given control over who knows her/his story and how much, some faith in the goodness of humanity is restored. If the opposite happens, the survivor is often victimized a second time – re-traumatized by the very people sworn to empower, protect, and heal.

Medical professionals and law enforcement by the definition of their roles must place certain conditions on the maintenance of confidentiality. It is vital, therefore, that there be a resource available to the survivor that does not bear these same restrictions. That role belongs to the advocate.

Back when I worked as an advocate, I remember waiting with a survivor "Kathy" for the nurse to come back with the rape kit to start the exam. Kathy appeared agitated, tearful, and jumpy. It was difficult for her to remain still. As I explained the nature of the exam, what she might expect from the police who were waiting outside the door, and the options she had; her hands and feet stilled, she made more eye contact, and her breathing slowed. She stopped shaking. She shared with me some of the horror she had experienced that night and her fears concerning the future repercussions of that violence.

At the end of the night as we walked towards the cab that was to take her home, she gave me a hug and said, "Thank you for being with me tonight. I needed someone who was there just for me. Someone I could trust. I felt so alone. Thanks for being in my corner."

As an advocate, I could not imagine having to tell Kathy that what she shared with me may be used in court. An advocate's job is the SURVIVOR. To be effective and present for a survivor, I have to be able to listen without judgement and without worrying about which parts of a survivor's story may jeopardize my ability to maintain confidentiality. For Kathy, this would have destroyed any hope of building trust and the opportunity of expressing her true feelings of anguish.

As a result of this, Kathy would also be much less likely to follow-up with the rape crisis center for future assistance/counseling if necessary. Hence, her risk of further isolation would increase. There must be a safety net for survivors. This does not impede the important contributions of medical professionals and law enforcement. In fact, it actually facilitates their work. According to Kathy, both the rape exam and police interview went more smoothly because she felt that "someone was in her corner."

Safety. You can help survivors restore their sense of safety and in so doing their faith in humanity. Please allow advocates to do their jobs. By maintaining confidentiality, advocates create a safe space for survivors. It is in this safe space that survivors are empowered to make decisions and move forward.



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Where Hope Begins and Abuse Ends

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March 4, 2002

To: All Senate Judiciary Committee Members

Re: Statement of Support

Please support the following bills that will ultimately extend further protection and assistance to victims of domestic violence:

SB 438 – reforms the Wisconsin's Restraining Order law by expanding the scope of protection for victims and enhances protection for individuals in dating relationships,

SB 439 – raises the standard of communications between advocates and victims of domestic violence and/or sexual assault, and

SB 440 – reforms Wisconsin's current stalking laws to cover additional behaviors that can be construed as stalking and increase penalties for offenders.

We have worked with and supported the Wisconsin Coalition Against Domestic Violence as well as other domestic abuse providers in Milwaukee to promote this legislation. Please continue this effort by supporting these bills in your committee.

Sincerely,

Amy Krymkowski
Government Relations Specialist

Memo

To: Senator GRG

From: MM

Date: January 27, 2002

RE: LRB-2868/2; relating to Domestic Violence and Sexual Assault Advocate and Victim Privilege

Under current law a person is guaranteed privileged communication with physicians, nurses, chiropractors, psychologists, social workers, therapists, and professional counselors.

This bill creates a new privilege for communications made and information shared between a victim of child abuse, interspousal battery, domestic abuse, or sexual assault and an individual who works with an organization that provides free counseling, assistance, or support services to such victims.

Domestic Violence and Sexual Assault Advocate and Victim Privilege

When a victim of domestic violence or sexual assault contacts a local domestic violence or sexual assault service provider, they are assured by those who serve them that their communications will be kept private and confidential. Confidentiality of services is a critical component to providing safety for victims of domestic and sexual violence. Despite assurances by service providers, employees that provide services are not currently authorized by Wisconsin law to guarantee their communications with victims are privileged. This lack of communication privilege may further endanger some victims/survivors.

To date, more than 30 states have passed laws guaranteeing victims of domestic abuse and/or sexual assault privileged communications with local advocacy programs designed to serve them. Wisconsin programs, despite lacking an official privileged communication law, have limited protection to assure confidentiality based upon Wis. Stats. 895.67, a law which prohibits the disclosure of the location of any service recipient or the minor children of the service recipient. Programs are also contractually bound to provide confidentiality by many of their funders, including the Wisconsin Department of Health and Family Services (see Wis. Stats. 49.83). Other funders that require that funding recipients guarantee confidentiality related to victim services include the Family Violence Prevention and Services Act (42 USC 3789g), the Crime Victims Fund (42 USC 10601-10604), Housing Assistance, Emergency Shelter Grants (42 USC 11375(c)(5)), and the Violence Against Women Act (42 USC 13942).

Despite these funding requirements, service providers cannot truly guarantee confidential, privilege communications with their service recipients under current Wisconsin law. This places these programs and those who receive these critical services in a difficult and compromising position. If a program reveals confidential information without the authorization of the victim or by order of a court, the program stands the risk of losing the funding that sustains the program. Additionally, Wisconsin may lose our entire federal block grants that fund these programs. Even more critical, is the compromised safety suffered by victims of domestic abuse and/or sexual assault and potential loss of services that assist them in breaking free of violence.

The proposed Domestic Violence and Sexual Assault Advocate/Client Privilege bill will provide service recipients of local programs with the guarantee of privileged communications.