



DAVID STEFFEN

STATE REPRESENTATIVE • 4TH ASSEMBLY DISTRICT

February 5, 2020

Chairman Sanfelippo and Committee Members,

Thank you for holding a Public Hearing on AB 844 creating a sexual assault victim bill of rights; collection and reporting of data regarding sexual assault kits; storage and processing of sexual assault kits; tracking of sexual assault kits in sexual assault cases; and requiring the exercise of rule-making authority.

One out of every six American women in her lifetime is a victim of attempted or completed rape. The current backlog in rape kits nationwide underscores a devastating gap in the criminal justice system. In the last decade, hundreds of thousands of rape kits — which include physical and DNA evidence gathered from rape victims — have gone untested because law enforcement agencies around the country are not prioritizing their testing or do not have the resources to do so. The testing of these kits are crucial to identifying perpetrators by demonstrating an individual's culpability in sex crimes.

Recently, the State of Wisconsin completed testing on thousands of previously un-submitted sexual assault kits that had accumulated for many years while in the possession of local law enforcement agencies and hospitals. We need to ensure that all sexual assault kits are processed in the future.

We owe it to sexual assault survivors and their families to ensure that local law enforcement and hospitals submit sexual assault kits to the state crime lab quickly in order to fully integrate them into the Department of Justice's (DOJ) testing process and avoid any unnecessary delays. Every single assault kit that is untested represents a human being who went through an awful trauma, and they deserve to have their case fully investigated.

Under current law, there is no statutory procedure for the collection and processing of sexual assault kits. This lack of a standard process led to a backlog of kits that were not being submitted to the state crime laboratory for testing.

If passed, when a health care professional collects sexual assault evidence, a victim will have the choice to report to law enforcement or not. If a victim does choose to report to law enforcement, under the proposed legislation the health care professional will notify law enforcement within 24 hours after collecting the sexual assault kit. The law enforcement agency then has 48 hours to collect the kit from the health care professional, and then no less than 48 hours and no more than seven days send the kit to the state crime laboratories for analysis. After the kit has been processed it will be sent to a law enforcement agency and stored for 50 years.

I appreciate your consideration of this bill and I would be happy to answer any questions you may have.



JANEL BRANDTJEN

STATE REPRESENTATIVE • 22ND ASSEMBLY DISTRICT

*Testimony before the Assembly Committee on Health
State Representative Janel Brandtjen
February 5, 2020*

Chairman Sanfelippo and Members of the Assembly Committee on Health,

Thank you for holding this hearing on AB 844, the Sexual Assault Survivor Bill of Rights. The trauma associated with such a violation of someone's personal privacy, human rights, and dignity can be overwhelming. The Sexual Assault Survivor Bill of Rights will set a standard of procedures and expectations for law enforcement and the courts.

The bill contains seven main points:

1. Victims of sexual assault have the right to access accurate information about victim rights.
2. They have the right to choose whether to undergo a sexual assault forensic investigation.
3. They have the right to bathe immediately following a forensic investigation.
4. They have the right to choose whether to cooperate with law enforcement.
5. They have the right to have any evidence stored for 50 years or until the end of the prison term if the offender is convicted.
6. They have the right to be notified in writing 60 days prior to the destruction of any evidence obtained in a forensic investigation.
7. They have a right to be notified if the results of their sexual assault kit matched the DNA of another kit.
8. Lastly, survivors have the right to have their sexual assault kit tested within 90 days of collection.

These eight victim rights, as explained by the bill, will go a long way in ensuring that victims of sexual assault are treated with respect and empathy. Understanding the emotions that these victims are experiencing, which may include embarrassment, fear, anger and guilt, along with depression and despair, is paramount to providing them with the compassion and care they need. Wisconsin would be the 21st state to pass a Sexual Assault Survivor Bill of Rights. I urge all of you to support the bill and give these victims the support they need.

Thank you,

A handwritten signature in black ink that reads "Janel Brandtjen". The signature is fluid and cursive, with the first name "Janel" being more prominent than the last name "Brandtjen".

State Representative Janel Brandtjen
22nd Assembly District



ANDRÉ JACQUE

STATE SENATOR • 1ST SENATE DISTRICT

Phone: (608) 266-3512

Fax: (608) 282-3541

Sen.Jacque@legis.wi.gov

State Capitol · P.O. Box 7882

Madison, WI 53707-7882

Testimony before the Assembly Committee on Health

State Senator André Jacque

February 5th, 2020

Chairman Sanfelippo and Members of the Assembly Committee on Health,

Thank you for holding this hearing on the Comprehensive Sexual Assault Examination Kit Reform. Tragically, every 92 seconds an American is sexually assaulted and 1 in 5 women in the US are raped within their lifetime. Representative Steffen and I have introduced AB 844 to ensure victims of sexual violence are accorded the dignity, respect, and ability to pursue the justice they deserve in a timely manner. Along with testing requirements, we've also included the Sexual Assault Survivor Bill of Rights, which codifies in law all of the rights a survivor deserves. With the enactment of this proposal, Wisconsin would become the 21st state to pass a Sexual Assault Survivor Bill of Rights.

Put simply, this bill increases transparency for the survivor, ensures that there would be no future backlog of kits to be tested for victims pursuing justice, and provides survivors with written and oral information about their rights.

Parts of this legislation were developed at the request of and in consultation with the national sexual assault victims group RISE and its state affiliate members, who will be testifying later today.

The Bill of Rights included in this legislation adds the following rights for survivors of sexual assault beyond Wisconsin's existing victim/witness bill of rights:

- 1.) The right to be provided with accurate information about his or her rights as a sexual assault victim.
- 2.) The right to choose whether or not to undergo a sexual assault forensic examination.
- 3.) The right to bathe immediately following a sexual assault forensic examination if facilities are available.
- 4.) The right to choose whether or not to cooperate with a law enforcement agency.
- 5.) The right to have any examination evidence stored for 50 years.
- 6.) The right to be notified in writing 60 days prior to the destruction of any evidence obtained in a sexual assault forensic examination.
- 7.) The right of an individual cooperating with law enforcement to have their sexual assault kit tested within 90 days of collection.

The bill requires the Department of Justice to test the sexual assault kit of a person who is cooperating with law enforcement within 90 days and requires DOJ to store all sexual assault kits for 50 years. This component of the legislation is critical to ensuring that there will be no future kit testing backlog.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

Room 114 East, State Capitol
PO Box 7857
Madison WI 53707-7857
(608) 266-1221
TTY 1-800-947-3529

PREPARED TESTIMONY OF ATTORNEY GENERAL JOSH KAUL

2019 Assembly Committee on Health
Wednesday, February 5, 2020

Chair Sanfelippo, Co-Chair Kurtz, and Members of the Committee:

Thank you for the opportunity to testify in opposition to 2019 Assembly Bill 844 (AB 844). With me today is Michelle Viste, the Executive Director of the Wisconsin Department of Justice's Office of Crime Victim Services.

In April of 2019, a bipartisan group of legislators and I announced legislation that, if enacted, will help prevent Wisconsin from having a future backlog of untested sexual assault kits. That legislation, 2019 Assembly Bill 214 (AB 214), was introduced and referred to this committee in May—more than eight months ago—but this committee still has not held a hearing regarding that bill.

AB 214 was drafted in consultation with subject matter experts who are part of the Attorney General's Sexual Assault Response Team. It has the support of the Wisconsin Chiefs of Police Association, the Wisconsin Coalition Against Sexual Assault, the Wisconsin Nurses Association, and the Wisconsin Alliance for Women's Health. It has been passed by the State Senate (as 2019 Senate Bill 200) and is co-sponsored by a majority of the members of the State Assembly.

In contrast, AB 844 was drafted in secret; is opposed by the Wisconsin Coalition Against Sexual Assault; and does not have bipartisan co-sponsorship. As of yesterday afternoon, AB 844 had been co-sponsored by only one member of the State Senate and companion legislation has yet to be introduced in that chamber.

I implore the members of this committee to consider and pass AB 214. Wisconsin has already had a backlog of untested sexual assault kits. We know it can happen. And when a backlog develops, there can be real consequences—for survivors, for whom justice may be delayed, and for public safety, as dangerous offenders may go unprosecuted.

AB 214 can help prevent a future backlog. I ask the members of this committee to do the right thing and advance that legislation.

With that, Michelle and I are happy to answer any questions committee members may have.



WISCONSIN COALITION AGAINST SEXUAL ASSAULT

Testimony

To: Members of the Assembly Committee on Health
From: Wisconsin Coalition Against Sexual Assault (WCASA)
Date: February 5, 2020
Re: Assembly Bill 844
Position: Oppose

The Wisconsin Coalition Against Sexual Assault (WCASA) appreciates the opportunity to offer this written testimony for your consideration. WCASA is a membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the sexual assault service provider agencies located throughout the state that offer support, advocacy and information to survivors of sexual assault and their families. WCASA works to ensure that every survivor has the support and care they need. We also work to create the social change necessary to end sexual violence.

AB 844 was formally introduced on Monday, after being circulated for co-sponsorship at the end of last week. Furthermore, this legislation was not introduced with bi-partisan support, nor was it developed with the input of subject matter experts. There are, however, two bills pending in the Assembly which do reflect broad bi-partisan support and subject matter expertise, AB 214 and AB 358. Those bills passed the Senate with overwhelming support in October, and they contain the same or substantially similar provisions as AB 844. However, had AB 844 been introduced earlier in the session, and in a manner that sought the input of many of the stakeholders who support AB 214 and AB 358, perhaps some compromise could have been reached. At a minimum, we could have provided input on some of the substantive concerns about this bill discussed below.

While we do have procedural concerns about this bill as outlined above, it is the inclusion of issues related to immigration and school choice that cause us to register in opposition to AB 844. These issues have not been part of any of the conversation about preventing a Sexual Assault Kit (SAK) backlog to date. The inclusion of school choice is particularly puzzling it has nothing to do with SAKs, or the criminal or health care system responses to sexual assault survivors. However, it is not simply that these topics are unrelated to SAKs that cause us to oppose AB 844. Rather, in the case of the immigration provisions contained in this bill, we believe they will be harmful to survivors.

Sections 12 and 20 – Citizenship of individuals arrested for or convicted of sexual assault

These sections require the Department of Justice (in cases resulting in a conviction) and local law enforcement (in cases resulting in an arrest) to notify Immigration and Customs Enforcement if the person arrested/convicted is not a U.S. citizen and is not authorized to be in the U.S. under federal law. According to the U.S. Department of Justice, sexual assault is the most underreported crime.¹ This is due to a variety of factors, including: self-blame, shame, fear of not being believed, and a lack of trust in the criminal justice system. WCASA believes these provisions will create a chilling effect for immigrant

¹ Rennison, C.A. (2002). *Rape and sexual assault: Reporting to police and medical attention, 1992-2000*.

survivors to reporting to law enforcement. Recent data from cities such as Los Angeles and Houston have demonstrated a significant decrease in reporting of sexual assault in the Latinx population as a result of policies that increase the entanglement of local law enforcement and immigration enforcement.² Furthermore, perpetrators may use the threat of deportation or family separation as a means of controlling the survivor – counting on their mistrust of law enforcement as a means of avoiding detection. These provisions increase barriers for immigrant survivors to engaging with the criminal justice system, which is not only harmful to the individual survivor, but also has negative consequences for public safety as offenders are not held accountable.

For a child sexual abuse victim, these provisions could be particularly harmful. Most child sexual abuse victims are assaulted by someone they know, and who is in a position of power or trust with respect to the child. If the perpetrator is undocumented, this may exacerbate the barriers that already exist for child sexual abuse survivors to engaging with the criminal justice system. Child sexual abuse offenders often groom their victims, and part of the grooming process is to make the child feel complicit in the abuse, and to make them feel responsible for what will happen to the offender if the victim reports. These provisions diminish a sexual assault survivor's ability to seek safety and justice.

Sections 3 through 8 – School Choice Programs

These sections allow a sexual assault survivor who is a K-12 pupil to attend a private school if charges have been filed and the offender is a pupil/employee of a school district. While these provisions are well-intentioned, the requirement that charges are filed against an offender will limit their utility for survivors as it requires them to not only report to law enforcement, but also a prosecutor must issue a criminal complaint. Thus, survivors will depend on a prosecutor exercising their discretion to file charges to benefit from these provisions. However data indicates that for every 100 rapes committed, only .4 – 5.4 are prosecuted,³ further limiting the ability of survivors to utilize this option.

The other concern with respect to these sections relates to the responsibility of schools to respond to sexual violence under both state and federal law. Schools have the responsibility to respond to and prevent sexual violence under Title IX, and we are concerned that these provisions will unintentionally send a message to schools that lessens their responsibility as the survivor can simply switch schools. While some survivors may want to switch schools, others may feel that they should not be the ones to leave, but rather the person responsible for the assault should bear that burden. While we appreciate the concern about sexual violence in our schools, we think addressing this in a more deliberate manner and with the input of subject matter experts would lead to a more comprehensive approach. We would also welcome broadening these provisions to include allowing a survivor to open-enroll in another public school as opposed to focusing solely on attending a private school.

Therefore, WCASA respectfully opposes AB 844 and we urge this committee to pass AB 214 instead. Thank you for your consideration. If you have any questions, you can reach me at ianh@wcasa.org.

² National Alliance to End Sexual Violence. Available at: https://www.endsexualviolence.org/where_we_stand/protections-for-immigrant-survivors/

³ Lonsway, K. and Archambault, J. (2012). *The "Justice Gap" for Sexual Assault Cases: Future Directions for Research and Reform*.



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5510 Research Park Drive
P.O. Box 259038
Madison, WI 53725-9038
608.274.1820 | FAX 608.274.8554 | www.wha.org

TO: Member of the Assembly Committee on Health

FROM: Kyle O'Brien - Senior Vice President Government Relations
Ann Zenk, RN, BSN, MHA - Vice President Workforce & Clinical Practice

DATE: February 5, 2020

RE: Wisconsin Hospital Association Opposition to Provisions in Assembly Bill 844

Wisconsin's hospital and emergency department staff are critical and caring frontline providers for victims of sexual assault. This responsibility, and the impact of new public policy changing this responsibility, is best understood by those who have cared for victims. With that feedback and counsel from our members, the Wisconsin Hospital Association expresses concerns with provisions of Assembly Bill 844 creating new statutory obligations for health care providers to inform patients about processes that are best known by law enforcement and victim/witness advocates within the criminal justice system, not health care providers.

Wisconsin hospitals, providers and staff work side-by-side with law enforcement, crime victim services and victim advocacy organizations to ensure patients are protected and perpetrators are prosecuted. Unfortunately, the new mandates in Assembly Bill 844 take a different approach by siloing responsibilities for informing victims of sexual assault and creating more government regulations, instead of encouraging collaboration between hospitals and important victim/witness partners in the law enforcement community.

These provisions of AB 844 incorrectly assign responsibilities to health care. We ask the Committee to reject these new statutory mandates placed upon hospitals and defer this notification responsibility to experts within law enforcement and crime victim services who are trained for this purpose.

Wisconsin Coalition Against Domestic Violence
1400 E. Washington Avenue, Suite 227
Madison, Wisconsin 53703
Phone: (608) 255-0539
jennag@endabusewi.org



To: Assembly Committee on Health
Date: February 4th, 2020
From: Jenna Gormal, Director of Public Policy and Systems Change, End Domestic Abuse Wisconsin
Re: Assembly Bill 844
Position: Oppose

Dear Chairman Sanfelippo and members of the Assembly Committee on Health,

Thank you for the opportunity to submit testimony regarding Assembly Bill 844. End Abuse is the statewide voice for survivors of domestic violence and the membership organization representing local domestic violence victim service providers throughout Wisconsin. We strongly oppose this legislation and respectfully urge the Committee not to approve its passage.

End Abuse opposes this legislation due to the inclusion of issues related to immigration and the effect it will have to further endanger the lives of sexual violence victims. AB 844 will lead to a dramatic decrease in the willingness of crime victims to reach out to law enforcement, meaning violent offenders will continue their abusive behavior unimpeded.

Because abusers will feel shielded by their victim's fear of deportation if they contact the authorities, this bill will have the direct opposite of its intended purpose, putting victims across the state directly in harm's way. Perpetrators count on a victim's mistrust of law enforcement as a means of avoiding detection. When crime victims feel unable to come forward, dangerous batterers and sex offenders go unidentified, and the entire community is at risk. This legislation, by increasing the fear of arrest and deportation for immigrant survivors, will therefore push victims of crime to the shadows of our society where they are afraid to report violent crimes, making them more vulnerable to victimization and harm.

A Wisconsin advocate recently reported the story of a victim who lives with the father of her young child. After an incident in which her partner sexually assaulted and threatened to kill her, she sought help from her local domestic abuse program. However, fear of ICE and being deported and separated from her child continues to make her hesitant to report the abuse to law enforcement or to seek a restraining order. All across our state, domestic violence programs are reporting dramatic decreases in Latino and immigrant willingness to work with the legal system or even file restraining orders. Passage of this legislation will create an atmosphere in which many more victims stay silent and as a result, abusers and sex offenders will remain free. Immigrant and undocumented people do not deserve to be further victimized because of their status.

Moreover, this legislation was introduced without bi-partisan support, despite there being two bills currently sitting in this committee with bi-partisan support, and informed by subject matter experts, AB 214 and AB 358. Those bills passed the Senate with overwhelming support in October, and they contain substantially similar provisions as AB 844. We respectfully urge you to please oppose AB 844 and pass AB 214 and AB 358 instead.

Thank you. If you have any questions, you can reach me at jennag@endabusewi.org



TO: Representative Joe Sanfelippo, Chair and Members of Assembly Committee on Health

FROM: Gina Dennik-Champion, MSN, RN, MSHA
Executive Director, Wisconsin Nurses Association

DATE: February 5, 2020

RE: Concerns regarding LRB 5536/1 - relating to: creating a sexual assault victim bill of rights; collection and reporting of data regarding sexual assault kits; storage and processing of sexual assault kits; tracking of sexual assault kits in sexual assault cases; and requiring the exercise of rule-making authority.

Dear Representative Sanfelippo and Members of the Assembly Health Committee,

The Wisconsin Nurses Association (WNA) is the professional nursing association that supports and advocates for the 90,000 registered nurses in Wisconsin. We would like to share our concerns regarding LRB 5536/1 that address victims of sexual assault and their corresponding sexual assault kit. WNA is very appreciative of the important role of the Sexual Assault Nurse Examiners (SANE) who provide compassionate care and treatment to a vulnerable and traumatized person while performing the collection and preservation of valuable forensic evidence for future use.

WNA has concerns regarding the introduction of LRB 5536/1 as it will delay the adoption of any potential legislation this biennium that support victims of sexual assault and the collection and storage of their forensic evidence. WNA would like to see the efforts, compassion and forensic-related work performed by Sexual Assault Nurse Examiners on behalf and for the victim not be lost because of the lack of state law regarding collection and preservation of this valuable evidence.

WNA is requesting that AB 214 which is the companion bill SB 200 which has been passed by the Senate be brought forward and voted on. The victims of sexual assault include grandmothers, mothers, children, sisters, wives, human trafficking victims and others should not have to worry about the availability of their forensic evidence for future prosecution. Sexual Assault Nurse Examiners should not have tell their patient as they do now, that there is no guarantee that the their forensic evidence has been lost or thrown away.

Please pass AB214/SB 200 without delay.

Thank you in advance for your consideration of WNA's request.

February 5, 2020

I became engaged in the Attorney General's Sexual Assault Response Team (SART) in 2017, under then AG Schimel. Prior to that time, I had been an Officer with the Wausau Police Department since 2005, a Detective starting in 2011, and I have been an Investigations Lieutenant since 2015. Over the past 15 years, in the course of many sexual assault investigations, it has been a privilege to serve survivors, among them being some of the strongest individuals I have ever met.

It was their experiences that motivated my interest in the AG SART. Regardless of conviction in any investigation, I knew I could never make survivors truly whole again. However, there are Core Values in law enforcement--including Accountability, Professionalism, Integrity, Respect—values that our citizens demand of us, and guide Officers to do the right thing in the face of adversity. These values dictate that we acknowledge those areas where we can improve, and that we strive for excellence in serving survivors in the aftermath of a sexual assault. We look for ways that we can further their trust in us. Law enforcement does that by seeking out multi-disciplinary, community partnerships within which we can problem-solve and accept feedback on challenges we face, to ensure that all stakeholders have a voice in the process and the outcome.

The AG SART has been a great example of using that approach to come up with best practices for serving survivors. It has therefore been an honor to serve on the AG SART, where I, on behalf of my agency, sought to have a greater impact on service to survivors. I was likewise glad to hear that AG Kaul would be continuing this initiative when he took office.

I am proud of the resulting AB 214, which is poised to further citizen trust in the sexual assault kit evidence process and those disciplines involved, because it was built the right way. It also stands to build trust in the legislative process, with its progress history showing no opposition and having broad support from stakeholders. It brings needed statewide consistency to the sexual assault kit process, with concise directives for law enforcement, medical facilities and the Crime Lab, as result of input from each. It allows advocates to speak with survivors confidently about what the process is, regardless of where the assault occurred, without advocates or survivors being left wonder about if and when their kit will be submitted.

When AB 214 was first issued, it was very reassuring to see the support it was getting, realizing what a step it was in building trust with survivors. Law enforcement works hard every day to build trust with our citizens, because we understand and appreciate that they provide us the authority to enforce the laws that are made here. We know we have to continuously earn that trust and we do not take it lightly. We know we have to show them that we hold ourselves accountable. We ask for their trust that we will carry out our law enforcement duties *with integrity and respect*. Therefore it has since been very frustrating, seeing our efforts and capability to build trust be undermined by the partisan interests of a few, in holding back AB 214 from a public hearing.

It seems apparent that the work of the AG SART and the interests of survivors are being disregarded in this process. The AG SART members and our respective organizations have invested significant time in the interest of survivors, to establish a consistent sexual assault kit process and to prevent a future backlog of kits to be tested. Citizens of Wisconsin demand that their law enforcement agencies hold themselves accountable. I am here to remind that citizens hold the

same expectations for what occurs here, that accountability amongst legislators must prevail, and direct that AB 214 be brought forward.

Respectfully,

Nathan Cihlar