



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 354

**Senate Substitute Amendment 1
and Senate Amendment 1 to
Senate Substitute Amendment 1**

Memo published: April 2, 2014

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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. Very generally, **2013 Senate Bill 354** grants victims of certain offenses a right to be accompanied by a victim advocate.

SENATE SUBSTITUTE AMENDMENT 1

Senate Substitute Amendment 1 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 abuse.

Victim Advocate Privilege

Current Law - Privilege

In general, current law 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. 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. [s. 905.045, Stats.]

Current Law - Definitions

An “advocate” is an individual who is an employee of or a volunteer for an organization for 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.

Senate Substitute Amendment 1

The substitute amendment adds sexual exploitation by a therapist under s. 940.22, Stats., human trafficking involving a commercial sex act under s. 940.302, Stats., and child abuse under ss. 948.01 to 948.11, Stats., to the list of acts that constitute “abusive conduct.” This change results in more victims being able to claim the victim advocate privilege because the privilege covers victims of additional 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 substitute amendment, generally a hospital that provides emergency services to a victim of sexual assault, human trafficking, or child abuse¹ must, at the request of the victim, 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. A parent, guardian, or legal custodian of a minor who is a victim of sexual assault, human trafficking, or child abuse may make a request for a victim advocate to accompany the minor victim of sexual assault, human trafficking, or child abuse. In addition, a minor who is a victim of sexual assault, human trafficking, or child 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.

Excluding a Victim Advocate at a Hospital

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 abuse. Furthermore, the hospital may exclude the victim advocate if his or her presence or continued presence obstructs the provision of necessary medical care to the victim, and the

¹ Under Senate Substitute Amendment 1, “victim of sexual assault, human trafficking, or child abuse” means “a person who alleges or for whom it is alleged that he or she suffered from a violation of s. 940.22, 940.225, 940.302, involving a commercial sex act, or ss. 948.01 to 948.11 and who, as a result of the violation, presents as a patient at a hospital that provides emergency services.”

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.

Notification of Victim Advocate Rights

The substitute amendment 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. The hospital must make this notification prior to examining or treating the victim, unless the delay caused by notification would endanger the health or safety of the victim. This notification must be made using a form provided by DHS unless a form is not available or the victim requests verbal notification, in which case the notification must be made verbally and must include information about all of the following:

- The right to request a victim advocate.
- The right to exclude a victim advocate.
- The procedure to complain to DHS.

Immunity From Liability

Under the substitute amendment, 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 substitute amendment 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.
- 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.

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

The substitute amendment adds to the basic bill of rights for victims who are victims of sexual assault, human trafficking, or child abuse. Under the substitute amendment, these victims have the right to be accompanied by a victim advocate at law enforcement interviews, unless the presence of the victim advocate obstructs or delays the interview. These victims also have the right to be accompanied by a victim advocate 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 postconviction proceedings.

SENATE AMENDMENT 1 TO SENATE SUBSTITUTE AMENDMENT 1

Senate Amendment 1 to Senate Substitute Amendment 1 eliminates the requirement that a hospital must notify a victim of sexual assault, human trafficking, or child abuse of his or her right to be accompanied by a victim advocate.

BILL HISTORY

Senate Substitute Amendment 1 and Senate Amendment 1 to Senate Substitute Amendment 1 were introduced by Senator Cowles. On February 20, 2014, the Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs recommended: adoption of Senate Amendment 1 to Senate Substitute Amendment 1; adoption of Senate Substitute Amendment 1, as amended; and passage of Senate Bill 354, as amended, on a vote of Ayes, 5; Noes, 0.

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