

STANDING COMMITTEES:

Energy, Consumer Protection, and
Government Reform, Chair
State and Federal Relations, Vice-Chair
Transportation, Public Safety,
and Veterans and Military Affairs



JOINT COMMITTEES

Audit Committee, Co-Chair
Information Policy and Technology
Transportation Projects Commission

January 15, 2014

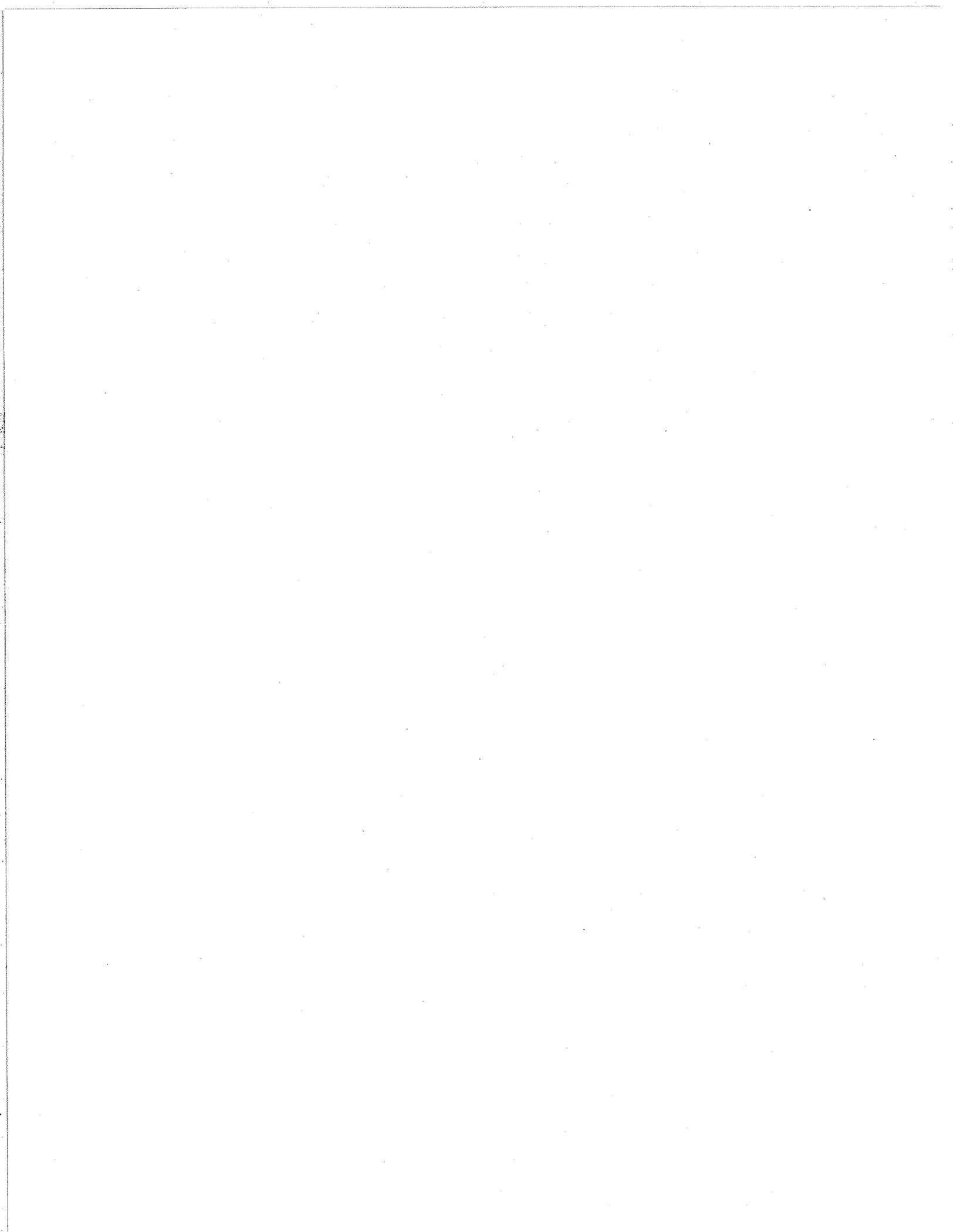
Testimony on Senate Bill 354

Whether you are a victim of crime or know someone who is a victim of crime you understand that the victim is going through a certainly difficult time: someone can be affected in so many ways, emotionally, physically, and mentally. This bill aims at providing additional support for those affected by sexual assault and human trafficking.

Senate Bill 354's purpose is to allow victim accompaniment to any event related to the abusive conduct that the victim attends or is required to attend. This bill asserts the needs of crime victims and can facilitate meaningful services to them. The preliminary reaction a sexual assault survivor receives when first reporting a crime has a critical influence on their recovery from assault. This bill delivers a sense of security during this vulnerable time for victims. Victim advocacy can also prevent additional emotional challenges by providing sensible consultation to victims and encourage victim's decisions through the legal process; which can result in better participation in the legal process and help our state prosecutors put criminals behind bars.

The amendment to the bill creates the correct scope for services so that the most vulnerable of crime victims are supported. Eleven other states have victim accompaniment legislation and generally allow a victim advocate to attend some or all of the proceedings a victim may have to be present. When dealing with sexual crimes and human trafficking treating victims with respect throughout the entire legal process helps create an environment that encourages victims feel safer to report their crimes and help others to share theirs.

I'd like to thank my companion author Representative Steineke, the co-sponsors to the legislation and all of the crime victims' advocacy groups who supported this legislation.





JIM STEINEKE

ASST. MAJORITY LEADER

STATE REPRESENTATIVE • 5th ASSEMBLY DISTRICT

(608) 266-2418
Toll-Free: (888) 534-0005
Rep.Steineke@legis.wi.gov

P.O. Box 8953
Madison, WI 53708-8953

Wednesday, January 15 | 1:00 PM | 330 Southwest
Senate Committee on Transportation, Public Safety and Veterans and Military Affairs

**Rep. Jim Steineke Testimony on Senate Bill 354:
Granting victims of certain offenses a right to be accompanied by a victim advocate.**

Good morning Chairman Petrowski and members of the Committee.

For those who are not familiar with it, interacting with the criminal justice system can be a confusing and frightening experience. Imagine what it must be like for people who are struggling with the effects of sexual assault or human trafficking.

The purpose of Senate Bill (SB) 354 is to provide assistance through the help of a victim advocate for abuse victims as they navigate the criminal justice system. A victim advocate is a highly-trained professional who offers basic information about the legal and medical systems and provides emotional support. They have no other obligation to any other institution or individual. Their sole concern is the victim's well-being.

Current law offers victims of certain crimes the right to be accompanied by a victim advocate or counselor. But it's only under a very narrow set of conditions. Moreover, existing law requires that all crime victims be treated with "fairness, dignity and respect for their privacy." The presence of a victim advocate helps make good on that promise.

Eleven other states already have similar laws in place. Statistics show that more cases proceed and more criminals are convicted when a victim is accompanied by an advocate.

People who are suffering from the devastating effects of sexual assault or human trafficking should have every resource made available in order to achieve justice and recover emotionally.

That is why I am asking for your support of Senate Bill 354 – granting abuse victims the option to be accompanied by an advocate.

I am grateful for the strong support this bill has already received from my colleagues, and I look forward to seeing this legislation become law soon. Thank you for your time.



Wisconsin Coalition Against Sexual Assault
2801 West Beltline Hwy., Ste. 202 • Madison, WI 53713
Voice/TTY (608) 257-1516 • Fax (608) 257-2150 • www.wcasa.org

Testimony

To: Members of the Senate Committee on Transportation, Public Safety and Veterans and Military Affairs
From: Wisconsin Coalition Against Sexual Assault (WCASA)
Date: January 15, 2014
Re: SB 354, Sexual Assault and Human Trafficking Victim Accompaniment
Position: Support

WCASA is a statewide organization that was created in 1985 to support and complement the work of Wisconsin's community-based sexual assault service provider programs and other organizations working to end sexual violence.

We want to thank Chairman Petrowski and other committee members for bringing this important piece of legislation forward for a public hearing today. We'd also like to thank the forty-seven cosponsors of this bill for their continued commitment to issues related to sexual assault and human trafficking. We feel this is the single most important step you can take to help victims as they deal with the trauma after an assault and also to help ensure that these assaults are reported and prosecuted.

As you are aware, this bill allows for victims of sexual assault and human trafficking to be accompanied, if they so choose, by a victim advocate during certain stages of the criminal justice process: the forensic exam and law enforcement/judicial proceedings.

We'd like to organize our testimony into answers to a few questions that typically come up when discussing victim accompaniment.

What is accomplished by this bill?

The initial response sexual assault survivors receive when reporting the crime or seeking services can have a profound impact on their ability to recover from the assault. This proposal will give victims a sense of security during that very vulnerable time and can help prevent additional psychological trauma as they deal with what has just occurred. Ensuring that emotional support and assistance are provided to victims after an assault increases the likelihood that they remain engaged with the criminal justice system which enhances the ability to hold perpetrators accountable. Additionally, this bill extends these rights to human trafficking victims, who are often extremely isolated and vulnerable.

Advocates provide badly needed services to sexual assault victims after an assault. Advocates explain procedures, provide basic information about the medical and criminal justice process and offer emotional support to victims. Sexual assault survivors report that the presence of an advocate is critical

to their ability to navigate the complex legal and medical systems. There is no other party involved in these cases whose sole interest lies in supporting survivors.

Furthermore, individuals who are supported by a victim advocate are more effective participants in the criminal justice system, which leads to increased reporting of crimes and increased convictions of offenders. A 2006 study found that sexual assault victims who had an advocate present during the criminal justice process had better outcomes – they were more likely to have a law enforcement report taken and the case was more likely to be investigated further when an advocate accompanied a victim. Sexual assault survivors interviewed for this study also reported less distress after their contacts with the legal and medical systems. Additionally, guaranteeing the presence of a victim advocate ensures that victims will be treated with respect. Treating victims with respect throughout all of the legal proceedings related to the assault helps create an environment in which other victims feel safer to report these drastically underreported crimes.

Finally, advocates already play an integral role in multi-disciplinary teams responding to sexual assault across the state. They are a key component in local Sexual Assault Response Teams (SARTs) that exist in many communities in Wisconsin. In fact, the Wisconsin SART Protocol states that allowing a victim to have an advocate present during law enforcement interviews, SANE exams, and meeting with prosecutors is a “best practice.” This bill provides the Legislature with the opportunity to codify this best practice.

Is this novel legislation?

No. Eleven other states currently have victim accompaniment legislation of some kind. The laws vary widely, but generally allow for an advocate to be present at some or all of the proceedings contained in SB354. In some cases there are fines involved, as well as notification requirements. SB 354, as amended by SA 1, does not contain a fine nor are there notification requirements. We feel those are not necessary to achieve what is intended by this legislation.

Current law in Wisconsin contains a very limited victim accompaniment provision. As described by the Legislative Reference Bureau:

Under current law, a victim of a crime is afforded certain rights while his or her case proceeds through the criminal justice system, including the right to be present at certain hearings, the right to make statements regarding the disposition of the case, and the right to be notified of additional proceedings after the case has been adjudicated. Current law allows a victim of certain crimes, including domestic abuse or certain acts of child abuse, harassment, sexual assault, or sexual exploitation by a therapist, to be accompanied by a victim advocate or counselor at criminal hearings, depositions, court proceedings, and at meetings related to the hearings, depositions, and court proceedings if the crime is a factor in a child custody case involving the victim or if the crime is a factor in the victim's ability to represent his or her own interests in the proceedings.

While this provision in current law clearly is a narrow one, it does provide precedent for the notion that there is significant value in allowing certain victims to be accompanied to these kinds of proceedings. Value, again, not only for the victim but also for all of society as we try to ensure that these cases are reported and make their way through the criminal justice system to completion.

Who are "Victim Advocates?"

While the word "advocate" is used in many ways in public policy discussions, in this case "victim advocate" has a very specific meaning as defined in SB 354. Victim advocates are highly trained, professional individuals who work or volunteer at local organizations that qualify to receive Sexual Assault Victim Services grants, administered by the Department of Justice, or domestic abuse service providers that are eligible to receive grants from the Department of Health Services. In order to receive such grants, organizations must provide a number of critical services such as: advocacy and counseling services, crisis telephone services 24/7, intervention and prevention education, and services for victims with special needs or that are hard to reach such as rural residents and other underserved groups.

What does Senate Amendment 1 accomplish?

Senate Amendment one accomplishes two things in response to feedback from a number of other interested parties: it clarifies the definition of who a "victim" is for purposes of this bill, focusing on sexual assault and human trafficking by removing other types of abuse and adding human trafficking, and it removes a fine for noncompliance which was included in the original bill that we do not feel is necessary in order to achieve the aims of the bill.

Conclusion

We feel SB 354 is very responsibly drafted, is not onerous on any of the actors involved and provides a measure of security and assistance for survivors of these assaults that will help them personally as they recover from these crimes as well as our society in general as we try to ensure that offenders are brought to justice and that future assaults are prevented.

We thank you for your attention to this matter and for your continued efforts to reduce the prevalence of sexual assaults in Wisconsin.



2801 Coho Street #301 ■ Madison, Wisconsin 53713
Business 608-251-5126 ■ 24 hr. Services 608-251-7273
Fax 608-251-6229 ■ Email info@danecountyrc.org
Web Site www.danecountyrc.org

RAPE CRISIS CENTER

2012 – 2013 Sample Feedback

Victim Feedback for Advocates

5/22/2012 – Thank you so much for everything. [The advocate] was really easy to talk to.

8/17/2012 – When we got the call that our daughter had been raped, my wife and I jumped in the car and drove through the night to Madison. When we got to the hospital, your advocate was there with [daughter], supporting her. And then she helped us understand what was going on, kept us calm so we could focus on what our daughter needed. It's all a blur – it was our worst nightmare. As a parent, as a dad, you're in shock. You don't know how to handle it - we're so grateful that you were there to help our family through this.

1/30/2013 – It meant so much to have [the advocate] there. She was amazingly helpful. I felt safe enough to sleep while we waited. I really needed that.

3/3/2013 – I truly appreciate having the company here to help me get through this.

7/27/2013 – If this had to happen, I just thank God that you were there at the hospital with me and I didn't have to go through this alone.

SANE Nurse Feedback for Advocates

4/21/2012 – Allison: you were awesome! You're always great but tonight was great. Thank you so much for all your help. Couldn't have done it without you. Thanks.

5/7/2013 – Bridget was so helpful with this Spanish speaking family and also a great help to me. I was so thankful she was here.

7/8/2013 – Erica was vital in assisting our patient through a very difficult time. Erica was very sensitive to our patient's needs and expectations, providing support and reassurance

8/26/2013 – Carlyn was invaluable with caring for a [child patient] during a SANE evaluation. The entire situation was quite complicated. Carlyn used strategies to engage this child and to settle her – providing comfort. Thank you.12

Submitted by: Kelly Anderson, Executive Director January 15, 2014





STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Kevin M. St. John
Deputy Attorney General

Jill J. Karofsky, Executive Director
Office of Crime Victim Services
17 West Main Street
P.O. Box 7951
Madison, WI 53707-7951

(608) 264-9497
(608) 264-6368 FAX
(800) 947-3529 TTY

January 15, 2014

Senator Jerry Petrowski, Chairman
Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs
Room 123 South
State Capitol

Dear Chairman Petrowski:

I am writing to you today regarding Senate Bill 354, relating to granting victims of certain offenses a right to be accompanied by a victim advocate. On its face, SB 354 appears to offer a vital service to those who have been victimized. I appreciate efforts to provide assistance in such critical situations and I have no doubt that the proponents of the bill have the best interests of victims in mind.

The Department of Justice includes the Office of Crime Victim Services (OCVS). OCVS offers a wide range of resources for the physical, emotional, and psychological challenges of being a crime victim. OCVS explains to victims their rights in the criminal justice system and assists them in exercising those rights. OCVS and DOJ continually work to develop, initiate, and support improved services for crime victims. While SB 354 might appear to work in the same direction, there are problems with the bill as drafted. Here are the concerns I have with the bill:

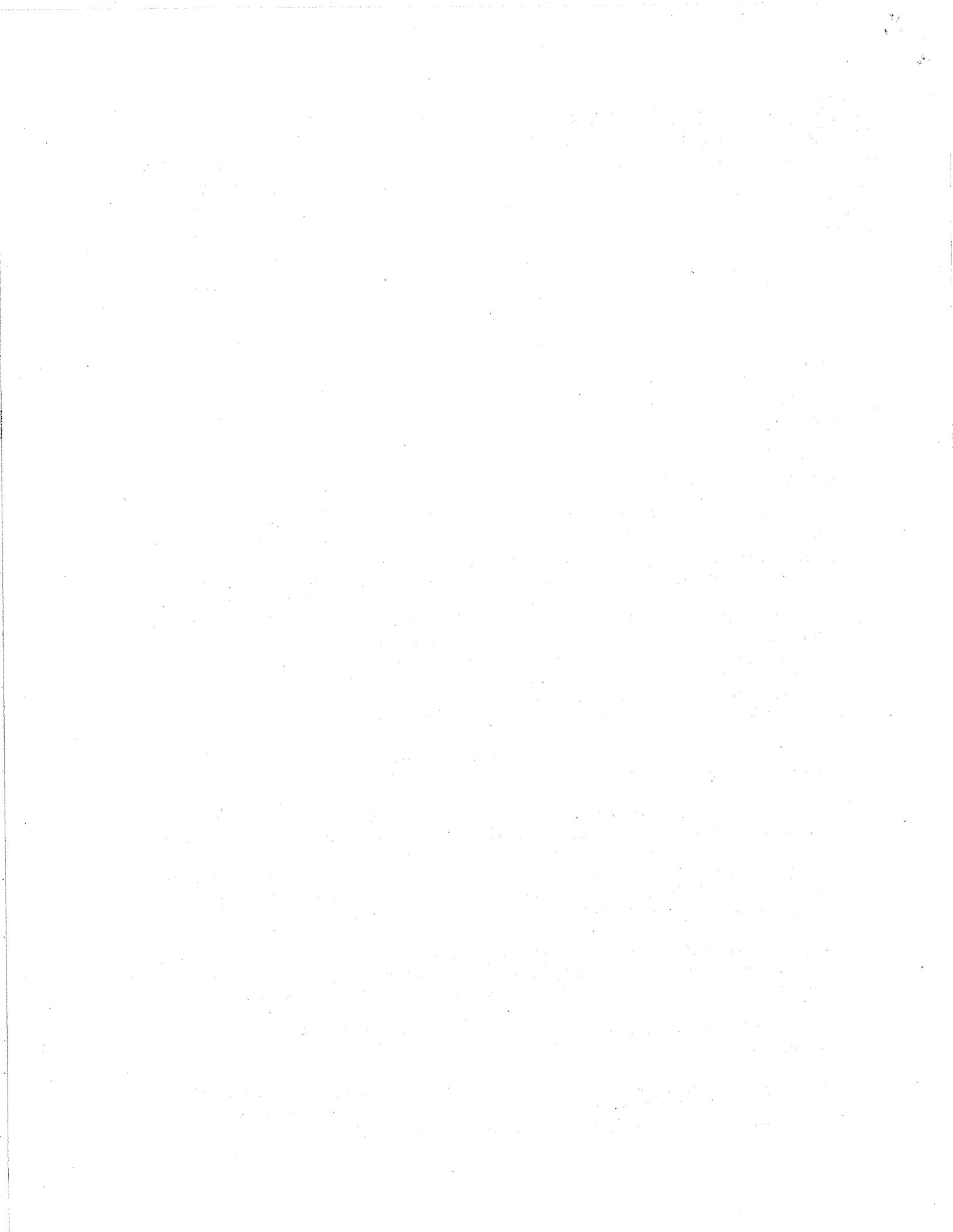
1. Section 3 - The hospital accompaniment language lacks the specificity required to protect the interests of victims and hospitals.

SB 354 lacks a mechanism to give victims notice of the right to accompaniment. The right applies narrowly to victims of "abusive conduct" which is defined to include some conduct not otherwise prohibited by law. The bill would necessitate an eligibility screening process that would likely result in victims disclosing non-medical details surrounding the circumstances of their injuries, but the proposal does not address how such information will be used, protected, or further disclosed, and whether victims would be informed of the consequences of such disclosure.

SB 354 does not address hospital compliance or liability when an advocate is unavailable or when medical urgency weighs against waiting for an advocate to arrive. SB 354 does not address how a hospital determines whether a person meets the requirements of a victim advocate under the bill.

2. Sections 4 & 5 - The proposal significantly alters the scope of Chapter 950, rights of victims and witnesses of crime.

Currently victims are eligible for Ch. 950 rights after a "crime" is committed against them (crime is defined as *conduct which is prohibited by state law and punishable by fine or imprisonment or both*). Under the proposal, individuals are eligible for victims' rights after an *attempt* at abusive



conduct—which in some cases is behavior that is not otherwise prohibited by law. This expansion of what is considered a “crime” represents a fundamental departure from the policy used to determine victims’ rights eligibility. The proposal risks confusion by creating a second group of “abusive conduct victims” eligible for accompaniment within Chapter 950. See *Section 950.04 (1v)(c)*.

SB 354 also allows child victims of abusive conduct to assert a right to accompaniment without parental consent. Child victims of other crimes do not enjoy the same authorization to assert their rights independently.

3. Key definitions in the proposal are too broad or too limiting.

“Victim advocate” as defined is too limiting. It specifically disqualifies law enforcement-based victim advocates and includes only advocates affiliated with certain sexual assault or domestic abuse organizations, leaving hospitals and public agencies with the burden of screening for eligibility.

“Abusive conduct” includes *attempts* at abusive conduct which complicates the provision of the proposed right. The definition differs from how “abusive conduct” is defined in the victim-advocate privilege statute, which may create confusion. It also differs from the definition used currently in Section 950.04 (1v)(c).

“Proceedings related to abusive conduct” is a phrase that is defined very broadly and provides unregulated access for advocates without any exceptions or guidelines that would facilitate interaction with criminal justice agencies.

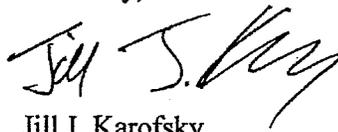
4. Possible impact on investigations.

SB 354 has a high potential for interfering with legitimate law enforcement functions. Victim advocates, although well meaning, may interfere with sexual assault nurse examiner (SANE) exams, and law enforcement or prosecutorial interviews of the victim for the purpose of gathering evidence. In addition, an advocate could become a witness to any interview and/or exam. Defense attorneys might try to put the advocate on the stand in the hopes that their recollection of events is different and thus attack the credibility of law enforcement or the SANE.

I see that the bill’s author has introduced Senate Amendment 1 to SB 354. Unfortunately, the amendment does little to address the problems described above and my concerns with the bill remain.

Thank you for your consideration. I look forward to working with the legislature on these and other crime victim related issues.

Sincerely,



Jill J. Karofsky
Executive Director

