

2013 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB354)

Received: 2/12/2014 Received By: phurley
Wanted: As time permits Same as LRB:
For: Robert Cowles (608) 266-0484 By/Representing:
May Contact: Drafter: phurley
Subject: Criminal Law - victims Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Sen.Cowles@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Eliminate hospital's duty to notify

Instructions:

See attached

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>
/1	phurley 2/12/2014	jdyer 2/12/2014	jmurphy 2/12/2014	_____	lparisi 2/12/2014	lparisi 2/12/2014	

FE Sent For:

<END>

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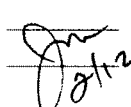
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Eliminate hospital's duty to notify ✓

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/1	phurley	1/2/12 jld	jd				

FE Sent For:

<END>

Hurley, Peggy

From: Mugnaini, Jason
Sent: Wednesday, February 12, 2014 10:44 AM
To: Hurley, Peggy
Subject: RE: SB 354: Victims Advocates Bill

Thanks for the clarification

Just the duties prescribed to the notification form

From: Hurley, Peggy
Sent: Wednesday, February 12, 2014 10:16 AM
To: Mugnaini, Jason
Subject: RE: SB 354: Victims Advocates Bill

You'll have it by tomorrow afternoon, then.

One point of clarification: eliminating the hospital's duty to notify could lead to eliminating the department's duty to prescribe a notification form under Section 1, sub. (4), par. (c) of the substitute amendment, but it doesn't necessarily lead to eliminating all of the departments duties under sub. (4). Par. (4) (a) requires the department to respond to complaints and par. (b) requires the department to provide guidelines and assistance to hospitals regarding the hospitals' duties. Do you want me to simply eliminate (4) (c), which required the department to prescribe the notification form? Or do you want me to eliminate all of the department's duties under sub. (4)?

If you want to eliminate just the duties relating to prescribing a notification form, I just want to note that the section could be reworked so that the department still has the duty (or we could change it to a "may" so that the department could choose) to develop a form that hospitals could choose to use. Please let me know your preference.

Peggy

From: Mugnaini, Jason
Sent: Wednesday, February 12, 2014 10:05 AM
To: Hurley, Peggy
Subject: RE: SB 354: Victims Advocates Bill

Perfect thanks

From: Hurley, Peggy
Sent: Wednesday, February 12, 2014 10:04 AM
To: Mugnaini, Jason
Subject: RE: SB 354: Victims Advocates Bill

Is tomorrow afternoon ok?

From: Mugnaini, Jason

Sent: Wednesday, February 12, 2014 10:01 AM
To: Hurley, Peggy
Subject: RE: SB 354: Victims Advocates Bill

Thanks you're the best

Relatively quickly though , sorry

Thanks again,
Jason

From: Hurley, Peggy
Sent: Wednesday, February 12, 2014 10:00 AM
To: Mugnaini, Jason
Subject: RE: SB 354: Victims Advocates Bill

Hi Jason,

No problem. When do you need it?

Peggy

From: Mugnaini, Jason
Sent: Wednesday, February 12, 2014 9:58 AM
To: Hurley, Peggy
Subject: SB 354: Victims Advocates Bill

Peggy,

Can I please ask another huge favor?

Could I get an amendment drafted to Sub 1 that eliminates section 1 part 2 sub d, the "notification requirement"

Which would probably also eliminate section 1 part 4.

Thank you,
Jason Mugnaini
Office of State Senator Robert Cowles
608-266-0484
Toll-Free: 800-334-1465
State Capitol
PO Box 7882
Madison, WI 53707



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0260/1
PJH:jld:rs

SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 354

February 4, 2014 - Offered by Senator COWLES.

1 **AN ACT** *to renumber and amend* 905.045 (1) (b); *to amend* 905.045 (1) (a) and
2 (c) and 905.045 (2), (3) and (4); and *to create* 50.378, 146.82 (4) (b) 3., 950.02
3 (4g) and 950.04 (1v) (cg) and (cr) of the statutes; **relating to:** granting victims
4 of certain crimes the right to be accompanied by a victim advocate.

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

5 **SECTION 1.** 50.378 of the statutes is created to read:

6 **50.378 Victim advocates.** (1) DEFINITIONS. In this section:

7 (a) "Victim advocate" has the meaning given in s. 905.045 (1) (b).

8 (b) "Victim of sexual assault, human trafficking, or child abuse" means a person
9 who alleges or for whom it is alleged that he or she suffered from a violation of s.
10 940.22, 940.225, or 940.302, involving a commercial sex act, or ss. 948.01 to 948.11
11 and who, as a result of the alleged violation, presents as a patient at a hospital that
12 provides emergency services.

(2)

1 (2) RIGHT TO ACCOMPANIMENT BY A VICTIM ADVOCATE. (a) Except as provided in
 2 par. (1), a hospital that provides emergency services to a victim of sexual assault,
 3 human trafficking, or child abuse shall, at the request of the victim, permit a victim
 4 advocate to accompany the victim to any examination or consultation that is
 5 performed at the hospital as a result of the violation.

6 (b) A parent, guardian, or legal custodian of a minor who is a victim of sexual
 7 assault, human trafficking, or child abuse may make a request under par. (a) for a
 8 victim advocate to accompany the minor victim of sexual assault, human trafficking,
 9 or child abuse.

10 (c) A minor who is a victim of sexual assault, human trafficking, or child abuse
 11 may make a request under par. (a) for a victim advocate to accompany him or her
 12 without the consent of his or her parent, guardian, or legal custodian.

13 (d) The hospital shall notify the victim and, if the victim is a minor, the victim's
 14 parent, guardian, or legal custodian, of his or her right to be accompanied by a victim
 15 advocate. The hospital shall make notification under this paragraph prior to
 16 examining or treating the victim, unless the delay caused by notification would
 17 endanger the health or safety of the victim. The hospital shall make notification
 18 under this paragraph using a form provided by the department under sub. (4) (c)
 19 unless a form is not available or the victim requests verbal notification, in which case
 20 the notification shall be made verbally and shall include all of the following
 21 information:

- 22 1. The right to request accompaniment under pars. (a) to (c).
- 23 2. The right to exclude a victim advocate under par. (e).
- 24 3. The procedure to complain to the department under sub. (4).

1 (d) (e) A victim may request exclusion of a victim advocate at any examination or
2 consultation that is performed at the hospital as a result of the sexual assault,
3 human trafficking, or child abuse.

4 (e) (f) The hospital may exclude the victim advocate if his or her presence or
5 continued presence obstructs the provision of necessary medical care to the victim,
6 and the hospital need not delay examining or treating the victim pending the arrival
7 of a victim advocate, if the delay would endanger the health or safety of the victim.

8 (3) IMMUNITY FROM LIABILITY. A hospital and its employees or agents are
9 immune from civil liability for allowing a victim advocate to accompany a victim, for
10 any failure to comply with any requirement in sub. (2), and for any act or omission
11 by a victim advocate.

12 (4) DUTIES OF THE DEPARTMENT. (a) The department shall respond to any
13 complaint received by the department concerning noncompliance by a hospital with
14 the requirements of sub. (2).

15 (b) The department shall develop guidelines for, and provide assistance to,
16 hospitals subject to the requirements of sub. (2).

17 (c) The department shall prescribe a form to be used by hospitals that provide
18 emergency services to victims of sexual assault, human trafficking, or child abuse to
19 provide notification to victims and, if a victim is a minor, the victim's parent,
20 guardian, or legal custodian, of his or her right to be accompanied by a victim
21 advocate under sub. (2). The form shall include all of the information provided in sub.

22 (2) (d) 1. to 3.

23 **SECTION 2.** 146.82 (4) (b) 3. of the statutes is created to read:

1 146.82 (4) (b) 3. A victim advocate, as defined in s. 50.378 (1) (a), who is
2 accompanying a victim of sexual assault, human trafficking, or child abuse under s.
3 50.378 (2).

4 **SECTION 3.** 905.045 (1) (a) and (c) of the statutes are amended to read:

5 905.045 (1) (a) “Abusive conduct” means abuse, as defined in s. 813.122 (1) (a),
6 of a child, as defined in s. 48.02 (2), interspousal battery, as described under s. 940.19
7 or 940.20 (1m), domestic abuse, as defined in s. 813.12 (1) (am), ~~or sexual exploitation~~
8 by a therapist under s. 940.22, sexual assault under s. 940.225, human trafficking
9 involving a commercial sex act under s. 940.302, or child abuse under ss. 948.01 to
10 948.11.

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

20 **SECTION 4.** 905.045 (1) (b) of the statutes is renumbered 905.045 (1) (e) and
21 amended to read:

22 905.045 (1) (e) “~~Advocate~~” “Victim advocate” means an individual who is an
23 employee of or a volunteer for an organization the purpose of which is to provide
24 counseling, assistance, or support services free of charge to a victim.

25 **SECTION 5.** 905.045 (2), (3) and (4) of the statutes are amended to read:

1 905.045 (2) GENERAL RULE OF PRIVILEGE. A victim has a privilege to refuse to
2 disclose and to prevent any other person from disclosing confidential
3 communications made or information obtained or disseminated among the victim,
4 ~~an a~~ a victim advocate who is acting in the scope of his or her duties as ~~an a~~ a victim
5 advocate, and persons who are participating in providing counseling, assistance, or
6 support services under the direction of ~~an a~~ a victim advocate, if the communication
7 was made or the information was obtained or disseminated for the purpose of
8 providing counseling, assistance, or support services to the victim.

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

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

16 **SECTION 6.** 950.02 (4g) of the statutes is created to read:

17 950.02 (4g) "Victim advocate" has the meaning given in s. 905.045 (1) (e).

18 **SECTION 7.** 950.04 (1v) (cg) and (cr) of the statutes are created to read:

19 950.04 (1v) (cg) If he or she is a victim of a violation of ss. 940.22, 940.225,
20 940.302, or 948.01 to 948.11, to be accompanied by a victim advocate at law
21 enforcement interviews, unless the presence of the victim advocate obstructs or
22 delays the interview.

23 (cr) Subject to par. (cg), if he or she is a victim of a violation of ss. 940.22,
24 940.225, 940.302, or 948.01 to 948.11, to be accompanied by a victim advocate at
25 interviews and proceedings at which he or she is requested or allowed to attend that

1 are related to the crime committed against him or her, including prosecution
2 interviews, department of corrections proceedings, court proceedings, and
3 postconviction proceedings.

4 **SECTION 8. Initial applicability.**

5 (1) This act first applies to violations that are committed against a victim on
6 the effective date of this subsection.

7 **SECTION 9. Effective date.**

8 (1) This act takes effect on the first day of the 4th month beginning after
9 publication.

10 (END)



JLD

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 354**

5
2-13
PM

1 At the locations indicated, amend the substitute amendment[✓] as follows:

2 **1.** Page 2, line 2: delete "(f)" and substitute "(e)".[✓]

3 **2.** Page 2, line 13: delete lines 13 to 24.[✓]

4 **3.** Page 3, line 1: delete "(e)" and substitute "(d)".[✓]

5 **4.** Page 3, line 4: delete "(f)" and substitute "(e)".[✓]

6 **5.** Page 3, line 17: delete lines 17 to 22.[✓]

7 (END)