

2005 DRAFTING REQUEST

Bill

Received: **04/20/2005**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Rob Kreibich (608) 266-0660**

By/Representing: **Brad Hub**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact: **Patti Seger - 255-0539**

Addl. Drafters:

Subject: **Elections - miscellaneous**

Extra Copies: **RPN - 1
PJK - 1**

Submit via email: **YES**

Requester's email: **Rep.Kreibich@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Confidential registration for domestic abuse, sexual assault or stalking victims

Instructions:

Change title to include reference to sexual assault and stalking. Permit a district attorney or an authorized representative of a sheriff, chief of police or district attorney to sign a certification. Permit individuals who receive services from a domestic abuse or sexual assault victim service provider to request confidentiality.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	rnelson2 05/11/2005 jkuesel 07/01/2005	csicilia 07/05/2005		_____			S&L
/1			pgreensl 07/05/2005	_____	lemery 07/05/2005		S&L

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/2	jkuesel 07/05/2005	csicilia 07/05/2005	pgreensl 07/05/2005	_____	lemery 07/05/2005	Inorthro 09/26/2005	

FE Sent For:

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AA
11/10/05

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PJK/AS

FE Sent For:

PATTI SEGER
POLICY DEVELOPMENT COORDINATOR



307 SOUTH PATERSON STREET
SUITE 1
MADISON, WISCONSIN 53703-3041
608 | 255 | 0539
FAX: 608 | 255 | 3560
E-mail: pattis@wcadv.org

1999 Assembly Bill 343

defined by 968.075 or 968.076
SEXUAL ASSAULT OR STALKING
- 3 -

1999 Wisconsin Act 49

(b) "Offense relating to domestic abuse" means an offense specified in s. 940.19, 940.20 (1m), 940.201, 940.22, 940.225, 940.32, 947.013, 948.02, 948.025, 948.06, 948.09 or 948.095.

(c) "Protected individual" means an individual whose name and address is confidential under sub. (2).

(d) "Protective order" means a temporary restraining order or an injunction issued under s. 813.12 or 813.125.

(e) "Shelter" means a place where at least 4 unrelated individuals reside that provides residential shelter to individuals whose personal security is or may be threatened by family members or other persons with whom the individuals have had contact.

(2) Except as authorized in sub. (8), the municipal clerk shall withhold from public inspection under s. 19.35 (1) the name and address of any eligible individual whose name appears on a poll list or registration list if the individual files a valid written request with the clerk to protect the individual's confidentiality. To be valid, a request under this subsection must be accompanied by a copy of a protective order that is in effect, an affidavit under sub. (1) (a) 2. that is dated within 30 days of the date of the request or a statement signed by the operator or an authorized agent of the operator of a shelter that is dated within 30 days of the date of the request and that indicates that the operator operates the shelter and that the individual making the request resides in the shelter. A physically disabled individual who appears personally at the office of the municipal clerk accompanied by another elector of this state may designate that elector to make a request under this subsection on his or her behalf.

(3) Upon listing of an elector under sub. (2), the municipal clerk shall issue to the elector a voting identification card on a form prescribed by the board that shall contain the name of the municipality issuing the card and in the case of a town, the county in which the town is located, the elector's name, the ward in which the elector resides, if any, and a unique identification serial number issued by the board. The number issued to an elector under this subsection shall not be changed for so long as the elector continues to qualify for a listing under sub. (2).

(4) Except as provided in sub. (5), a confidential listing under sub. (2) expires on the date that a protective order expires, the date that the protected individual ceases to reside in a shelter or at the end of the 24-month period that follows creation or renewal of the listing under sub. (2), whichever is earlier.

(5) (a) The municipal clerk shall cancel a confidential listing under sub. (2) if:

1. The clerk receives notification from a sheriff or chief of police under sub. (8).
2. The name of the protected individual is legally changed.
3. The protected individual changes his or her address without notifying the municipal clerk.

4. The municipal clerk finds that the protected individual provided false information to the clerk for the purpose of obtaining a confidential listing under sub. (2).

(b) An individual whose confidential listing is canceled under par. (a) may file a new request and qualify under sub. (2) to obtain a renewal of the listing.

(6) Upon expiration of a confidential listing on a registration list under sub. (2), the municipal clerk shall cancel the registration of the protected individual unless the individual files a new request and qualifies under sub. (2) to obtain a renewal of the listing or unless the individual applies for and qualifies to obtain a nonconfidential voter registration. Except as authorized in sub. (8), the municipal clerk shall withhold from public inspection under s. 19.35 (1) the name and address of any individual whose registration is canceled under this subsection if the individual qualified for a confidential listing at the time of that listing.

(7) (a) If the municipal clerk has notice that a confidential listing under sub. (2) is scheduled to expire, the municipal clerk shall provide 30 days' notice to the protected individual of the scheduled expiration of the listing.

(b) If notice to a protected individual is not provided under par. (a), the municipal clerk shall provide notice to the subject individual upon canceling a confidential listing under sub. (2).

(8) The municipal clerk shall provide access to a name and address under sub. (2):

- (a) To a law enforcement officer for official purposes.
- (b) To a state or local governmental officer pursuant to a specific law that necessitates obtaining the name or address.
- (c) Pursuant to a court order citing a reason that access to the name or address should be provided.

(d) To a clerk of circuit court for purposes of s. 756.04 (5) (a).

(e) At the request of a protected individual, for purposes of permitting that individual to sign a petition under s. 59.05 (2) or a protest petition, consent or counter petition under s. 125.05.

(9) No person who obtains access to a name or address under sub. (8) may disclose the name or address to any person other than a public employe for the same purpose for which the information was obtained.

(10) If a sheriff or chief of a police department who signs an affidavit under sub. (1) (a) 2. obtains information that the person who was charged with an offense relating to domestic abuse is no longer so charged or that the person's judgment of conviction has been vacated, and the charge or conviction was the sole basis for the affidavit, the sheriff or chief shall provide written notice of that information to the municipal clerk to whom the affidavit was directed.

DV
OR
SA
PRUG.

SECTION 10. 6.55 (2) (a) of the statutes is amended to read:

6.55 (2) (a) Except where the procedure under par. (c) or (cm) is employed, any person who qualifies as an elector in the ward or election district where he or she desires to vote, but has not previously filed a registration form, or was registered at another location in a municipality where registration is required, may request permission to vote at the polling place for that ward or election district, or at an alternate polling place assigned under s. 5.25 (5) (b). When a proper request is made, the inspector shall require the person to execute a registration form prescribed by the board which shall contain the following certification:

"I, ..., hereby certify that to the best of my knowledge, I am a qualified elector, having resided at ... for at least 10 days immediately preceding this election, and that I am not disqualified on any ground from voting, and I have not voted, at this election." If a change of address is made from outside the municipality, the elector shall file a cancellation under s. 6.40 (1) (b) 6.

SECTION 11. 6.55 (2) (cm) of the statutes is created to read:

6.55 (2) (cm) If an elector who is not registered wishes to obtain a confidential listing under s. 6.47 (2), the elector shall register at the office of the municipal clerk of the municipality where the elector resides. Upon completion of registration, the municipal clerk or a deputy clerk shall serially number the registration form and issue a voting identification card to the elector under s. 6.47 (3). The elector may vote at the polling place serving his or her residence by presenting the identification card or by providing his or her name and identification serial number to the inspectors.

SECTION 12. 6.79 (1) to (3) of the statutes are amended to read:

6.79 (1) MUNICIPALITIES WITHOUT REGISTRATION. Where Except as provided in sub. (6) (a), where there is no registration, before being permitted to vote, each person shall state his or her full name and address. The officials shall record each name and address on a poll list in the same order as the votes are cast. If the residence of the elector does not have a number, the election officials shall, in the appropriate space, write "none". Alternatively, the municipal clerk may maintain a poll list consisting of the full name and address of electors compiled from previous elections. Whenever an elector appears to vote, the officials shall verify the correctness of the elector's name and address, and shall enter a serial number next to the name of the elector in the order that the votes are cast, beginning with the number one. If the name and address of an elector do not appear on the prepared poll list, the officials shall record the name, address and serial number of the elector at the bottom of the list. The officials may require any elector to provide identification, including acceptable proof of residence, or to have

another elector corroborate his or her information in accordance with the procedure specified in s. 6.55 (2) (b) before permitting the elector to vote. An elector who presents an identification card under sub. (6) (a) is not required to provide separate identification. The officials shall maintain a separate list of those persons voting under ss. 6.15 and 6.24.

(2) MUNICIPALITIES WITH REGISTRATION. Where Except as provided in sub. (6) (b), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55 (2) or (3) and electors who are reassigned from another polling place under s. 5.25 (5) (b). Each such elector shall have his or her full name, address and serial number likewise recorded and shall be given a slip bearing such number.

(3) REFUSAL TO GIVE NAME AND ADDRESS. If Except as provided in sub. (6), if any elector offering to vote at any polling place refuses to give his or her name and address, the elector may not be permitted to vote.

SECTION 13. 6.79 (5) of the statutes is amended to read:

6.79 (5) POLL LIST FORMS. Poll lists shall be kept on forms designed by the board to be substantially similar to the standard registration list forms used in municipalities where registration is required and shall require, for each person offering to vote, the entry of the person's full name and address, except as otherwise required under sub. (6) (a).

SECTION 14. 6.79 (6) of the statutes is created to read:

6.79 (6) CONFIDENTIAL NAMES AND ADDRESSES. (a) In municipalities where there is no registration, an elector who has a confidential listing under s. 6.47 (2) may present an identification card issued under s. 6.47 (3) in lieu of providing his or her name and address. If the elector resides in the area served by the polling place, the inspectors shall then enter the elector's name and identification serial number on the poll list in a section following the other names, shall issue a voting serial number to the elector and shall record that number on the poll list and permit the elector to vote.

(b) In municipalities where registration is required, an elector who has a confidential listing under s. 6.47 (2) may present his or her identification card issued under s. 6.47 (3) or may give his or her name and identification serial number issued under s. 6.47 (3). If the elector's name and identification serial number appear on the confidential portion of the list, the inspectors shall issue a voting serial number to the elector, record that number on the registration list and permit the elector to vote.

SECTION 15. 6.87 (2) of the statutes is amended to read:

6.87 (2) The municipal clerk shall place the ballot in an unsealed envelope furnished by the clerk. The envelope shall have the name, official title and post-office address of the clerk upon its face. The other side of the envelope shall have a printed certificate-affidavit in substantially the following form:

[STATE OF
County of]

or

[(name of foreign country and city or other jurisdictional unit)]

I,, (certify) (do solemnly swear) subject to the penalties of s. 12.60 (1) (b), Wis. Stats. for false statements that I am a resident of the [.... ward of the] (town) (village) of, or of the aldermanic district in the city of, residing at in said city, the county of, state of Wisconsin, and am entitled to vote in the (ward) (election district) at the election to be held on, that I am not voting at any other location in this election; that I cannot appear at the polling place in the (ward) (election district) on election day because I expect to be absent from the municipality or because of age, sickness, handicap, physical disability, religious reasons, jury duty, service as an election official, or because I have changed my residence within the state from one ward or election district to another within 10 days before the election. An elector who provides an identification serial number issued under s. 6.47 (3) need not provide a street address. I (certify) (swear) that I exhibited the enclosed ballot unmarked to the (2 witnesses) (person administering the oath), that I then in (their) (his) (her) presence and in the presence of no other person marked the ballot and enclosed and sealed the same in this envelope in such a manner that no one but myself and any person rendering assistance under s. 6.87 (5), Wis. Stats., if I requested assistance, could know how I voted.

Signed

Identification serial number, if any:

The (2 witnesses) (person administering the oath) shall execute either of the following as appropriate:

We, the undersigned witnesses, subject to the penalties of s. 12.60 (1) (b), Wis. Stats., for false statements, certify that the above statements are true and the voting procedure was executed as there stated. Neither of us is a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk). The elector was not solicited or advised by us to vote for or against any candidate or measure.

....(Name)
....(Address)
....(Name)
....(Address)

Subscribed and sworn to before me this day of, A.D.,, and I hereby certify that I am not a candidate on

the ballot upon which the affiant voted (unless I am an incumbent municipal clerk), that the voting procedure above was executed as therein stated, and that the affiant was not solicited or advised by me to vote for or against any candidate or measure.

....(Name)

....(Title)

....(State or nation)

SECTION 16. 6.87 (6m) of the statutes is created to read:

6.87 (6m) Except as authorized in s. 6.47 (8), the municipal clerk shall withhold from public inspection under s. 19.35 (1) the name and address of any absent elector who obtains a confidential listing under s. 6.47 (2).

SECTION 17. 6.88 (3) (a) of the statutes is amended to read:

6.88 (3) (a) Any time between the opening and closing of the polls on election day, the inspectors shall open the carrier envelope only, and announce the absent elector's name of the absent elector or the identification serial number of the absent elector if the elector has a confidential listing under s. 6.47 (2). When the inspectors find that the certification or affidavit has been properly executed, the applicant is a qualified elector of the ward or election district, and the applicant has not voted in the election, they shall enter an indication on the poll or registration list next to the applicant's name indicating an absentee ballot is cast by the elector. They shall then open the envelope containing the ballot in a manner so as not to deface or destroy the affidavit or certification thereon. The inspectors shall take out the ballot without unfolding it or permitting it to be unfolded or examined. Unless the ballot is cast under s. 6.95, the inspectors shall verify that the ballot has been endorsed by the issuing clerk. The inspectors shall deposit the ballot in the proper ballot box and enter the absent elector's name or voting number after his or her name on the poll or registration list the same as if the elector had been present and voted in person.

SECTION 18. 7.08 (1) (c) of the statutes is amended to read:

7.08 (1) (c) Prescribe forms required by ss. 6.24 (3) and (4), 6.30 (3) and (4), 6.33 (1), 6.40 (1) (b), 6.47 (1) (a) 2. and (3). 6.55 (2) and (3), 6.79 (5) and 6.86 (2) and (3). All such forms shall contain a statement of the penalty applicable to false or fraudulent registration or voting through use of the form. Forms are not required to be furnished by the board.

SECTION 19. 7.39 (5) of the statutes is amended to read:

7.39 (5) POLL POSITIONS. Observers of election proceedings, as a matter of right, shall be so positioned at the polls by the chief inspector as to reasonably be enabled to closely observe proceedings and hear instructions given to voters. No observer may view the confidential

portion of a registration list maintained under s. 6.36 (4) or poll list maintained under s. 6.79 (6). However, the inspectors shall disclose to any observer, upon request, the existence of such a list, the number of electors whose names appear on the list and the number of those electors who have voted at any point in the proceedings. No observer may view the certificate-affidavit form of an absent elector who obtains a confidential listing under s. 6.47 (2).

SECTION 19m. 7.41 (4) of the statutes is created to read:

7.41 (4) An individual exercising the right under sub. (1) may not view any records to which access by observers is prohibited under s. 7.39 (5). The inspectors shall disclose to such an individual, upon request, the existence of confidential records specified in s. 7.39 (5) and the information required to be provided to observers under s. 7.39 (5).

SECTION 20. 7.51 (1) of the statutes is amended to read:

7.51 (1) **CANVASS PROCEDURE.** Immediately after the polls close the inspectors shall proceed to canvass publicly all votes received at the polling place. In any municipality where an electronic voting system is used, the municipal governing body or board of election commissioners may provide or authorize the municipal clerk or executive director of the board of election commissioners to provide for the adjournment of the canvass to one or more central counting locations for specified polling places in the manner prescribed in subch. III of ch. 5. No central counting location may be used to count votes at a polling place where an electronic voting system is not employed. The canvass, whether conducted at the polling place or at the central counting location, shall continue without adjournment until the canvass is completed and the return statements are made. The inspectors shall not permit access to the name of any elector who has obtained a confidential listing under s. 6.47 (2) during the canvass, except as authorized in s. 6.47 (8).

SECTION 21. 9.01 (1) (b) 11. of the statutes is amended to read:

9.01 (1) (b) 11. All steps of the recount shall be performed publicly. All Except as provided in subd. 12., all materials and ballots may be viewed and identified by the candidates, the person demanding the recount and their authorized representatives and counsel, but only members of the board of canvassers and tabulators assisting them may touch any of the materials or ballots. The candidates, the person demanding the recount and their authorized representatives and counsel may object to the counting of any ballot. Any errors shall be corrected.

SECTION 22. 9.01 (1) (b) 12. of the statutes is created to read:

9.01 (1) (b) 12. Except as authorized in s. 6.47 (8), the board of canvassers shall not permit access to the name of any elector who has obtained a confidential listing under s. 6.47 (2) during the recanvass.

SECTION 23. 12.13 (2) (b) 8. of the statutes is created to read:

12.13 (2) (b) 8. Intentionally disclose the name or address of any elector who obtains a confidential listing under s. 6.47 (2) to any person who is not authorized by law to obtain that information.

SECTION 24. 12.13 (3) (zm) and (zn) of the statutes are created to read:

12.13 (3) (zm) Wilfully provide to a municipal clerk false information for the purpose of obtaining a confidential listing under s. 6.47 (2) for that person or another person.

(zn) Disclose to any person information provided under s. 6.47 (8) when not authorized to do so.

SECTION 25. 12.60 (1) (a) of the statutes is amended to read:

12.60 (1) (a) Whoever violates s. 12.09, 12.11 or 12.13 (1), (2) (b) 1. to 7. or (3) (a), (e), (f), (j), (k), (L), (m), (y) or (z) may be fined not more than \$10,000 or imprisoned not more than 3 years in the Wisconsin state prisons or both.

SECTION 26. 12.60 (1) (a) of the statutes, as affected by 1997 Wisconsin Act 283, is amended to read:

12.60 (1) (a) Whoever violates s. 12.09, 12.11 or 12.13 (1), (2) (b) 1. to 7. or (3) (a), (e), (f), (j), (k), (L), (m), (y) or (z) may be fined not more than \$10,000 or imprisoned for not more than 4 years and 6 months or both.

SECTION 27. 12.60 (1) (b) of the statutes is amended to read:

12.60 (1) (b) Whoever violates s. 12.03, 12.05, 12.07, 12.08 or 12.13 (2) (b) 8., (3) (b), (c), (d), (g), (i) or (n) to (x), (zm) or (zn) may be fined not more than \$1,000, or imprisoned not more than 6 months or both.

SECTION 28. 60.11 (7) of the statutes is amended to read:

60.11 (7) **POLL LIST.** An annual town meeting may require the clerk of the town meeting to keep a poll list with the name and address of every elector voting at the meeting. If an elector of the town obtains a confidential listing under s. 6.47 (2) and presents an identification card issued under s. 6.47 (3), the clerk shall record the identification serial number of the elector in lieu of the elector's address.

SECTION 29. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 12.60 (1) (a) (by SECTION 26) of the statutes takes effect on December 31, 1999.

6.40 THE ELECTORS

for who wishes to obtain a confidential listing under s. 6.47 (2) shall register at the office of the municipal clerk of the municipality where the elector resides.

(3) RECORDING CHANGES. All changes of names and addresses under this section shall be filed with the municipal clerk and the clerk shall then correct the official registration list.

History: 1971 c. 242; 1971 c. 304 s. 29 (1), (2); 1975 c. 85, 199, 200; 1977 c. 394 ss. 23, 24, 53; 1983 a. 484; 1985 a. 304; 1999 a. 49; 2003 a. 265.

6.45 Access to registration list. (1) After the deadline for revision of the registration list, the municipal clerk shall make copies of the list for election use. The registration list and any supplemental lists which are prepared at polling places or other registration locations under s. 6.55, shall be open to public inspection. Under the regulations prescribed by the municipal clerk, any person may copy the registration list at the office of the clerk. A registration list maintained at a polling place may be examined by any person who is observing the proceedings under s. 7.41 when such use does not interfere with the conduct of the election.

(1m) The registration list and any supplemental lists which are prepared at polling places or other registration locations under s. 6.55, shall be open to public inspection. Under the regulations prescribed by the municipal clerk, any person may copy the registration list at the office of the clerk. A registration list maintained at a polling place may be examined by any person who is observing the proceedings under s. 7.41 when such use does not interfere with the conduct of the election. This subsection does not apply to information that is confidential under s. 6.47.

(2) The municipal clerk shall furnish upon request to each candidate who has filed nomination papers for an office which represents at least part of the residents of the municipality one copy of the current registration list for those areas for which he or she is a candidate for a fee not to exceed the cost of reproduction. The clerk shall exclude information that is confidential under s. 6.47 (2) from copies of the list, except as authorized under s. 6.47 (8).

History: 1975 c. 85, 199; 1977 c. 394 s. 53; 1983 a. 484; 1989 a. 192; 1999 a. 49, 182; 2001 a. 38.

6.46 Poll lists; copying. (1) Poll lists shall be preserved by the municipal clerk until destruction or other disposition is authorized under s. 7.23.

(2) Poll lists shall be open to public inspection, except as provided in s. 6.47. The municipal clerk shall furnish upon request to each candidate who has filed nomination papers for an office which represents at least part of the municipality one copy of the current poll list for those areas for which he or she is a candidate for a fee not to exceed the cost of reproduction. If a copying machine is not accessible, the clerk shall remove the lists from the office for the purposes of copying, and return them immediately thereafter. The clerk shall exclude information that is confidential under s. 6.47 (2) from copies of the list, except as authorized under s. 6.47 (8).

History: 1975 c. 85, 199; 1999 a. 49.

6.47 Confidentiality of information relating to victims of domestic abuse. (1) In this section:

(a) "Eligible individual" means:

1. An individual who has been granted a protective order that is in effect.

2. An individual who files an affidavit with the municipal clerk of the municipality where the individual resides, on a form prescribed by the board, that is signed by a sheriff or the chief of a police department and directed to the municipal clerk, and that verifies that a person has been charged with or convicted of an offense relating to domestic abuse in which the individual was a victim and reasonably continues to be threatened by that person.

3. An individual who resides in a shelter.

(b) "Offense relating to domestic abuse" means an offense specified in s. 940.19, 940.20 (1m), 940.201, 940.22, 940.225, 940.32, 947.013, 948.02, 948.025, 948.06, 948.09 or 948.095.

(c) "Protected individual" means an individual whose name and address is confidential under sub. (2).

(d) "Protective order" means a temporary restraining order or an injunction issued under s. 813.12 or 813.125.

(e) "Shelter" means a place where at least 4 unrelated individuals reside that provides residential shelter to individuals whose personal security is or may be threatened by family members or other persons with whom the individuals have had contact.

(2) Except as authorized in sub. (8), the board, each municipal clerk, each agent designated under s. 6.33 (5) (b), and each election official shall withhold from public inspection under s. 19.35 (1) the name and address of any eligible individual whose name appears on a poll list or registration list if the individual provides the municipal clerk with a valid written request to protect the individual's confidentiality. To be valid, a request under this subsection must be accompanied by a copy of a protective order that is in effect, an affidavit under sub. (1) (a) 2. that is dated within 30 days of the date of the request or a statement signed by the operator or an authorized agent of the operator of a shelter that is dated within 30 days of the date of the request and that indicates that the operator operates the shelter and that the individual making the request resides in the shelter. A physically disabled individual who appears personally at the office of the municipal clerk accompanied by another elector of this state may designate that elector to make a request under this subsection on his or her behalf.

(3) Upon receiving a valid written request from an elector under sub. (2), the municipal clerk shall issue to the elector a voting identification card on a form prescribed by the board that shall contain the name of the elector's municipality of residence and, in the case of a town, the county in which the town is located, the elector's name, the ward in which the elector resides, if any, and a unique identification serial number issued by the board. The number issued to an elector under this subsection shall not be changed for so long as the elector continues to qualify for a listing under sub. (2).

(4) Except as provided in sub. (5), a confidential listing under sub. (2) expires on the date that a protective order expires, the date that the protected individual ceases to reside in a shelter or at the end of the 24-month period that follows creation or renewal of the listing under sub. (2), whichever is earlier.

(5) (a) The municipal clerk shall cancel a confidential listing under sub. (2) if:

1. The clerk receives notification from a sheriff or chief of police under sub. (8).

2. The name of the protected individual is legally changed.

3. The protected individual changes his or her address without notifying the municipal clerk.

4. The municipal clerk finds that the protected individual provided false information to the clerk for the purpose of obtaining a confidential listing under sub. (2).

(b) An individual whose confidential listing is canceled under par. (a) may file a new request and qualify under sub. (2) to obtain a renewal of the listing.

(6) Upon expiration of a confidential listing on a registration list under sub. (2), the municipal clerk shall change the registration of the protected individual to ineligible status unless the individual files a new request and qualifies under sub. (2) to obtain a renewal of the listing or unless the individual applies for and qualifies to obtain a nonconfidential voter registration. Except as authorized in sub. (8), the municipal clerk shall withhold from public inspection under s. 19.35 (1) the name and address of any individual whose registration is changed under this subsection if the individual qualified for a confidential listing at the time of that listing.

(7) (a) If the municipal clerk has notice that a confidential listing under sub. (2) is scheduled to expire, the municipal clerk shall provide 30 days' notice to the protected individual of the scheduled expiration of the listing.

Domestic abuse or sexual assault service provider

M/SA Serv. provid

law enforcement agency or rep of DA office or sexual assault service provider

signed by law enforcement or police

who... receives or has received services of a domestic violence

(b) If notice to a protected individual is not provided under par. (a), the municipal clerk shall provide notice to the subject individual upon canceling a confidential listing under sub. (2).

(8) The municipal clerk shall provide access to a name and address under sub. (2):

(a) To a law enforcement officer for official purposes.

(b) To a state or local governmental officer pursuant to a specific law that necessitates obtaining the name or address.

(c) Pursuant to a court order citing a reason that access to the name or address should be provided.

(d) To a clerk of circuit court for purposes of s. 756.04 (5) (a).

(e) At the request of a protected individual, for purposes of permitting that individual to sign a petition under s. 59.05 (2) or a protest petition, consent or counter petition under s. 125.05.

(9) No person who obtains access to a name or address under sub. (8) may disclose the name or address to any person other than a public employee for the same purpose for which the information was obtained.

(10) If a sheriff or chief of a police department who signs an affidavit under sub. (1) (a) 2. obtains information that the person who was charged with an offense relating to domestic abuse is no longer so charged or that the person's judgment of conviction has been vacated, and the charge or conviction was the sole basis for the affidavit, the sheriff or chief shall provide written notice of that information to the municipal clerk to whom the affidavit was directed.

History: 1999 a. 49, 186; 2003 a. 265.

6.48 Challenging registration. (1) GENERAL PROCEDURE.

(a) Any registered elector of a municipality may challenge the registration of any other registered elector by submitting to the municipal clerk or executive director of the board of election commissioners in cities of more than 500,000 population an affidavit stating that the elector is not qualified to vote and the reasons therefor. The clerk or director, upon receipt of the affidavit, shall mail a notification of the challenge to the challenged elector, at his or her registered address.

(b) The challenged and challenging electors shall appear before the municipal clerk within one week of notification or arrange under sub. (2) to appear before the board of election commissioners. The challenging elector shall make an affidavit answering any questions necessary to determine the challenged elector's qualifications. Judgment rests with the municipal clerk and decisions shall be rendered as soon as heard. If the clerk cannot resolve the issue or has reservations as to the answers, the clerk may require the challenging elector to take the oath under s. 6.925. If the challenged elector appears and contests any answer of the challenging elector, the clerk may require the challenged elector to take the oath under s. 6.94 and to answer any question necessary to determine the challenged elector's qualifications. If the challenging elector appears before the municipal clerk or board of election commissioners but the challenged elector fails to appear, such clerk or board may make the decision without consulting the challenged elector. If the municipal clerk or board of election commissioners does not sustain the challenge, the challenged elector's registration remains valid.

(c) If the challenging elector fails to appear before the municipal clerk within one week or in cities of more than 500,000 population fails to appear before the board of election commissioners under sub. (2) to answer questions and take the oath under s. 6.925, such clerk or board shall cancel the challenge.

(d) If the clerk determines that the challenged elector is not qualified, the clerk shall change the challenged elector's registration from eligible to ineligible status on the registration list and notify the inspectors for the ward or election district where the elector was registered.

(2) SPECIAL PROCEDURE IN POPULOUS CITIES. (a) In cities of more than 500,000 population, objections may be made before the board of election commissioners which shall sit on the last

Wednesday before each election from 9 a.m. to 12 a.m. and from 2 p.m. to 5 p.m. to hear objections then made or deferred under sub. (1). If all the objections cannot then be determined, the commissioners shall sit during the same hours the next day.

(b) Upon appearing in person, objectors shall be examined, under oath, by the commissioners and testimony taken. Judgment rests with the board of election commissioners and decisions shall be rendered as soon as heard. All cases are heard and decided summarily. The commissioners shall determine whether the person objected to is qualified. If they determine that a person is not qualified, the executive director of the board of election commissioners shall change the elector from eligible to ineligible status on the registration list and shall notify the proper ward officials of the change immediately.

(3) CHALLENGE BASED ON INCOMPETENCY. Section 6.03 (3) applies to any challenge which is made to registration based on an allegation that an elector is incapable of understanding the objective of the elective process and thereby ineligible for registration.

(4) DISQUALIFICATION. The municipal clerk or board of election commissioners may not disqualify an elector under this section except upon the grounds and in accordance with the procedure specified in s. 6.325.

History: 1971 c. 304 s. 29 (2); 1973 c. 334; 1975 c. 85, 199; 1977 c. 394; 1979 c. 110; 1983 a. 484; 1985 a. 304; 1987 a. 391; 2003 a. 265.

6.50 Revision of registration list. (1) Within 90 days following each general election, the municipal clerk or board of election commissioners of each municipality shall examine the registration records and identify each elector who has not voted within the previous 4 years if qualified to do so during that entire period and shall mail a notice to the elector in substantially the following form:

"NOTICE OF SUSPENSION OF REGISTRATION

You are hereby notified that your voter registration will be suspended, according to state law, for failure to vote within the previous 4-year period, unless you apply for continuation of your registration within 30 days. You may continue your registration by signing the statement below and returning it to this office by mail or in person.

APPLICATION FOR CONTINUATION OF REGISTRATION

I hereby certify that I still reside at the address at which I am registered and apply for continuation of registration.

Signed

Present Address

If you have changed your residence within this municipality or changed your name, please contact this office to complete a change of name or address form.

[Office of clerk or board of election commissioners

Address

Telephone]".

(2) The municipal clerk or board of election commissioners shall change the registration of all notified electors under sub. (1) who have not applied for continuation of registration within 30 days of the date of mailing of the notice of suspension from eligible to ineligible status.

(3) Upon receipt of reliable information that a registered elector has changed his or her residence to a location outside of the municipality, the municipal clerk or board of election commissioners shall notify the elector by mailing a notice by 1st class mail to the elector's registration address stating the source of the information. All municipal departments and agencies receiving information that a registered elector has changed his or her residence shall notify the clerk or board of election commissioners. If the elector no longer resides in the municipality or fails to apply for continuation of registration within 30 days of the date the notice is mailed, the clerk or board of election commissioners shall change the elector's registration from eligible to ineligible status.

Section 9.

2. An individual who files an affidavit with the municipal clerk of the municipality where the individual resides, on a form prescribed by the board, which is signed by a sheriff, chief of police, other law enforcement representative, or district attorney representative and directed to the municipal clerk, and which verifies that a person has been charged with or convicted of an offense relating to domestic abuse in which the individual was a victim and reasonably continues to be threatened by that person.
3. An individual who resides in a shelter or is engaging the services of domestic violence or sexual assault programs.

(b) "Offense relating to domestic abuse, sexual assault or stalking" means an offense specified in s. 940.19, 940.20 (1m), 940.201, 940.22, 940.225, 940.32, 947.013, 948.02, 948.025, 948.06, 948.09, 948.095, **968.075 or 813.12 (1) (am).**

(e) "Shelter" means a place where at least 4 unrelated individuals reside that provides residential shelter to individuals whose personal security is or may be threatened by family members or other persons with whom the individuals have had contact. "Engaging in the services of domestic violence or sexual assault programs" means documentation from a domestic violence or sexual assault program accessed by the individual; documentation from any professional from whom the victim sought assistance in dealing with violence, sexual assault, or stalking. North Carolina

"domestic abuse" appears 5 times and should be changed to "domestic abuse, sexual assault, or stalking"

1999 Assembly Bill 343

Date of enactment: April 11, 2000
Date of publication*: April 25, 2000

1999 WISCONSIN ACT 49

AN ACT to renumber and amend 6.36 (2); to amend 6.28 (1), 6.33 (1), 6.35 (1) (intro.), 6.40 (2) (b), 6.45, 6.46, 6.55 (2) (a), 6.79 (1) to (3), 6.79 (5), 6.87 (2), 6.88 (3) (a), 7.08 (1) (c), 7.39 (5), 7.51 (1), 9.01 (1) (b) 11., 12.60 (1) (a), 12.60 (1) (a), 12.60 (1) (b) and 60.11 (7); and to create 6.35 (1m), 6.36 (2) (b), 6.36 (4), 6.47, 6.55 (2) (cm), 6.79 (6), 6.87 (6m), 7.41 (4), 9.01 (1) (b) 12., 12.13 (2) (b) 8. and 12.13 (3) (zm) and (zn) of the statutes; relating to: authorization for electors who are victims of domestic abuse to be listed confidentially on poll and registration lists and providing penalties.

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

SECTION 1. 6.28 (1) of the statutes is amended to read:

6.28 (1) REGISTRATION LOCATIONS: DEADLINE. Registration in person for any election shall close at 5 p.m. on the 2nd Wednesday preceding the election. Registrations made by mail under s. 6.30 (4) must be delivered to the office of the municipal clerk or postmarked no later than the 2nd Wednesday preceding the election. All applications for registration corrections and additions may be made throughout the year at the office of the city board of election commissioners, at the office of the municipal clerk, at the office of any register of deeds or at other locations provided by the board of election commissioners or the common council in cities over 500,000 population or by either or both the municipal clerk, or the common council, village or town board in all other municipalities and may also be made during the school year at any high school by qualified persons under sub. (2) (a). Other registration locations may include but are not limited to fire houses, police stations, public libraries, institutions of higher education, supermarkets, community centers,

plants and factories, banks, savings and loan associations and savings banks. Special registration deputies shall be appointed for all locations. An elector who wishes to obtain a confidential listing under s. 6.47 (2) shall register at the office of the municipal clerk of the municipality where the elector resides.

SECTION 2. 6.33 (1) of the statutes is amended to read:

6.33 (1) The municipal clerk shall supply sufficient registration forms as prescribed by the board printed on loose-leaf sheets or cards to obtain from each applicant information as to name, date, residence location, citizenship, age, whether the applicant has resided within the ward or election district for at least 10 days, whether the applicant has lost his or her right to vote, and whether the applicant is currently registered to vote at any other location, and shall provide a space for the applicant's signature. The forms shall also include a space for the identification serial number of any elector who is issued such a number under s. 6.47 (3). Each register of deeds shall obtain sufficient registration forms at the expense of the unit of government by which he or she is employed for completion by any elector who desires to register to vote.

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 3. 6.35 (1) (intro.) of the statutes is amended to read:

6.35 (1) (intro.) Under the direction of the municipal clerk or board of election commissioners, the original registration forms shall be filed in one of the following ways, except as provided in sub. (1m):

SECTION 4. 6.35 (1m) of the statutes is created to read:

6.35 (1m) Original registration forms of electors who have obtained a confidential listing under s. 6.47 (2) shall be filed in alphabetical order after the forms of the other electors.

SECTION 4g. 6.36 (2) of the statutes is renumbered 6.36 (2) (a) and amended to read:

6.36 (2) (a) The Except as provided in par. (b), the registration lists shall contain the full name and address of each registered elector, a blank column for the entry of the serial number of the electors when they vote, and a form of a certificate stating that each list is a true and complete combined check and registration list of the respective wards.

SECTION 4r. 6.36 (2) (b) of the statutes is created to read:

6.36 (2) (b) If an elector obtains a confidential listing under s. 6.47 (2), the registration list shall be prepared such that the address of the elector does not appear on copies of the list that are used at polling places.

SECTION 5. 6.36 (4) of the statutes is created to read:

6.36 (4) The names and identification serial numbers of electors who have obtained a confidential listing under s. 6.47 (2) shall appear separately after the remainder of the list. These names and serial numbers shall be arranged alphabetically by last name.

SECTION 6. 6.40 (2) (b) of the statutes is amended to read:

6.40 (2) (b) In addition to the revision which is required under s. 6.50, municipal clerks may conduct door-to-door and mail registration canvasses at any time. The door-to-door canvass shall consist of both the deletion from the registration list of the names of electors who no longer reside at the address for which they are registered and the addition to the registration list of the names of electors who reside at that address. The mail canvass shall consist of the municipal clerk examining the registration records and canceling the registration of electors after the mailing of notices in accordance with s. 6.50 (1) and (2) or (2m). The mail canvass may also consist of adding to the registration list the names of eligible electors. Both door-to-door and mail canvasses whenever made shall be made throughout the municipality in a uniform manner. An elector who wishes to obtain a confidential listing under s. 6.47 (2) shall register at the office of the municipal clerk of the municipality where the elector resides.

SECTION 7. 6.45 of the statutes is amended to read:

6.45 Access to registration list. (1) After the deadline for revision of the registration list, the municipal clerk shall make copies of the list for election use.

(1m) The registration list and any supplemental lists which are prepared at polling places or other registration locations under s. 6.55, shall be open to public inspection. Under the regulations prescribed by the municipal clerk, any person may copy the registration list at the office of the clerk. A registration list maintained at a polling place may be examined by an observer when such use does not interfere with the conduct of the election. This subsection does not apply to information that is confidential under s. 6.47.

(2) The municipal clerk shall furnish upon request to each candidate who has filed nomination papers for an office which represents at least part of the residents of the municipality one copy of the current registration list for those areas for which he or she is a candidate for a fee not to exceed the cost of reproduction. The clerk shall exclude information that is confidential under s. 6.47 (2) from copies of the list, except as authorized under s. 6.47 (8).

SECTION 8. 6.46 of the statutes is amended to read:

6.46 Poll lists; copying. (1) Poll lists shall be preserved by the municipal clerk until destruction or other disposition is authorized under s. 7.23, and,

(2) Poll lists shall be open to public inspection, except as provided in s. 6.47. The municipal clerk shall furnish upon request to each candidate who has filed nomination papers for an office which represents at least part of the municipality one copy of the current poll list for those areas for which he or she is a candidate for a fee not to exceed the cost of reproduction. If a copying machine is not accessible, the clerk shall remove the lists from the office for the purposes of copying, and return them immediately thereafter. The clerk shall exclude information that is confidential under s. 6.47 (2) from copies of the list, except as authorized under s. 6.47 (8).

SECTION 9. 6.47 of the statutes is created to read:

6.47 Confidentiality of information relating to victims of domestic abuse. (1) In this section:

(a) "Eligible individual" means:

- 1. An individual who has been granted a protective order that is in effect.
- 2. An individual who files an affidavit with the municipal clerk of the municipality where the individual resides, on a form prescribed by the board, which is signed by a sheriff or the chief of a police department and directed to the municipal clerk, and which verifies that a person has been charged with or convicted of an offense relating to domestic abuse in which the individual was a victim and reasonably continues to be threatened by that person.
- 3. An individual who resides in a shelter.

CAN THIS SECTION JUST BE LAW ENF. AGENCY +/OR DISTRICT ATTORNEY

CAN THIS BE "ENGAGING THE SVS OF"

Confidential Listing

1999 Wisconsin Act 49 authorizes electors who are victims of domestic abuse to be listed confidentially on poll and registration lists. An individual is eligible if they have been granted a protective order that is in effect, have an affidavit which is signed by a sheriff or the chief of police which verifies that the individual was a victim and continues to be threatened, or the individual resides in a shelter. The name and address of the protected individual is not disclosed on the poll/registration list.

Request for Confidentiality

An individual must *personally* register to vote in the office of the municipal clerk and make a *written request* for confidentiality. ss.6.28(1), 6.47(2), Stats. The individual may use the form entitled Elector Request for Confidential Listing (EB-146). A physically disabled individual may be accompanied to the clerk's office by another elector of Wisconsin and may designate the other elector to make a request for confidentiality on their behalf. 6.47(2), Stats.

If an individual is not registered on election day and wishes to obtain a confidential listing, the elector must register at the clerk's office before they may vote at the polling place serving their residence. s.6.55(2)(cm), Stats.

To be eligible, an individual must provide 1 of 3 documents:

- Copy of temporary restraining order or an injunction. ss.6.47(1)(a)1., (d), (2), Stats.
- Affidavit from sheriff or chief of police (Affidavit of Sheriff or Chief of Police, EB-147) that is dated within 30 days of the date of the request. ss.6.47(1)(a)2., (2), Stats.
- Statement signed by the operator or authorized agent of a shelter that is dated within 30 days of the date of the request that indicates the operator operates the shelter and that the individual making the request resides in the shelter. ss.6.47(1)(a)3., (2), Stats.

Clerk issues a voting identification card (Identification Card of Protected Individual, EB-148) to the protected individual and notes the identification serial number on the voter registration form in the space provided. ss.6.33 (1), 6.47(3), Stats. *The unique identification serial number is created by taking the HINDI number of the municipality and adding 2 digits starting with 01, i.e. if the HINDI number of the municipality is 01100 then the first ID issued will be 0110001. The 5-digit HINDI number is located on the mailing label from the State Elections Board to the municipal clerk.*

When voting absentee, the protected individual who provides an ID number does not need to provide a street address on the absentee certificate. s.6.87(2), Stats. The clerk makes a notation of the individual's name and identification number in the Absentee Elector Log. The clerk notes on the Absentee Elector Log and on the Absentee Certificate (EB-122) that the voter is a protected individual. The clerk does not disclose the protected individual's information on the Absentee Elector Log.

Recordkeeping

- The original registration card is filed alphabetically after the forms of other electors. ss.6.35(1)intro, (1m), Stats.
- Registration lists contain the full name and address of each registered voter, except that the address of the protected elector does not appear on copies of lists used at the polling place. ss.6.36(2)(a), (b), Stats.
- Names and identification serial numbers of protected individuals appear separately after the remainder of the list. Names and serial numbers are arranged alphabetically by last name of elector. s.6.36(4), Stats.

Clerk keeps the file confidential

Access to poll/registration list does not apply to information that is confidential. ss.6.45(1m), 6.46(2), Stats.

When the clerk furnishes a copy of the current registration list, the clerk excludes information that is confidential. s.6.45(2), Stats.

The confidential listing expires:

- On the date the protective order expires,
- The date the protected individual ceases to reside in a shelter, or
- After the 24-month period that follows creation or renewal of the listing, whichever is earlier. s.6.47(4), Stats.

The municipal clerk cancels a confidential listing if:

- The clerk receives notification from a sheriff or chief of police. ss.6.47(5)(a)1., (10), Stats.
- The name of the protected individual is legally changed. s.6.47(5)(a)2., Stats.
- The protected individual changes their address without notifying the clerk. s.6.47(5)(a)3., Stats.
- The clerk finds that the protected individual provided false information. s.6.47(5)(a)4., Stats.

If the municipal clerk has notice that a confidential listing is scheduled to expire, the clerk provides 30-day notice to the individual of the scheduled expiration of the listing. If notice to the protected individual is not provided, the clerk provides notice upon canceling. s.6.47(7), Stats. The clerk may use Notice of Cancellation of Registration and Confidential Listing (EB-149) to notify the elector.

The municipal clerk may use the sample *Tracking of Confidential Listing* to assist them in maintaining their records.

Upon expiration or cancellation of the confidential listing, an individual may file a new request and qualify by filing the proper documents. The individual may apply for and qualify to obtain a nonconfidential (regular) voter registration. ss.6.47(5)(b), (6), Stats.

Access to confidential name and address is permitted only under certain circumstances:

- To a law enforcement officer for official purposes. s.6.47(8)(a), Stats.
- To a state or local governmental officer pursuant to a specific law. s.6.47(8)(b), Stats.
- Pursuant to a court order. s.6.47(8)(c), Stats.

Confidential Listing

- To the clerk of court. s.6.47(8)(d), Stats.
- At the request of the protected individual. s.6.47(8)(e), Stats.

No person who obtains access to a protected individual's name and address may disclose it to any person other than a public employee for the same purpose for which the information was obtained. s.6.47(9), Stats.

At Polling Place

- A protected individual presents their identification card to election inspectors in lieu of providing their name and address and is not required to provide separate identification. ss.6.79(1), (6), Stats.
- The inspectors put the name and identification number in a separate section of the poll list (or find the name and identification number on the confidential portion of the poll/registration list) and record a voting serial number on the list. s.6.79(6), Stats. When using a poll list, the inspectors write "Protected Elector" on the line where the elector's name and address would normally appear, and use the number of the line as the voter serial number in the separate section for protected individuals.
- When the protected individual is voting absentee, only the identification serial number is announced when processing the absentee ballot. s.6.88(3)(a), Stats.
- The inspectors may only disclose to observers/public the existence of a confidential list, the number of protected individuals on a poll/registration list and the number of those who may have voted. No observer may view the absentee certificate of a protected individual. s.7.41(4), Stats.
- The inspectors should not permit access to the name of any protected elector during the canvass. s.7.51(1), Stats.

The board of canvassers at a recount should not permit access to the name of any protected individual. s.9.01(1)(b)12., Stats.

Violations With Respect to Confidential Listings

- To intentionally disclose the name and address of a protected individual to any person who is not authorized by law to obtain that information. s.12.13(2)(b)8., Stats.
- Willfully provide to a municipal clerk false information for the purpose of obtaining a confidential listing. s.12.13(3)(zm), Stats.
- To disclose confidential information to any person provided by law, when not authorized to do so. s.12.13(3)(zn), Stats.

Persons who violate the confidentiality of a protected individual may be fined not more than \$1,000, or imprisoned not more than 6 month, or both. s.12.60(1)(b), Stats.

LINKS:

- [Elector Request for Confidential Listing \(EB-146\)](#)
- [Affidavit of Sheriff or Chief of Police \(EB-147\)](#)
- [Notice of Cancellation of Registration and Confidential Listing \(EB-149\)](#)

Available upon request by clerks only: Identification Card of Protected Individuals (EB-148)

NOTICE OF CANCELLATION OF REGISTRATION AND CONFIDENTIAL LISTING

You are hereby notified of cancellation of your voter registration as a protected individual as defined in s.6.47(1)(c), Stats., according to state law. s.6.47(4), (5), Stats.

Your voter registration as a protected individual is being cancelled, effective 30 days from receipt of this notice, because:

- The protective order will expire.
- The 24-month period allowed voter registration as a protected individual will expire.

Your registration is cancelled, effective immediately, pursuant to s.6.47(4),(5), Stats.

You may renew your registration as a protected individual by submitting a new request and filing one of the appropriate documents required for a confidential listing. Or you may apply to obtain a nonconfidential voter registration.

If you have any questions, please contact:

(Name and address of municipal clerk)

EB-149 (9/2000) The information on this form is required by s.6.47, Stats. This form is prescribed by the State Elections Board, 132 East Wilson Street, Suite 200, Madison, WI, 608-266-8005, <http://elections.state.wi.us>

NOTICE OF CANCELLATION OF REGISTRATION AND CONFIDENTIAL LISTING

You are hereby notified of cancellation of your voter registration as a protected individual as defined in s.6.47(1)(c), Stats., according to state law. s.6.47(4), (5), Stats.

Your voter registration as a protected individual is being cancelled, effective 30 days from receipt of this notice, because:

- The protective order will expire.
- The 24-month period allowed voter registration as a protected individual will expire.

Your registration is cancelled, effective immediately, pursuant to s.6.47(4),(5), Stats.

You may renew your registration as a protected individual by submitting a new request and filing one of the appropriate documents required for a confidential listing. Or you may apply to obtain a nonconfidential voter registration.

If you have any questions, please contact:

(Name and address of municipal clerk)

EB-149 (9/2000) The information on this form is required by s.6.47, Stats. This form is prescribed by the State Elections Board, 132 East Wilson Street, Suite 200, Madison, WI, 608-266-8005, <http://elections.state.wi.us>

resulting from or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling or other assessment or treatment of or involving any mental or emotional illness, symptom or condition has a civil cause of action against the psychotherapist for all damages resulting from, arising out of or caused by that sexual contact. Consent is not an issue in an action under this section, unless the sexual contact that is the subject of the action occurred more than 6 months after the psychotherapy, counseling, assessment or treatment ended.

(b) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1) and 815.05 (1g) (a), in an action brought under this section, the plaintiff may substitute his or her initials, or fictitious initials, and his or her age and county of residence for his or her name and address on the summons and complaint. The plaintiff's attorney shall supply the court the name and other necessary identifying information of the plaintiff. The court shall maintain the name and other identifying information, and supply the information to other parties to the action, in a manner that reasonably protects the information from being disclosed to the public.

(c) Upon motion by the plaintiff, and for good cause shown, or upon its own motion, the court may make any order that justice requires to protect:

1. A plaintiff who is using initials in an action under this section from annoyance, embarrassment, oppression or undue burden that would arise if any information identifying the plaintiff were made public.

2. A plaintiff in an action under this section from unreasonably long, repetitive or burdensome physical or mental examinations.

3. The confidentiality of information which under law is confidential, until the information is provided in open court in an action under this section.

(3) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person bringing an action under this section.

(4) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is subject to s. 893.585.

(5) SILENCE AGREEMENTS. Any provision in a contract or agreement relating to the settlement of any claim by a patient against a therapist that limits or eliminates the right of the patient to disclose sexual contact by the therapist to a subsequent therapist, the department of regulation and licensing, the department of health and family services, the injured patients and families compensation fund peer review council, or a district attorney is void.

History: 1985 a. 275; 1987 a. 352; 1991 a. 160, 217; 1995 a. 27 s. 9126 (19); 1999 a. 85; 2003 a. 111.

Under sub. (2), consent is not an issue and, as such, an instruction regarding the victim's contributory negligence was improper. *Block v. Gomez*, 201 Wis. 2d 795, 549 N.W.2d 783 (Ct. App. 1996), 94-1085.

This section grants no cause of action against a therapist's employer. *L.L.N. v. Clauder*, 203 Wis. 2d 570, 552 N.W.2d 879 (Ct. App. 1996), 95-2084. Reversed on other grounds, 209 Wis. 2d 674, 704, 563 N.W.2d 434 (1997), 95-2084.

895.71 Sexual exploitation by a member of the clergy.

(1) DEFINITIONS. In this section:

(a) "Member of the clergy" has the meaning given in s. 48.981 (1) (cx).

(b) "Religious organization" means an association, conference, congregation, convention, committee, or other entity that is organized and operated for a religious purpose and that is exempt from federal income tax under 26 USC 501 (c) (3) or (d) and any subunit of such an association, conference, congregation, convention, committee, or entity that is organized and operated for a religious purpose.

(c) "Sexual contact" has the meaning given in s. 940.225 (5) (b).

(2) CAUSE OF ACTION. (a) Any person who suffers an injury as a result of sexual contact with a member of the clergy that occurs while the person is under the age of 18 may bring an action against the member of the clergy for all damages caused by that sexual contact.

(b) Any person who may bring an action under par. (a) may bring an action against the religious organization that employed the member of the clergy for all damages caused by that sexual contact if, at the time that the sexual contact occurred, another employee of that religious organization whose duties included supervising that member of the clergy knew or should have known that the member of the clergy previously had sexual contact with a person under the age of 18 and failed to do all of the following:

1. Report that sexual contact under s. 48.981 (3).

2. Exercise ordinary care to prevent similar incidents from occurring.

(c) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1), and 815.05 (1g) (a), in an action brought under this section, the plaintiff may substitute his or her initials, or fictitious initials, and his or her age and county of residence for his or her name and address on the summons and complaint. The plaintiff's attorney shall supply the court the name and other necessary identifying information of the plaintiff. The court shall maintain the name and other identifying information, and supply the information to other parties to the action, in a manner that reasonably protects the information from being disclosed to the public.

(d) Upon motion by the plaintiff, and for good cause shown, or upon its own motion, the court may make any order that justice requires to protect any of the following:

1. A plaintiff who is using initials in an action under this section from annoyance, embarrassment, oppression, or undue burden that would arise if any information identifying the plaintiff were made public.

2. A plaintiff in an action under this section from unreasonably long, repetitive, or burdensome physical or mental examinations.

3. The confidentiality of information which under law is confidential, until the information is provided in open court in an action under this section.

(3) CONSENT. Consent is not an issue in an action under this section.

(4) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is subject to s. 893.587.

(5) SILENCE AGREEMENTS. Any contract or agreement concerning the settlement of any claim under this section that limits or eliminates the right of the injured person to disclose the sexual contact described under sub. (2) to another member of the religious organization to which the member of the clergy under sub. (2) belongs, to a therapist, as defined in s. 895.70 (1) (e), to a person listed under s. 48.981 (2) (a), or to a district attorney, is void.

History: 2003 a. 279.

895.73 Service representatives. (1) DEFINITIONS. In this section:

(a) "Abusive conduct" means domestic abuse, as defined under s. 46.95 (1) (a), 813.12 (1) (am), or 968.075 (1) (a), harassment, as defined under s. 813.125 (1), sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss. 948.02 to 948.11.

(b) "Complainant" means an adult who alleges that he or she was the subject of abusive conduct or who alleges that a crime has been committed against him or her.

(c) "Service representative" means an individual member of an organization or victim assistance program who provides counseling or support services to complainants or petitioners and charges no fee for services provided to a complainant under sub. (2) or to a petitioner under s. 813.122.

(2) RIGHT TO BE PRESENT. A complainant has the right to select a service representative to attend, with the complainant, hearings, depositions and court proceedings, whether criminal or civil, and all interviews and meetings related to those hearings, depositions

and court proceedings, if abusive conduct is alleged to have occurred against the complainant or if a crime is alleged to have been committed against the complainant and if the abusive conduct or the crime is a factor under s. 767.24 or is a factor in the complainant's ability to represent his or her interest at the hearing, deposition or court proceeding. The complainant shall notify the court orally, or in writing, of that selection. A service representative selected by a complainant has the right to be present at every hearing, deposition and court proceeding and all interviews and meetings related to those hearings, depositions and court proceedings that the complainant is required or authorized to attend. The service representative selected by the complainant has the right to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, deposition or court proceeding and related interviews and meetings, except when the complainant is testifying or is represented by private counsel. The service representative may not sit at counsel table during a jury trial. The service representative may address the court if permitted to do so by the court.

(3) **FAILURE TO EXERCISE RIGHT NOT GROUNDS FOR APPEAL.** The failure of a complainant to exercise a right under this section is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

History: 1991 a. 276; 1995 a. 220; 2001 a. 109.

895.75 Physical injury, emotional distress, loss or damage suffered by members of certain groups. (1) If a person suffers physical injury to his or her person or emotional distress or damage to or loss of his or her property by reason of conduct that is prohibited under s. 943.012 and that causes damage to any property specified in s. 943.012 (1) to (4) or by reason of conduct that is grounds for a penalty increase under s. 939.645 (1), the person has a civil cause of action against the person who caused the physical injury, emotional distress, damage or loss.

(2) The burden of proof in a civil action under sub. (1) rests with the person who suffers the physical injury, emotional distress, damage or loss to prove his or her case by a preponderance of the credible evidence.

(3) If the plaintiff prevails in a civil action under sub. (1), he or she may recover special and general damages, including damages for emotional distress; punitive damages; and costs, including all reasonable attorney fees and other costs of the investigation and litigation which were reasonably incurred.

(4) A person may bring a civil action under sub. (1) regardless of whether there has been a criminal action related to the physical injury, emotional distress, loss or damage under sub. (1) and regardless of the outcome of any such criminal action.

(5) This section does not limit the right of a person to recover from any parent or parents under s. 895.035.

History: 1987 a. 348; 2003 a. 243.

895.76 Limits on recovery by prisoners. A prisoner, as defined in s. 801.02 (7) (a) 2., may not recover damages for mental or emotional injury unless the prisoner shows that he or she has suffered a physical injury as a result of the same incident that caused the mental or emotional injury.

History: 1997 a. 133.

895.77 Injury caused by criminal gang activity.

(1) **DEFINITIONS.** In this section:

(a) "Criminal gang" has the meaning given in s. 939.22 (9).

(b) "Criminal gang activity" has the meaning given in s. 941.38 (1) (b).

(c) "Political subdivision" means a city, village, town or county.

(2) **CIVIL CAUSE OF ACTION.** (a) The state, a school district or a political subdivision may bring an action in circuit court for any expenditure of money for the allocation or reallocation of law enforcement, fire fighting, emergency or other personnel or resources if the expenditure of money by the state, a school district or a political subdivision is the result of criminal gang activity.

(b) Any person who suffers physical injury or incurs property damage or loss resulting from any criminal gang activity has a cause of action for the actual damages sustained. The burden of proof in a civil action under this paragraph rests with the person who suffers the physical injury or property damage or loss to prove his or her case by a preponderance of the credible evidence.

(c) The action may be brought against the criminal gang or against any member, leader, officer or organizer of a criminal gang who participates in a criminal gang activity or who authorizes, causes, orders, ratifies, requests or suggests a criminal gang activity. An action brought under this subsection shall also name as defendants the criminal gang and any criminal gang members that participated in the criminal gang activity. An action brought under this subsection may name, as a class of defendants, all unknown criminal gang members.

(d) The plaintiff may bring a civil action under this subsection regardless of whether there has been a criminal action related to the injury, property damage or loss or expenditure of money under par. (a) or (b) and regardless of the outcome of that criminal action.

(3) **SERVICE OF PROCESS.** A summons may be served individually upon any member, leader, officer or organizer of a criminal gang by service as provided under s. 801.11 (1), (2), (5) or (6) where the claim sued upon arises out of or relates to criminal gang activity within this state sufficient to subject a defendant to personal jurisdiction under s. 801.05 (2) to (10). A judgment rendered after service under this subsection is a binding adjudication against the criminal gang.

(4) **INJUNCTIVE RELIEF, DAMAGES, COSTS AND FEES.** (a) The court, upon the request of the state, a school district or a political subdivision, may grant an injunction restraining an individual from committing an act that would injure the state, a school district or a political subdivision or may order such other relief as the court determines is proper.

(b) The court may order a criminal gang member to divest himself or herself of any interest or involvement in any criminal gang activity and may restrict a criminal gang member from engaging in any future criminal gang activity.

(c) In addition to the costs allowed under s. 814.04, a final judgment in an action under sub. (2) (a) in favor of the plaintiff shall include compensatory damages for the expenditure of money for the allocation or reallocation of law enforcement, fire fighting, emergency or other personnel or resources caused by the criminal gang activity and compensation for the costs of the investigation and prosecution and reasonable attorney fees.

(d) In addition to the costs allowed under s. 814.04, a final judgment in an action under sub. (2) (b) in favor of the plaintiff shall include attorney fees and the costs of the investigation and litigation.

(e) The final judgment in favor of the plaintiff in an action under sub. (2) (a) or (b) may include punitive damages assessed against a criminal gang leader, officer, organizer or member who is found to have participated in criminal gang activity.

History: 1993 a. 98.

895.78 Limiting felon's right to damages. (1) In this section:

(a) "Crime" means a crime under the laws of this state or under federal law.

(b) "Damages" means damages for an injury to real or personal property, for death, or for personal injury.

(c) "Felony" means a felony under the laws of this state or under federal law.

(d) "Victim" means a person against whom an act constituting a felony was committed.

(2) No person may recover damages from any of the following persons for injury or death incurred while committing, or as a result of committing, an act that constituted a felony, if the person was convicted of a felony for that act:

(a) A victim of that felony.

905.045 PRIVILEGES

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

(b) "Advocate" means 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.

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

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

(2) GENERAL RULE OF PRIVILEGE. A victim has 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 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.

(3) WHO MAY CLAIM THE 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. The advocate's authority to do so is presumed in the absence of evidence to the contrary.

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

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

History: 2001 a. 109.

905.05 Husband-wife privilege. (1) GENERAL RULE OF PRIVILEGE. A person has a privilege to prevent the person's spouse or former spouse from testifying against the person as to any private communication by one to the other made during their marriage.

(2) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the person or by the spouse on the person's behalf. The authority of the spouse to do so is presumed in the absence of evidence to the contrary.

(3) EXCEPTIONS. There is no privilege under this rule:

(a) If both spouses or former spouses are parties to the action.

(b) In proceedings in which one spouse or former spouse is charged with a crime against the person or property of the other or of a child of either, or with a crime against the person or property of a 3rd person committed in the course of committing a crime against the other.

(c) In proceedings in which a spouse or former spouse is charged with a crime of pandering or prostitution.

(d) If one spouse or former spouse has acted as the agent of the other and the private communication relates to matters within the scope of the agency.

History: Sup. Ct. Order, 59 Wis. 2d R1, R130 (1973); 1991 a. 32.

Cross-reference: As to testimony of husband and wife in paternity action regarding child born in wedlock, see s. 891.39.

A wife's testimony as to statements made by her husband was admissible when the statements were made in the presence of 2 witnesses. *Abraham v. State*, 47 Wis. 2d 44, 176 N.W.2d 349 (1970).

Spouses can be compelled to testify as to whether the other was working or collecting unemployment insurance, since such facts are known to 3rd persons. *Kain v. State*, 48 Wis. 2d 212, 179 N.W.2d 777 (1970).

A wife's observation, without her husband's knowledge, of her husband's criminal act committed on a public street was neither a "communication" nor "private" within meaning of sub. (1). *State v. Sabin*, 79 Wis. 2d 302, 255 N.W.2d 320 (1977).

"Child" under sub. (3) (b) includes a foster child. *State v. Michels*, 141 Wis. 2d 81, 414 N.W.2d 311 (Ct. App. 1987).

The privilege under sub. (1) belongs to the person against whom testimony is being offered. While an accused may invoke the privilege to prevent his or her spouse from testifying against him or her, the witness spouse may not invoke it to prevent his or her own testimony. *Umhoefer v. Police and Fire Commission of the City of Mequon*, 2002 WI App 217, 257 Wis. 2d 539, 652 N.W.2d 412, 01-3468.

Under sub. (3) (b), it is irrelevant whether the acts of the defendant that constitute a crime against a third party are the same acts that constitute a crime against the spouse or different acts. *State v. Richard G. B.* 2003 WI App 13, 259 Wis. 2d 730, 656 N.W.2d 469, 02-1302.

905.06 Communications to members of the clergy.

(1) DEFINITIONS. As used in this section:

(a) A "member of the clergy" is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual.

(b) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(2) GENERAL RULE OF PRIVILEGE. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the member's professional character as a spiritual adviser.

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

(4) EXCEPTIONS. There is no privilege under this section concerning observations or information that a member of the clergy, as defined in s. 49.981 (1) (cx) [s. 48.981 (1) (cx)], is required to report as suspected or threatened child abuse under s. 48.981 (2) (bm).

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

History: Sup. Ct. Order, 59 Wis. 2d R1, R135 (1973); 1991 a. 32; 2003 a. 279.

An out-of-court disclosure by a priest that the defendant would lead police to the victim's grave was not privileged under this section. *State v. Kunkel*, 137 Wis. 2d 172, 404 N.W.2d 69 (Ct. App. 1987).

Should Clergy Hold the Priest-Penitent Privilege? *Mazza*. 82 MLR 171 (1998).

905.065 Honesty testing devices. (1) DEFINITION. In this section, "honesty testing device" means a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty.

(2) GENERAL RULE OF THE PRIVILEGE. A person has a privilege to refuse to disclose and to prevent another from disclosing any oral or written communications during or any results of an examination using an honesty testing device in which the person was the test subject.

(3) WHO MAY CLAIM PRIVILEGE. The privilege may be claimed by the person, by the person's guardian or conservator or by the person's personal representative, if the person is deceased.

(b) *Examination by order of judge.* If the judge orders an examination of the physical, mental or emotional condition of the patient, or evaluation of the patient for purposes of guardianship, protective services or protective placement, communications made and treatment records reviewed in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) *Condition an element of claim or defense.* There is no privilege under this section as to communications relevant to or within the scope of discovery examination of an issue of the physical, mental or emotional condition of a patient in any proceedings in which the patient relies upon the condition as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(d) *Homicide trials.* There is no privilege in trials for homicide when the disclosure relates directly to the facts or immediate circumstances of the homicide.

(e) *Abused or neglected child or abused unborn child.* 1. In this paragraph:

a. "Abuse" has the meaning given in s. 48.02 (1).

b. "Neglect" has the meaning given in s. 48.981 (1) (d).

2. There is no privilege in situations where the examination of an abused or neglected child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the abuse or neglect was other than accidentally caused or inflicted by another.

3. There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or alcohol concentration, as defined in s. 340.01 (1v).

(g) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child under ss. 767.45 to 767.53.

(h) *Reporting wounds and burn injuries.* There is no privilege regarding information contained in a report under s. 146.995 pertaining to a patient's name and type of wound or burn injury.

(i) *Providing services to court in juvenile matters.* There is no privilege regarding information obtained by an intake worker or dispositional staff in the provision of services under s. 48.067, 48.069, 938.067 or 938.069. An intake worker or dispositional staff member may disclose information obtained while providing services under s. 48.067 or 48.069 only as provided in s. 48.78 and may disclose information obtained while providing services under s. 938.067 or 938.069 only as provided in s. 938.78.

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61, 418; 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400, 535; 1987 a. 233, 264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436; 1997 a. 292; 1999 a. 22; 2001 a. 80.

Sub. (4) (a) applies to proceedings to extend a commitment under the sex crimes act. State v. Hungerford, 84 Wis. 2d 236, 267 N.W.2d 258 (1978).

By entering a plea of not guilty by reason of mental disease or defect, the defendant lost the physician-patient privilege by virtue of s. 905.04 (4) (c) and the confidentiality of treatment records under s. 51.30 (4) (b) 4. State v. Taylor, 142 Wis. 2d 36, 417 N.W.2d 192 (Ct. App. 1987).

A psychotherapist's duty to 3rd parties for dangerous patients' intentional behavior is discussed. Schuster v. Altenberg, 144 Wis. 2d 223, 424 N.W.2d 159 (1988).

A defendant did not have standing to complain that a physician's testimony violated a witness's physician-patient's privilege under s. 905.04; the defendant was not authorized to claim the privilege on the patient's behalf. State v. Echols, 152 Wis. 2d 725, 449 N.W.2d 320 (Ct. App. 1989).

Under sub. (4) (g), the history of a pregnancy is discoverable. The court may permit discovery of the history as long as information regarding the mother's sexual relations outside of the conceptive period is eliminated. In re Paternity of J.S.P. 158 Wis. 2d 100, 461 N.W.2d 794 (Ct. App. 1990).

Because under sub. (4) (f) there is no privilege for chemical tests for intoxication, the results of a test taken for diagnostic purposes are admissible in an OMVWI trial. City of Muskego v. Godce, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

A patient's mere presence in a physician's office is not within the ambit of this privilege. A defendant charged with trespass to a medical facility, s. 943.145, is entitled to compulsory process to determine if any patients present at the time of the alleged incident had relevant evidence. State v. Migliorino, 170 Wis. 2d 576, 489 N.W.2d 678 (Ct. App. 1992).

To be entitled to an in camera inspection of privileged records, a criminal defendant must show that the sought after evidence is relevant and may be necessary to a fair determination of guilt or innocence. Failure of the record's subject to agree to inspection is grounds for sanctions, including suppressing the record subject's testimony. State v. Shiffra, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993).

The patient's objectively reasonable expectations of confidentiality from the medical provider are the proper gauge of the privilege. State v. Locke, 177 Wis. 2d 590, 502 N.W.2d 891 (Ct. App. 1993).

When a patient's medical condition is at issue the patient-client privilege gives way. Wikrent v. Toys "R" Us, 179 Wis. 2d 297, 507 N.W.2d 130 (Ct. App. 1993).

Ex parte contacts between several treating physicians after the commencement of litigation did not violate this section. This section applies only to judicial proceedings and places restrictions on lawyers, not physicians. Limited ex parte contacts between defense counsel and plaintiff's physicians are permissible, but ex parte discovery is not. Steinberg v. Jensen, 194 Wis. 2d 440, 534 N.W.2d 361 (1995).

There is no general exception to privileged status for communications gathered from incarcerated persons. State v. Joseph P. 200 Wis. 2d 227, 546 N.W.2d 494 (Ct. App. 1996), 95-2547.

Both initial sex offender commitment and discharge hearings under ch. 980 arc "proceedings for hospitalization" within the exception to the privilege under sub. (4) (a). State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301 (Ct. App. 1997), 96-2159.

A party may not challenge on appeal an in camera review of records conducted at his own request. State v. Darcy N. K. 218 Wis. 2d 640, 581 N.W.2d 567 (Ct. App. 1998), 97-0458.

This section does not regulate the conduct of physicians outside of a courtroom. Accordingly it does not give a patient the right to exclude others from a treatment area. State v. Thompson, 222 Wis. 2d 179, 585 N.W.2d 905 (Ct. App. 1998), 97-2744.

When a motion has been made seeking a minor victim's health care records, the state shall give notice to the victim and the victim's parents, providing a reasonable time to object to the disclosure. If the victim does not expressly consent to disclosure, the state shall not waive the materiality hearing under *Schiffra*. Jessica J.L. v. State, 223 Wis. 2d 622, 589 N.W.2d 660 (Ct. App. 1998), 97-1368.

The psychotherapist-patient privilege does not automatically or absolutely foreclose the introduction of a therapeutic communication. When a therapist had reasonable cause to believe a patient was dangerous and that contacting police would prevent harm and facilitate the patient's hospitalization, the patient's statements fell within a dangerous patient exception to the privilege. State v. Agacki, 226 Wis. 2d 349, 595 N.W.2d 31 (Ct. App. 1999), 97-3463.

Under the *Schiffra* test, an in camera inspection of the victim's mental health records was allowed. The defendant established more than the mere possibility that the requested records might be necessary for a fair determination of guilt or innocence. State v. Walther, 2001 WI App 23, 240 Wis. 2d 619, 623 N.W.2d 205.

Release of records containing information of previous assaultive behavior by a nursing home resident was not prohibited by the physician-patient privilege. A nursing home resident does not have a reasonable expectation of privacy in assaultive conduct. The information may be released by court order. Crawford v. Care Concepts, Inc. 2001 WI 45, 243 Wis. 2d 119, 625 N.W.2d 876, 99-0863.

An in camera inspection of confidential records under *Schiffra* is not restricted to mental health records. State v. Navarro, 2001 WI App 225, 248 Wis. 2d 396, 636 N.W.2d 481, 00-0795.

The preliminary showing for an in camera review of a victim's mental health records requires a defendant to set forth, in good faith, a specific factual basis demonstrating a reasonable likelihood that the records contain relevant information necessary to a determination of guilt or innocence and is not merely cumulative of other evidence available to the defendant. The information will be "necessary to a determination of guilt or innocence" if it "tends to create a reasonable doubt that might not otherwise exist." State v. Green, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298, 00-1392.

The test set out in *Shiffra* and *Green*, pertaining to access to privileged mental health records applies to a defendant requesting confidential records during postconviction discovery and the defendant should be required to meet the preliminary *Shiffra-Green* burden. State v. Robertson, 2003 WI App 84, 349 Wis. 2d 349, 661 N.W.2d 105, 02-1718.

A privilege holder waives the privilege if he or she voluntarily discloses any significant part of the matter or communication. Once confidentiality is destroyed through voluntary disclosure, no subsequent claim of privilege can restore it. A mother waived the right to assert the counselor-patient privilege on her daughter's behalf when she disclosed a significant part of the daughter's communications with her counselor to a third party. State v. Denis L.R. 2004 WI App 51, 570 Wis. 2d 663, 678 N.W.2d 326, 03-0384.

The privilege under this section is not a principle of substantive law, but merely an evidentiary rule applicable at all stages of civil and criminal proceedings, except actual trial on the merits in homicide cases. 64 Atty. Gen. 82.

A person claiming a privilege in a communication with a person who was not a medical provider under sub. (1) (d) to (g) has the burden of establishing that he or she reasonably believed the person to be a medical provider. U.S. v. Schwenson, 942 F. Supp. 902 (1996).

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

2005

Date (time) needed

Wed 7/6

LRB - 2846, 1

BILL

JTK: gjs

SA ✓
X ✓
RWS ✓

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; **relating to:** *voter registration for certain victims of domestic abuse, sexual assault, or stalking.*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: **create → anal: → title: → head**

For the subheading, execute: **create → anal: → title: → sub**

For the sub-subheading, execute: **create → anal: → title: → sub-sub**

For the analysis text, in the component bar:

For the text paragraph, execute: **create → anal: → text**

attached

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

SECTION #.

attached

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2846/lins2
JTK.....

Analysis

Currently, a victim of a crime relating to domestic abuse, sexual assault, or stalking may exercise the right to have his or her name and voter registration address withheld from disclosure. To have a name and address treated confidentially, a victim must: 1) reside in a shelter for domestic abuse, sexual assault, or stalking victims; 2) be under a protective order that restrains another person from having contact with the victim; or 3) submit an affidavit signed by a sheriff or the chief of a police department that verifies that a person has been charged with or convicted of an offense relating to domestic abuse, sexual assault, or stalking in which the victim was involved and reasonably continues to be threatened by that person. A confidential listing expires no later than 24 months after the date that it becomes effective.

Submit for a request confidential listing and mes +

This bill permits a district attorney or any authorized representative of a sheriff, chief of police, or district attorney to sign an affidavit verifying the victim's status. The bill also permits a victim of domestic abuse, sexual assault, or stalking to obtain a confidential address listing by submitting a statement signed by an authorized representative of an organization that qualifies as a domestic abuse victim service provider or a sexual assault victim service provider for purposes of state laws providing grants to such organizations which indicates that the victim has received services from the organization within the 24-month period preceding the date of the statement.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

dated within 30 days of
dated within 30 days of
the date of the request
the date of the request

SECTION 1. 6.47 (title) of the statutes is amended to read:

6.47 (title) **Confidentiality of information relating to victims of domestic abuse, sexual assault or stalking.**

History: 1999 a. 49, 186; 2003 a. 265.

SECTION 2. 6.47 (1) (a) (intro.) and 1. of the statutes are renumbered 6.47 (1) (am) (intro.) and 1.

SECTION 3. 6.47 (1) (a) 2. of the statutes is renumbered 6.47 (1) (am) 2. and amended to read:

6.47 (1) (am) 2. An individual who files an affidavit with the municipal clerk of the municipality where the individual resides, on a form prescribed by the board, that is signed by a sheriff or the chief of a police department, or a district attorney or his or her authorized representative and directed to the municipal clerk, and that verifies that a person has been charged with or convicted of an offense relating to domestic abuse, sexual assault or stalking in which the individual was a victim and reasonably continues to be threatened by that person.

History: 1999 a. 49, 186; 2003 a. 265.

SECTION 4. 6.47 (1) (a) 3. of the statutes is renumbered 6.47 (1) (am) 3.

SECTION 5. 6.47 (1) (a) of the statutes is created to read:

6.47 (1) (a) "Domestic abuse victim service provider" means an organization that is certified by the department of health and family services as eligible to receive grants under s. 46.95 (2) and whose name is included on the list provided by the board under s. 7.08 (10).

SECTION 6. 6.47 (1) (am) 4. of the statutes is created to read:

6.47 (1) (am) 4. An individual who submits a dated statement to the municipal clerk that includes the individual's full name, that is signed by an authorized

of a sheriff, chief of police or district attorney

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dated within 30 days of the date of submission

representative of a domestic abuse victim service provider or a sexual assault victim service provider, and that indicates that the individual received services from the provider within the 24-month period ending on the date of the statement.

SECTION 7. 6.47 (1) (b) of the statutes is amended to read:

6.47 (1) (b) "Offense relating to domestic abuse, sexual assault or stalking" means an offense specified in s. 940.19, 940.20 (1m), 940.201, 940.22, 940.225, 940.32, 947.013, 948.02, 948.025, 948.06, 948.09 or 948.095.

History: 1999 a. 49, 186; 2003 a. 265.

SECTION 8. 6.47 (1) (dm) of the statutes is created to read:

6.47 (1) (dm) "Sexual assault victim service provider" means an organization that is certified by the department of justice as eligible to receive grants under s. 165.93 (2) and whose name is included on the list provided by the board under s. 7.08 (10).

SECTION 9. 6.47 (2) of the statutes is amended to read:

6.47 (2) Except as authorized in sub. (8), the board, each municipal clerk, each agent designated under s. 6.33 (5) (b), and each election official shall withhold from public inspection under s. 19.35 (1) the name and address of any eligible individual whose name appears on a poll list or registration list if the individual provides the municipal clerk with a valid written request to protect the individual's confidentiality. To be valid, a request under this subsection must be accompanied by a copy of a protective order that is in effect, an affidavit under sub. (1) ^(am)2. that is dated within 30 days of the date of the request or, a statement signed by the operator or an authorized agent of the operator of a shelter that is dated within 30 days of the date of the request and that indicates that the operator operates the shelter and that the individual making the request resides in the shelter, or a statement signed by an

that is dated within 30 days of the date of the request

authorized representative of a domestic abuse victim service provider or a sexual assault victim service provider under sub. (1) (am) 4. A physically disabled individual who appears personally at the office of the municipal clerk accompanied by another elector of this state may designate that elector to make a request under this subsection on his or her behalf.

keep scored point

keep plain period

of a sheriff's chief or district attorney

History: 1999 a. 49, 186; 2003 a. 265.

SECTION 10. 6.47 (4) of the statutes is amended to read:

6.47 (4) Except as provided in sub. (5), a confidential listing under sub. (2) expires on the date that a protective order expires, the date that the protected individual ceases to reside in a shelter, the date that updated information is received from a sheriff, the chief of a police department or a district attorney, or his or her authorized representative, or at the end of the 24-month period that follows creation or renewal of the listing under sub. (2), whichever is earlier.

the

History: 1999 a. 49, 186; 2003 a. 265.

SECTION 11. 6.47 (5) (a) 1. of the statutes is amended to read:

6.47 (5) (a) 1. The clerk receives notification from a sheriff or, chief of police or district attorney or his or her authorized representative under sub. (8) (10).

3

History: 1999 a. 49, 186; 2003 a. 265.

SECTION 12. 6.47 (7) (b) of the statutes is amended to read:

6.47 (7) (b) If notice to a protected individual is not provided under par. (a), the municipal clerk shall provide notice to the subject individual upon canceling a confidential listing changing a listed individual to ineligible status under sub. (2) (6).

of a sheriff's chief or district attorney

History: 1999 a. 49, 186; 2003 a. 265.

SECTION 13. 6.47 (10) of the statutes is amended to read:

6.47 (10) If a sheriff or, chief of a police department who signs or district attorney has signed or the authorized representative of a sheriff, chief or district attorney has signed an affidavit under sub. (1) (a) 2. and the sheriff, chief or district

(am)

attorney or his or her authorized representative later obtains information that the person who was charged with an offense relating to domestic abuse, sexual assault or stalking is no longer so charged or that the person's judgment of conviction has been vacated, and the charge or conviction was the sole basis for the affidavit, the sheriff or, chief or district attorney or his or her authorized representative shall provide written notice of that information to the municipal clerk to whom the affidavit was directed.

History: 1999 a. 49, 186; 2003 a. 265.

SECTION 14. 7.08 (1) (c) of the statutes is amended to read:

7.08 (1) (c) Prescribe forms required by ss. 6.24 (3) and (4), 6.30 (4), 6.33 (1), 6.40 (1) (a), 6.47 (1) ~~(a)~~ (am) 2. and (3), 6.55 (2) and (3), and 6.86 (2) and (3). All such forms shall contain a statement of the penalty applicable to false or fraudulent registration or voting through use of the form. Forms are not required to be furnished by the board.

History: 1971 c. 242; 1973 c. 334 s. 6, 57; 1975 c. 85, 93, 94, 199; 1977 c. 29, 107, 394, 427; 1979 c. 89, 177, 260, 311; 1981 c. 377; 1983 a. 51, 484; 1985 a. 120, 304; 1989 a. 192; 1993 a. 140; 1995 a. 16 s. 2; 1997 a. 27; 1999 a. 49, 182; 2001 a. 16, 38, 107, 109; 2003 a. 265.

SECTION 15. 7.08 (10) of the statutes is created to read:

7.08 (10) DOMESTIC ABUSE AND SEXUAL ASSAULT SERVICE PROVIDERS. Provide to each municipal clerk, on a continuous basis, the names and addresses of organizations that are certified under s. 46.95 (4) or 165.93 (4) to provide services to victims of domestic abuse or sexual assault.

SECTION 16. 46.95 (4) of the statutes is created to read:

46.95 (4) LIST OF ELIGIBLE ORGANIZATIONS. The department shall certify to the elections board, on a continuous basis, a list containing the name and address of each organization that is eligible to receive grants under sub. (2).

SECTION 17. 165.93 (4) of the statutes is created to read:

165.93 (4) LIST OF ELIGIBLE ORGANIZATIONS. The department shall certify to the elections board, on a continuous basis, a list containing the name and address of each organization that is eligible to receive grants under sub. (2).

SECTION 18. Effective date.

(1) This act takes effect on the first day of the 2nd month beginning after publication.

(END)



State of Wisconsin
2005 - 2006 LEGISLATURE

Wed 7/6

LRB-2846/1
RPN:cjs:pg
JTK
JTK
↑

2005 BILL

fix ~~header~~
header
it should say
JTK:cjs:

Regen cat.

1 AN ACT *to renumber* 6.47 (1) (a) (intro.) and 1. and 6.47 (1) (a) 3.; *to renumber*
2 *and amend* 6.47 (1) (a) 2.; *to amend* 6.47 (title), 6.47 (1) (b), 6.47 (2), 6.47 (4),
3 6.47 (5) (a) 1., 6.47 (7) (b), 6.47 (10) and 7.08 (1) (c); and *to create* 6.47 (1) (ag),
4 6.47 (1) (am) 4., 6.47 (1) (dm), 7.08 (10), 46.95 (4) and 165.93 (4) of the statutes;
5 **relating to:** voter registration for certain victims of domestic abuse, sexual
6 assault, or stalking.

Analysis by the Legislative Reference Bureau

Currently, a victim of a crime relating to domestic abuse, sexual assault, or stalking may exercise the right to have his or her name and voter registration address withheld from disclosure. To have a name and address treated confidentially, a victim must submit a request for a confidential listing and must 1) reside in a shelter for domestic abuse, sexual assault, or stalking victims; 2) be under a protective order that restrains another person from having contact with the victim; or 3) submit an affidavit signed by a sheriff or the chief of a police department that verifies that a person has been charged with or convicted of an offense relating to domestic abuse, sexual assault, or stalking in which the victim was involved and reasonably continues to be threatened by that person. A confidential listing expires no later than 24 months after the date that it becomes effective.

This bill permits a district attorney or any authorized representative of a sheriff, chief of police, or district attorney to sign an affidavit verifying the victim's

BILL

status. The bill also permits a victim of domestic abuse, sexual assault, or stalking to obtain a confidential address listing by submitting a statement dated within 30 days of the date of the request signed by an authorized representative of an organization that qualifies as a domestic abuse victim service provider or a sexual assault victim service provider for purposes of state laws providing grants to such organizations which indicates that the victim has received services from the organization within the 24-month period preceding the date of the statement.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 6.47 (title) of the statutes is amended to read:

2 **6.47 (title) Confidentiality of information relating to victims of**
3 **domestic abuse, sexual assault, or stalking.**

4 **SECTION 2.** 6.47 (1) (a) (intro.) and 1. of the statutes are renumbered 6.47 (1)
5 (am) (intro.) and 1.

6 **SECTION 3.** 6.47 (1) (a) 2. of the statutes is renumbered 6.47 (1) (am) 2. and
7 amended to read:

8 6.47 (1) (am) 2. An individual who files an affidavit with the municipal clerk
9 of the municipality where the individual resides, on a form prescribed by the board,
10 that is signed by a sheriff ~~or~~, the chief of a police department, or a district attorney
11 or the authorized representative of a sheriff, chief, or district attorney and directed
12 to the municipal clerk, and that verifies that a person has been charged with or
13 convicted of an offense relating to domestic abuse, sexual assault, or stalking in
14 which the individual was a victim and reasonably continues to be threatened by that
15 person.

16 **SECTION 4.** 6.47 (1) (a) 3. of the statutes is renumbered 6.47 (1) (am) 3.

17 **SECTION 5.** 6.47 (1) (ag) of the statutes is created to read:

BILL

1 6.47 (1) (ag) “Domestic abuse victim service provider” means an organization
2 that is certified by the department of health and family services as eligible to receive
3 grants under s. 46.95 (2) and whose name is included on the list provided by the board
4 under s. 7.08 (10).

5 **SECTION 6.** 6.47 (1) (am) 4. of the statutes is created to read:

6 6.47 (1) (am) 4. An individual who submits a dated statement to the municipal
7 clerk that includes the individual’s full name, that is signed by an authorized
8 representative of a domestic abuse victim service provider or a sexual assault victim
9 service provider, and that indicates that the individual received services from the
10 provider within the 24-month period ending on the date of the statement.

11 **SECTION 7.** 6.47 (1) (b) of the statutes is amended to read:

12 6.47 (1) (b) “Offense relating to domestic abuse, sexual assault, or stalking”
13 means an offense specified in s. 940.19, 940.20 (1m), 940.201, 940.22, 940.225,
14 940.32, 947.013, 948.02, 948.025, 948.06, 948.09 or 948.095.

15 **SECTION 8.** 6.47 (1) (dm) of the statutes is created to read:

16 6.47 (1) (dm) “Sexual assault victim service provider” means an organization
17 that is certified by the department of justice as eligible to receive grants under s.
18 165.93 (2) and whose name is included on the list provided by the board under s. 7.08
19 (10).

20 **SECTION 9.** 6.47 (2) of the statutes is amended to read:

21 6.47 (2) Except as authorized in sub. (8), the board, each municipal clerk, each
22 agent designated under s. 6.33 (5) (b), and each election official shall withhold from
23 public inspection under s. 19.35 (1) the name and address of any eligible individual
24 whose name appears on a poll list or registration list if the individual provides the
25 municipal clerk with a valid written request to protect the individual’s

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1 confidentiality. To be valid, a request under this subsection must be accompanied by
2 a copy of a protective order that is in effect, an affidavit under sub. (1) ~~(a)~~ (am) 2. that
3 is dated within 30 days of the date of the request ~~or~~, a statement signed by the
4 operator or an authorized agent of the operator of a shelter that is dated within 30
5 days of the date of the request and that indicates that the operator operates the
6 shelter and that the individual making the request resides in the shelter, or a
7 statement signed by an authorized representative of a domestic abuse victim service
8 provider or a sexual assault victim service provider under sub. (1) (am) 4. that is
9 dated within 30 days of the date of the request. A physically disabled individual who
10 appears personally at the office of the municipal clerk accompanied by another
11 elector of this state may designate that elector to make a request under this
12 subsection on his or her behalf.

13 SECTION 10. 6.47 (4) of the statutes is amended to read:

14 6.47 (4) Except as provided in sub. (5), a confidential listing under sub. (2)
15 expires on the date that a protective order expires, the date that the protected
16 individual ceases to reside in a shelter, the date that updated information is received
17 from a sheriff, the chief of a police department, or a district attorney or the authorized
18 representative of a sheriff, chief, or district attorney, or at the end of the 24-month
19 period that follows creation or renewal of the listing under sub. (2), whichever is
20 earlier.

21 SECTION 11. 6.47 (5) (a) 1. of the statutes is amended to read:

22 6.47 (5) (a) 1. The clerk receives notification from a sheriff ~~or~~, chief of police,
23 or district attorney or the authorized representative of a sheriff, chief, or district
24 attorney under sub. ~~(8)~~ (10).

25 SECTION 12. 6.47 (7) (b) of the statutes is amended to read:

BILL

1 6.47 (7) (b) If notice to a protected individual is not provided under par. (a), the
2 municipal clerk shall provide notice to the subject individual upon ~~canceled~~
3 ~~confidential listing~~ changing a listed individual to ineligible status under sub. (2) (6).

4 **SECTION 13.** 6.47 (10) of the statutes is amended to read:

5 6.47 (10) If a sheriff ~~or~~, chief of a police department ~~who signs, or district~~
6 attorney has signed or the authorized representative of a sheriff, chief, or district
7 attorney has signed an affidavit under sub. (1) (a) (am) 2. and the sheriff, chief,
8 district attorney or authorized representative later obtains information that the
9 person who was charged with an offense relating to domestic abuse, sexual assault,
10 or stalking is no longer so charged or that the person's judgment of conviction has
11 been vacated, and the charge or conviction was the sole basis for the affidavit, the
12 sheriff ~~or~~, chief, district attorney or authorized representative shall provide written
13 notice of that information to the municipal clerk to whom the affidavit was directed.

14 **SECTION 14.** 7.08 (1) (c) of the statutes is amended to read:

15 7.08 (1) (c) Prescribe forms required by ss. 6.24 (3) and (4), 6.30 (4), 6.33 (1),
16 6.40 (1) (a), 6.47 (1) (a) (am) 2. and (3), 6.55 (2) and (3), and 6.86 (2) and (3). All such
17 forms shall contain a statement of the penalty applicable to false or fraudulent
18 registration or voting through use of the form. Forms are not required to be furnished
19 by the board.

20 **SECTION 15.** 7.08 (10) of the statutes is created to read:

21 7.08 (10) DOMESTIC ABUSE AND SEXUAL ASSAULT SERVICE PROVIDERS. Provide to
22 each municipal clerk, on a continuous basis, the names and addresses of
23 organizations that are certified under s. 46.95 (4) or 165.93 (4) to provide services to
24 victims of domestic abuse or sexual assault.

25 **SECTION 16.** 46.95 (4) of the statutes is created to read:

