



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Senate Bill 323

Senate Amendment 3

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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. 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. [s. 905.045, 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.

2015 SENATE BILL 323

Senate Bill 323 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.

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

Under the bill, a hospital that provides emergency services to a victim of sexual assault, human trafficking, or child 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 bill authorizes a parent, guardian, or legal custodian of a minor who is a victim of sexual assault, human trafficking, or child abuse to 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.

The bill 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.

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

The bill grants a victim of sexual assault, human trafficking, or child 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.

Requirements of Victim Advocates at Law Enforcement Interviews

The bill 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 bill, 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. 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.

SENATE AMENDMENT 3

Senate Amendment 3 does the following:

- Changes the applicability of the bill from “victims of sexual assault, human trafficking, or child abuse” to “victims of sexual assault, human trafficking, or child sexual abuse.”
- Modifies the provision authorizing a parent, guardian, or legal custodian of a victim who is a minor to request a victim advocate to accompany the victim to an examination or consultation that is performed at a hospital. The amendment specifies that a parent, guardian, or legal custodian may request a victim advocate if the minor victim 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.
- Adds a provision that authorizes a parent, guardian, or legal custodian of a minor – of any age – 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.
- Requires a victim advocate to comply with all instructions or requests from the 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.
- Removes a provision in the bill that specifies that the victim advocate privilege does not apply to the report of certain offenses against children.

BILL HISTORY

Senate Amendment 3 was offered by Senator Cowles on January 5, 2016. The Senate voted to adopt Senate Amendment 3 and pass the bill, as amended, on voice votes on January 12, 2016.

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