



1997 ASSEMBLY BILL 939

March 19, 1998 - Introduced by Representatives MEYER, SCHNEIDER, HANSON, RYBA, GRONEMUS, SPRINGER, CARPENTER and MUSSEY, cosponsored by Senator WINEKE. Referred to Committee on Children and Families.

1 **AN ACT** *to create* 905.055 of the statutes; **relating to:** creating a parent-child
2 privilege.

Analysis by the Legislative Reference Bureau

Under current law, a person may not refuse to be a witness, disclose any matter, refuse to produce any object or writing or prevent any other person from doing the same. Currently, there are exceptions to this general rule, for confidential communications between a client and his or her lawyer, a medical provider and his or her patient, a husband and wife and with a member of the clergy. These confidential communications are "privileged". Current law provides that the person who made the confidential communication, such as a patient to a doctor, has the right to prevent the receiver of the confidential communication (in this case, the doctor) from disclosing the contents of that confidential communication. The current privileged communications also have exceptions, such as an exception in the medical provider-client privilege when the medical provider has reasonable grounds to believe that the abuse or neglect of a child was not caused by an accident.

This bill creates a parent-child privilege. Under this bill, confidential communications between a parent and a child are privileged and may not be disclosed to another person without the consent of the parent or child. Either the parent or the child may claim the privilege under the bill. The bill includes exceptions to the privilege, providing that no privilege exists if both the parent and child are parties to the same action, in an action involving the charging of the parent of a crime against the child or of the child of a crime against the parent in a criminal action when the parent and child participated in the same crime; or in matters where

ASSEMBLY BILL 939

the parent or child has acted as an agent of the other and the confidential communication relates to matters within the scope of the agency.

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

1 **SECTION 1.** 905.055 of the statutes is created to read:

2 **905.055 Parent-child privilege. (1) DEFINITION.** In this section, a
3 communication is “confidential” if made privately and not intended for further
4 disclosure except to other persons present in furtherance of the purpose of the
5 communication.

6 **(2) GENERAL RULE OF PRIVILEGE.** A parent has a privilege to prevent his or her
7 child from testifying against the parent as to any confidential communication by the
8 parent made to the child. A child has a privilege to prevent his or her parent from
9 testifying against the child as to any confidential communication by the child made
10 to the parent.

11 **(3) WHO MAY CLAIM THE PRIVILEGE.** The parent’s privilege may be claimed by the
12 parent or by the child on the parent’s behalf. The child’s privilege may be claimed
13 by the child or by the parent on the child’s behalf. The authority of the parent or child
14 to claim the privilege is presumed in the absence of evidence to the contrary.

15 **(4) EXCEPTIONS.** There is no privilege under this rule:

16 (a) If both the parent and child are parties to the action.

17 (b) In proceedings in which the parent is charged with a crime against the child
18 or property of the child, in which the child is charged with a crime against the parent
19 or property of the parent or in which the parent or child is charged with a crime
20 against the person or property of a 3rd person committed in the course of committing
21 a crime against the parent or the child.

