



WISCONSIN COALITION AGAINST SEXUAL ASSAULT

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## Summary of Wisconsin's Victim Accompaniment Law

April 21, 2016

This document provides a basic summary of Wisconsin's new victim accompaniment law, 2015 Wisconsin Act 351, signed into law on April 11, 2016. For more specifics, see the law's [statutory language here](#).

With some exceptions, the victim accompaniment law gives survivors of sexual assault, human trafficking, and child sexual abuse the right to be accompanied, if they so choose, by a sexual assault victim advocate throughout the criminal justice process.

### Definitions

“Victim advocate” is “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.”

In this law and in this document, “victim” refers to an individual who has experienced sexual assault, human trafficking, and/or child sexual abuse.

### Accompaniment at Hospitals

With exceptions (see below), “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 performed at the hospital as a result of the violation.”

Hospitals do not have to wait for an advocate to arrive before examining or treating the victim if “delay would endanger the health or safety of the victim or risk loss of evidence.”

#### Minors

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

#### *Minors 10 and Older*

“A parent, guardian, or legal custodian of a minor who is age 10 or older and who is a victim of sexual assault, human trafficking, or child sexual abuse may make a request ... for a victim advocate to accompany the minor victim of sexual assault, human trafficking, or child sexual abuse.”

### *Minors Under 10*

“A treating medical provider may make a request ... 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.”

#### Notification

The hospital is required to notify the victim — and the victim’s parent, guardian or legal custodian if the victim is a minor who is at least 10 years of age — of two things:

1. the victim’s right to be accompanied by a victim advocate
2. that a hospital is required to permit a different victim advocate to accompany the victim if the hospital excludes an advocate for reasons described below.

The hospital can (but does not have to) make this notification using a form provided by the state Department of Health Services. See below for more information on this form.

#### Advocate Exclusion

A victim can request that the victim advocate be excluded from any examination or consultation and the victim advocate must comply with the victim’s request.

A hospital can exclude the victim advocate for any of the following reasons:

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 or comply with confidentiality requirements relating to another individual at a hospital
  - b) “failing to comply with a request by a victim” to exclude the advocate.

#### Immunity from Civil Liability

A hospital and its employees or agents are immune from civil liability for:

1. allowing a victim advocate to accompany a victim
2. any failure to comply with any requirement of this law
3. any act or omission by a victim advocate.

#### Confidentiality of Patient Health Care Records

A health care provider may release a portion, but not a copy, of a patient health care record to a victim advocate who is accompanying a victim.

## **Wisconsin Department of Health Services and Department of Justice**

This law requires the Wisconsin Department of Health Services (DHS) to do the following.

1. Respond to any complaint it receives concerning a hospital not complying with this law’s requirements, described above.
2. In “cooperation” with the Wisconsin Department of Justice, develop “guidelines” for hospitals regarding the accompaniment law and provide assistance to hospitals as needed regarding the accompaniment law.
3. “[P]rescribe a form” hospitals can use (they do not have to) to notify victims — and parents,

guardians, or legal custodians if a victim is a minor who is at least 10 years of age — of the victim’s right to be accompanied by a victim advocate under this law.

This notification form must include information on all of the following:

1. the right to request accompaniment
2. the right to exclude a victim advocate
3. the procedure for making a complaint to DHS.

## **Accompaniment at Law Enforcement Interviews and Other Proceedings**

With some exceptions (see below), a victim has the right to be accompanied by a victim advocate at “law enforcement interviews” and at “interviews and proceedings at which [the victim] is requested or allowed to attend that are related to the crime committed against [the victim], including”

1. prosecution interviews
2. Department of Corrections proceedings
3. court proceedings
4. postconviction proceedings

A parent, guardian, or legal custodian of a victim who is a minor may request a victim advocate to accompany the victim at “law enforcement interviews” as well as at “interviews and proceedings.”

### Advocate Exclusion

Victim advocates risk being excluded from law enforcement interviews if they violate any of the following rules. A victim advocate:

1. “may not obstruct or delay a law enforcement interview”
2. “shall comply with the victim’s requests or instructions”
3. “shall comply with any rule, policy or requirement established by the law enforcement agency regarding confidentiality of information relating to an investigation”
4. “may not disclose information not previously disclosed to the general public to any person” with the following exception:
  - a. a “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.”
    - i. This language is intended to ensure that victim advocates can communicate with their clients, supervisors and colleagues as necessary regarding counseling, assistance or support services for a victim.

If a victim advocate is excluded from a law enforcement interview, the victim can request a different victim advocate to accompany them.

### Immunity from Civil Liability

“A law enforcement agency” and its employees or agents are immune from civil liability for

1. allowing a victim advocate to accompany a victim
2. any failure to comply with any requirement of this law
3. any act or omission by a victim advocate

## **Accompaniment at Child Forensic Interviews**

### Advocate Exclusion

Victim advocates can be excluded from the child forensic interview and the child advocacy center. A victim advocate:

1. “may not obstruct or delay a forensic interview conducted at or on behalf of a child advocacy center”
2. “shall comply with any instructions or requests from the lead forensic interviewer, including excluding himself or herself from the interview room”
3. “shall comply with any rule, policy or requirement established by the child advocacy center”

## **Domestic Violence or Sexual Assault Advocate-Victim Privilege**

The accompaniment law clarifies the state’s existing confidentiality and privilege statutory language by replacing “advocate” with “victim advocate” in various places in state law.

## **Initial Applicability and Effective Date**

The victim accompaniment law is not retroactive. In other words, it only applies to violations committed against a victim on or after the date that the new law takes effect. That date is August 1, 2016: the first day of the fourth month following publication of the law.

For questions regarding this document, please contact:

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