



## 2001 SENATE BILL 439

February 13, 2002 - Introduced by Senators BURKE, DARLING, GEORGE, HANSEN, HUELSMAN, MOORE, PLACHE, ROESSLER and HARSDORF, cosponsored by Representatives LIPPERT, BOYLE, COGGS, CULLEN, HAHN, KAUFERT, KRAWCZYK, LA FAVE, LASSA, J. LEHMAN, MEYERHOFER, MILLER, MUSSER, OLSEN, POCAN, RICHARDS, SHILLING, STONE, TURNER, WARD, WASSERMAN, WIECKERT and BERCEAU. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1     **AN ACT** *to create* 905.045 of the statutes; **relating to:** an evidentiary privilege  
2             for communications made to a person employed by or volunteering with an  
3             organization providing counseling, assistance, or support services to victims of  
4             sexual assault or abusive conduct.

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### *Analysis by the Legislative Reference Bureau*

Under current law, with certain exceptions, a patient has a privilege in a court and in certain administrative proceedings to refuse to disclose, and to prevent any other person from disclosing, confidential communications and information relating to the diagnosis or treatment of the patient's physical, mental, or emotional condition, if the communication was made or the information was shared between the patient, certain health care providers who are diagnosing or treating the patient, and other persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of a specified health care provider. The health care providers included under this privilege are physicians, registered nurses, chiropractors, psychologists, social workers, marriage and family therapists, and professional counselors.

The bill creates a new privilege for communications made and information shared between 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 free counseling, assistance, or support services to such victims. Under the bill, a victim of abusive conduct has a privilege in a court and in certain administrative proceedings to refuse to disclose, and to prevent any

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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.

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

1           **SECTION 1.** 905.045 of the statutes is created to read:

2           **905.045 Domestic violence or sexual assault advocate-victim**  
3 **privilege. (1) DEFINITIONS.** In this section:

4           (a) "Abusive conduct" means abuse, as defined in s. 813.122 (1) (a), of a child,  
5 as defined in s. 48.02 (2), interspousal battery, as described under s. 940.19 or 940.20  
6 (1m), domestic abuse, as defined in s. 813.12 (1) (a), or sexual assault under s.  
7 940.225.

8           (b) "Advocate" means an individual who is an employee of or a volunteer for an  
9 organization the purpose of which is to provide counseling, assistance, or support  
10 services free of charge to a victim.

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

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1 (d) "Victim" means an individual who has been the subject of abusive conduct  
2 or who alleges that he or she has been the subject of abusive conduct. It is immaterial  
3 that the abusive conduct has not been reported to any government agency.

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

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

17 (4) EXCEPTIONS. Subsection (2) does not apply to any report concerning child  
18 abuse that an advocate is required to make under s. 48.981.

19 (5) RELATIONSHIP TO S. 905.04. If a communication or information that is  
20 privileged under sub. (2) is also a communication or information that is privileged  
21 under s. 905.04 (2), the provisions of s. 905.04 supersede this section with respect to  
22 that communication or information.

23 **SECTION 2. Initial applicability.**

