

State of Wisconsin



2015 Senate Bill 323

Date of enactment: April 11, 2016
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2015 WISCONSIN ACT 351

AN ACT *to renumber and amend* 905.045 (1) (b); *to amend* 905.045 (1) (a) and (c) and 905.045 (2), (3) and (4); and *to create* 50.378, 146.82 (4) (b) 3., 950.02 (4g) and 950.045 of the statutes; **relating to:** granting victims 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:

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

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

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

(b) "Victim of sexual assault, human trafficking, or child sexual abuse" means a person who alleges or for whom it is alleged that he or she suffered from a violation of s. 940.22, 940.225, or 940.302, involving a commercial sex act, or s. 948.02, 948.025, or 948.05 to 948.11 and who, as a result of the alleged violation, presents as a patient at a hospital that provides emergency services.

(2) **RIGHT TO ACCOMPANIMENT BY A VICTIM ADVOCATE.**

(a) Except as provided in par. (f) or (g), a hospital that provides emergency services to a victim of sexual assault, human trafficking, or child sexual abuse shall, at the request of the victim, permit a victim advocate to accompany the victim to any examination or consultation that is performed at the hospital as a result of the violation.

(b) 1. A parent, guardian, or legal custodian of a minor who is at least 10 years of age and who is a victim of sexual assault, human trafficking, or child sexual abuse may make a request under par. (a) for a victim

advocate to accompany the minor victim of sexual assault, human trafficking, or child sexual abuse.

2. A treating medical provider may make a request under par. (a) for a victim advocate to accompany a minor who has not attained the age of 10 and who is a victim of sexual assault, human trafficking, or child sexual abuse.

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

(d) The hospital shall notify the victim and, if the victim is a minor who is at least 10 years of age, the victim's parent, guardian, or legal custodian, of his or her right to be accompanied by a victim advocate and of his or her rights under par. (h). The hospital may make notification under this paragraph using a form provided by the department under sub. (4) (c).

(e) A victim may request exclusion of a victim advocate at any examination or consultation that is performed at the hospital as a result of the sexual assault, human trafficking, or child sexual abuse. The victim advocate shall comply with a request under this paragraph.

(f) The hospital need not delay examining or treating the victim pending the arrival of a victim advocate, if the delay would endanger the health or safety of the victim or risk the loss of evidence.

* Section 991.11, WISCONSIN STATUTES: 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."

(g) The hospital may exclude the victim advocate if any of the following occurs:

1. The presence or continued presence of the victim advocate obstructs the provision of necessary medical care to the victim.

2. The victim advocate fails to comply with hospital policies governing the conduct of individuals accompanying patients in the hospital.

3. The hospital has knowledge that the victim advocate, in his or her role as a victim advocate at any hospital, has taken one of the following actions and is more likely than not to take that action again:

a. Failing to agree to or comply with confidentiality requirements relating to another individual at a hospital.

b. Failing to comply with a request by a victim under par. (e).

(h) If a hospital has excluded a specific victim advocate under par. (g), the hospital shall, at the request of the victim, permit a different victim advocate to accompany the victim.

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

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

(b) The department, in cooperation with the department of justice, shall develop guidelines for, and provide assistance to, hospitals that are subject to the requirements of sub. (2).

(c) The department shall prescribe a form to be used by hospitals that provide emergency services to victims of sexual assault, human trafficking, or child sexual abuse to provide notification to victims and, if a victim is a minor who is at least 10 years of age, the victim's parent, guardian, or legal custodian, of his or her right to be accompanied by a victim advocate under sub. (2). The form shall include all of the following information:

1. The right to request accompaniment under sub. (2) (a) to (c).

2. The right to exclude a victim advocate under sub. (2) (e).

3. The procedure to make a complaint to the department under sub. (4) (a).

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

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

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

905.045 (1) (a) "Abusive conduct" means abuse, as defined in s. 813.122 (1) (a), of a child, as defined in s. 813.122 (1) (b), interspousal battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, as defined in s. 813.12 (1) (am), ~~or sexual exploitation by a therapist under s. 940.22,~~ sexual assault under s. 940.225, human trafficking involving a commercial sex act under s. 940.302, or child sexual abuse under s. 948.02, 948.025, or 948.05 to 948.11.

(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~~ a victim 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.

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

905.045 (1) (e) "Advocate" "Victim 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.

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

905.045 (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~~ a victim advocate who is acting in the scope of his or her duties as ~~an~~ a victim advocate, and persons who are participating in providing counseling, assistance, or support services under the direction of ~~an~~ a victim 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 victim advocate may claim the privilege on behalf of the victim. The victim 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~~ a victim advocate is required to make under s. 48.981.

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

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

SECTION 7. 950.045 of the statutes is created to read:

950.045 Accompaniment by a victim advocate. (1)

RIGHT TO ACCOMPANIMENT AT LAW ENFORCEMENT INTERVIEWS; EXCEPTIONS. (a) In addition to all rights afforded to victims under s. 950.04, an individual who is a victim of a violation of s. 940.22, 940.225, 940.302, 948.02, 948.025, or 948.05 to 948.11 has the right to be accompanied by a victim advocate at law enforcement interviews, subject to par. (b) or (c) and except as provided in par. (c) or (d).

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

(b) A victim advocate may not obstruct or delay a law enforcement interview, shall comply with the victim's requests or instructions, and shall comply with any rule, policy, or requirement established by a law enforcement agency regarding the confidentiality of information relating to an investigation. A victim advocate may not disclose information not previously disclosed to the general public to any person except that the victim advocate may disclose information to an individual or to an agency that is providing counseling, assistance, or support services to the victim to the extent that disclosure is reasonably necessary to assist in the provision of counseling, assistance, or support services.

(c) A victim advocate may not obstruct or delay a forensic interview conducted at or on behalf of a child advocacy center, as described in s. 165.96, and shall comply with any instructions or requests from the lead forensic interviewer, including excluding himself or herself

from the interview room, and shall comply with any rule, policy, or requirement established by the child advocacy center.

(d) A victim advocate who violates the provisions of par. (b) or (c) may be excluded from a law enforcement interview. At the request of the victim, a different victim advocate may be allowed to accompany the victim.

(2) RIGHT TO ACCOMPANIMENT AT PROCEEDINGS. (a) In addition to all rights afforded to victims under s. 950.04, an individual who is a victim of a violation of s. 940.22, 940.225, 940.302, 948.02, 948.025, or 948.05 to 948.11 has a right to be accompanied by a victim advocate at interviews and proceedings at which he or she is requested or allowed to attend that are related to the crime committed against him or her, including prosecution interviews, department of corrections proceedings, court proceedings, and postconviction proceedings, except as provided in s. 950.045 (1) (c) and (d).

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

(3) CIVIL IMMUNITY. A law enforcement agency and its employees or agents are immune from civil liability for allowing a victim advocate to accompany a victim, for any failure to comply with any requirement in this section, and for any act or omission by a victim advocate.

SECTION 8. Initial applicability.

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

SECTION 9. Effective date.

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