



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 351
[2015 Senate Bill 323]

**Right to Accompaniment by a
Victim Advocate and the Victim
Advocate Privilege**

CURRENT LAW

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 also provides victims of abusive conduct a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made or information obtained or disseminated among the victim, an advocate, and persons who are participating in providing 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 (“privilege” or “victim advocate privilege”). The privilege may be claimed by the victim, by the victim’s guardian or conservator, or by the victim’s personal representative if the victim is deceased. The advocate may claim the privilege on behalf of the victim and the advocate’s authority to do so is presumed in the absence of evidence to the contrary. The privilege does not apply to any report concerning child abuse that an advocate is required to make under s. 48.981, Stats.

An “advocate” is an individual who is an employee of or a volunteer for an organization the purpose of which is to provide counseling, assistance, or support services free of charge to a victim. For purposes of the privilege, a “victim” is an individual who has been the subject of abusive conduct or who alleges that he or she has been the subject of abusive conduct. Under current law, “abusive conduct” means abuse, as defined in s. 813.122 (1) (a), Stats., of a child, as defined in s. 48.02 (2), Stats., interspousal battery, as described under ss. 940.19 or 940.20 (1m), Stats., domestic abuse, as defined in s. 813.12 (1) (am), Stats., or sexual assault under s. 940.225, Stats.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

2015 WISCONSIN ACT 351

2015 Wisconsin Act 351 makes changes to the victim advocate privilege and creates a right to accompaniment by a victim advocate for a victim of sexual assault, human trafficking, or child sexual abuse.

Victim Advocate Privilege

In addition to what is allowed under current law, the Act allows a victim of one of the following crimes to claim the victim advocate privilege: (1) sexual exploitation by a therapist; (2) human trafficking involving a commercial sex act; or (3) certain child sexual abuse crimes.

Right to Accompaniment at a Hospital, Immunity From Civil Liability, and Duties of the Department of Health Services (DHS)

Right to Accompaniment by a Victim Advocate

Under the Act, a hospital that provides emergency services to a victim of sexual assault, human trafficking, or child sexual abuse must generally permit a victim advocate to accompany the victim to any examination or consultation that is performed at the hospital as a result of the alleged violation if the victim requests an advocate. The Act authorizes a parent, guardian, or legal custodian of a minor who is a victim of sexual assault, human trafficking, or child sexual abuse to request for a victim advocate to accompany the minor victim if he or she is at least 10 years of age. If the victim is under the age of 10, a treating medical provider may request a victim advocate for the minor. In addition, a minor who is a victim of sexual assault, human trafficking, or child sexual abuse may make a request for a victim advocate to accompany him or her without the consent of his or her parent, guardian, or legal custodian. The hospital need not delay examining or treating the victim pending the arrival of a victim advocate if the delay would endanger the health or safety of the victim or risk the loss of evidence.

Excluding a Victim Advocate

Under the Act, a victim may also request exclusion of a victim advocate at any examination or consultation that is performed at a hospital as a result of sexual assault, human trafficking, or child sexual abuse.

The Act also permits a hospital to exclude a victim advocate if any of the following occur:

- The presence or continued presence of the victim advocate obstructs the provision of necessary medical care to the victim.
- The victim advocate fails to comply with hospital policies governing the conduct of individuals accompanying patients in the hospital.
- The hospital has knowledge that the victim advocate, in his or her role as a victim advocate at any hospital, has taken one of the following actions and is more likely than not to take that action again:
 - Failing to agree to or comply with confidentiality requirements relating to another individual at a hospital.

- Failing to comply with a victim's request to exclude a victim advocate at any examination or consultation that is performed at a hospital.

Notification of Victim Advocate Rights

The Act requires a hospital to notify a victim and, if the victim is a minor, the victim's parent, guardian, or legal custodian, of his or her right to be accompanied by a victim advocate and right to exclude a victim advocate. This notification may be made using a form provided by DHS.

Immunity From Liability

Under the Act, a hospital and its employees or agents are immune from civil liability for allowing a victim advocate to accompany a victim, for any failure to comply with any requirement to allow the presence of a victim advocate, and for any act or omission by a victim advocate.

Duties of DHS

The Act requires DHS to do all of the following:

- Respond to any complaint received concerning a hospital's noncompliance with the requirement to allow a victim to be accompanied by a victim advocate.
- In cooperation with the Department of Justice, develop guidelines for, and provide assistance to, hospitals subject to the requirements to allow a victim to be accompanied by a victim advocate.
- Prescribe a form to be used by hospitals that provide emergency services to victims of sexual assault, human trafficking, or child abuse to provide notification to victims and, if a victim is a minor, the victim's parent, guardian, or legal custodian, of his or her right to be accompanied by a victim advocate. The form must include all of the following information:
 - The right to request a victim advocate.
 - The right to exclude a victim advocate.
 - The procedure to complain to DHS.

Right to Accompaniment by a Victim Advocate at Certain Interviews and Proceedings

Right to Accompaniment

The Act grants a victim of sexual assault, human trafficking, or child sexual abuse the right to be accompanied by a victim advocate at law enforcement interviews and at interviews and proceedings at which he or she is requested or allowed to attend that are related to the crime committed against him or her, including prosecution interviews, Department of Corrections proceedings, court proceedings, and post-conviction proceedings. The Act also authorizes a parent, guardian, or legal custodian of a minor who is a victim of sexual assault, human

trafficking, or child sexual abuse to request a victim advocate to accompany the minor victim at law enforcement interviews, legal proceedings, and prosecutorial interviews.

Requirements of Victim Advocates at Law Enforcement Interviews

The Act provides that a victim advocate may not obstruct or delay a law enforcement interview, must comply with the victim's requests or instructions, and must comply with any rule, policy, or requirement established by a law enforcement agency regarding the confidentiality of information relating to an investigation. Further, under the Act, a victim advocate may not disclose information not previously disclosed to the general public to any person except that the victim advocate may disclose information to an individual or to an agency that is providing counseling, assistance, or support services to the victim to the extent that disclosure is reasonably necessary to assist in the provision of counseling, assistance, or support services. Lastly, the Act requires a victim advocate to comply with all instructions or requests from a lead forensic interviewer at a child advocacy center, as defined by statute, and authorizes the interviewer to exclude the victim advocate from the interview room. A victim advocate who fails to comply with these requirements may be excluded from a law enforcement interview, in which case a different victim advocate may be allowed to accompany the victim at his or her request.

Immunity From Liability

Under the Act, a law enforcement agency and its employees or agents are immune from civil liability for allowing a victim advocate to accompany a victim, for any failure to comply with any requirement to allow the presence of a victim advocate, and for any act or omission by a victim advocate.

Effective date and initial applicability: The Act takes effect on August 1, 2016, and first applies to violations that are committed against a victim on that date.

Prepared by: Michael Queensland, Staff Attorney

April 28, 2016

MQ:mcm;jal