PAT STRACHOTA

STATE REPRESENTATIVE

Assembly Committee on Public Health

Assembly Bill 556

Representative Pat Strachota

I would like to thank Representative Hines for co-sponsoring this bill with myself and Senator Erpenbach and thank the committee for holding a hearing on it today.

AB 556 is a very simple bill. It provides abused children with the same confidentiality privileges as any other person who seeks help from a mental health professional.

Legislative action is needed because of a 2005 Wisconsin Supreme Court decision that essentially abolishes the ability of therapists to engage in effective therapy with many child victims of abuse. The decision says that abused children are no longer guaranteed privilege for their communications with mental health professionals.

This was clearly not the intent when the Wisconsin laws regarding privilege and mandatory reporting of child abuse were drafted. Mental health professionals regarded the original intent of the mandatory reporting exception to privilege to only extend to the information contained in their mandatory report—not any and all personal information the patient has shared that related to the abuse.

When a child is abused, this is precisely the time when therapy is most needed. Child victims require a safe environment to share intimate information relating to abuse. The privilege statute is designed to afford confidentiality in those situations when it is most important. The current law removes those protections precisely when they are needed the most. This makes no sense.

AB 556 limits the scope of the mandatory reporting privilege exception and makes the statutes consistent with other statutory privilege exceptions, such as the exception to privilege in guardianship proceedings

Today you will hear testimony from professionals who can further explain the great need for this bill and can answer any of your technical questions.

I urge the committee to support this bill and provide abused children with confidential and therapeutic treatment so that they can heal.

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To: Assembly Committee on Public Health
From: Mike Murray, Policy Specialist, Wisconsin Coalition Against Sexual Assault, Inc.
Date: December 5, 2007
Re: Wisconsin Coalition Against Sexual Assault Testimony in Favor of AB 556

My name is Mike Murray and I am the policy specialist for the Wisconsin Coalition Against Sexual Assault, Inc. [WCASA]. I am here to testify in favor of AB 556, which protects the ability of child victims of abuse to engage in effective counseling with their therapists. WCASA would like to thank Rep. Strachota and Sen. Erpenbach for sponsoring this important piece of legislation. This bill restores the legislative intent behind protecting child-therapist confidentiality, while still ensuring that mandatory reports of child abuse can be made to the appropriate authorities.

A 2005 Wisconsin Supreme Court case, Denis LR, held that when a professional listed under the 905.04 privilege statute makes a mandatory report of child abuse or neglect, any information shared between the patient and the therapist regarding the abuse is no longer privileged.[1] This holding was based on the court's interpretation of the statutory language that creates an exception to the patient-therapist privilege. The precise wording of the exception is:

> There is no privilege in situations where the examination of an abused or neglected child creates a reasonable ground for an opinion of the . . . family therapist or professional counselor that the abuse or neglect was other than accidentally caused or inflicted by another. Wis. Stat. sec. 905.04(4)(e)(2).

Unfortunately, the Supreme Court interpreted the exception literally to hold that once a therapist (or any other mandatory reporter) has reason to make a mandated report, she can be compelled to testify about any information disclosed during the course of therapy regarding the alleged abuse. This interpretation of the privilege statute could have a devastating affect on the patient-treatment provider relationship.

The Supreme Court's reading of the statute drastically enlarges its scope beyond what was intended and is necessary. Mental health professionals had always believed the exception existed for the sole purpose of allowing the therapist to share *only* the information contained in their mandated report. Until Denis LR, this is how this statute worked out in practice. This interpretation and practice was consistent with other statutory privilege exceptions, such as the exception in section 905.04(4)(am) that allows the court to access

[1] 283 Wis.2d 358, 699 N.W.2d 154, 2005 WI 110

(OVER)

privileged information in a guardianship proceeding. This statute is narrowly tailored so that the exception to the doctor-patient privilege is limited to only "information contained in a statement concerning the mental condition of the patient furnished to the court by a physician or psychologist." Thus the relevant information is available to the court without compromising the therapist-patient relationship. In parallel with the guardianship report exception, AB 556 will restore an appropriate balance between Wisconsin's interest in having child abuse reported and investigated and the need to protect privileged mental health communications.

A child should be able to seek therapy for abuse without fear that everything he or she discusses with the therapist could be revealed to others. When a child is abused, this is precisely the time when therapy is most needed. In order to heal, child survivors of sexual assault need to develop a support system in which they can explore and discuss embarrassing and intimate feelings and experiences.[2] For many survivors, one of the most crucial steps towards recovery is regaining the ability to trust in others. Without a guarantee of confidentiality, most child victims will never be able to build the trust necessary with their therapist to engage in effective therapy. The privilege statute is designed to afford confidentiality in those situations. The Denis L.R. decision removed those protections for child victims precisely when they are needed the most.

AB 556 strikes the appropriate balance between confidentiality provisions in the privilege law and mandatory child abuse reporting without completely destroying the therapeutic relationship. This both allows social services and law enforcement to get involved to protect the child, but also allows that child to continue to receive services from the therapist without fears about public disclosure of intimate, embarrassing, and extremely personal information

On behalf of WCASA and its members across the state, I urge you to support this legislation to restore the legislature's intention that children be provided a safe environment to access supportive services without the risk of further victimization.

[2] For example, it is not uncommon for boys question their sexuality after being sexually assaulted by a man. If the boy described such struggles with this issue and wants to work on that issue in therapy, that struggle should not be revealed in a public courtroom.

(OVER)

State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Kevin R. Hayden, Secretary

December 5, 2007

TO: Assembly Committee on Public Health
FROM: Katie Plona, DHFS Legislative Liaison
RE: Assembly Bill 556

Good morning. I'm Katie Plona, legislative liaison for the Department of Health and Family Services. Rep. Hines and committee members, thank you for the opportunity to testify in favor of Assembly Bill 556.

The Department is supportive of this legislation because it increases the ability and the likelihood that professionals who work with children and families report information they learn about child abuse and neglect or the potential for abuse or neglect.

I am here today mainly to talk about an amendment to the bill that DHFS requested. First, I want to thank the bill's authors, Rep. Strachota and Sen. Erpenbach for working with the Department on this amendment and introducing it to enhance the bill.

As currently drafted, AB 556 would allow "privileged" providers to report child abuse or neglect when the provider is a mandatory reporter. A provider is only a mandatory reporter when he sees a child in the course of his or her professional responsibilities and believes the child is being abused or neglected, or is being threatened with abuse or neglect and that the abuse or neglect will occur. However, if the provider doesn't learn the information from the child, he or she is not considered a mandatory reporter.

This amendment addresses situations when a provider learns of abuse or neglect but is not a mandatory reporter. For example, a therapist may treat the abuser, who discloses that he is abusing the child. Another example is when a therapist sees one parent and he or she discloses that the other parent is abusing the child. The amendment DHFS recommends would allow this provider who, in his or her professional responsibilities, has evidence of abuse and neglect or believes it will occur to make a report without concern that the information is privileged.

The Department believes this amendment will improve AB 556. Additionally, we believe the amendment is consistent with the bill's intent because it applies the bill's provisions to providers who are permissive but not mandatory reporters. This will hopefully lead to more reports of child abuse and neglect that will result in much-needed protection of children suffering from abuse or neglect.

Thank you again for the opportunity to testify in favor of AB 556, and thank you again to Rep. Strachota and Sen. Erpenbach for agreeing to introduce this amendment. We respectfully ask for the committee's support.

Memo

To: Members of the Assembly Committee on Public Health

From: Josh Freker, Policy Director, WCADV, 608-255-0539 or joshf@wcadv.org

Date: December 5, 2007

Re: Testimony in support of AB 556

Thank you for providing an opportunity to share my organization's perspective on AB 556. I represent the Wisconsin Coalition Against Domestic Violence, which is the statewide voice for victims of domestic violence and the local programs in every county of our state that serve them. A substantial charge of our organization is to advocate for families and children. I'm here today to offer comments in support of AB 556.

Although the domestic violence movement began with a concerted focus on helping battered women, our focus has rightly expanded to address the needs of children who have witnessed their mothers being abused. The research literature increasingly confirms the obvious: these children can suffer potentially long-term consequences, including depression, anxiety, sleep disorders, aggressive behaviors, and not being able to keep up with school. In addition, many of these children experience abuse directly themselves.

Every domestic violence program in the state has programming specifically designed to support these children. Our advocates provide a sense of safety to the children, opportunities to heal from abuse, strategies for stopping the intergenerational transmission of violent behavior, and a place to talk about the children's experiences in the home. They also help direct children to therapists who can counsel them on a more intensive level.

In most cases, children come to a domestic violence program having never spoken to anyone—even their own mother—about the violence in their household. They almost always carry with them a sense that somehow the violence at home is their fault. Mothers also feel a sense of guilt or shame and often have never addressed their abuse directly with their children. This means advocates and therapists are often the first people the children have ever trusted to discuss these extremely sensitive issues.

The *Dennis L.R.* decision has caused a great deal of worry for our local programs who fear the ruling would open up private details of therapists' sessions with kids to the courts or law enforcement, well beyond reporting the fact of abuse itself. If therapists are forced to reveal their full exchanges with the children, it seriously undermines their ability to help children begin to heal.

We support AB 556 because it will help ensure that the child therapist privilege is narrowly tailored to include the mandatory reporting of child abuse but not force counselors to reveal the entire content of their therapy sessions. It will ensure that direct abuse of children comes to light but therapists and advocates' ability to gain trust and focus on the needs of traumatized children is not compromised.

I strongly urge you to support AB 556.

Thank you for your time and consideration of my remarks.

Assembly Public Hearing
Committee on Health and Human Services

12/5/07
Assembly Bill 556

Submitted by: Kristin Hoffschmidt, MSSW
Member, National Association of Social Workers – WI Chapter

I urge you to support AB 556, which introduces a simple change in the statutory language of WI Stats 904.04, concerning the privilege of confidential communication between clients and professionals. The change proposed in AB 556 states that there is no privilege **for information contained in a report** of child abuse or neglect.

Currently, WI Stats 904.04 does not specify any limitations to the exception to privilege in cases where the professional has reasonable grounds to suspect child abuse or neglect. A careful definition of this exception to privilege is necessary to protect the legal rights of the client to confidential communication, and to preserve the integrity of the relationship between the client and the professional. While a report of child abuse and neglect is a necessary exception, it should not open the door to access to records outside of the information contained in the report.

Without this change, the potential exists that social workers will be put in direct conflict with their professional Code of Ethics. Our professional code states that only information related to the reason for the exception should be released, and that social workers have an obligation to protect confidential client information, using the legal process if necessary. Privacy and confidentiality issues comprise the longest section under social workers' ethical responsibilities to clients, precisely because they are so critical to effective helping relationships. Protection of the privacy of the client-professional relationship is in the interest of the individual's right to privacy and in the public interest in access to effective helping resources.

The passage of AB 556 will protect client's rights by closing the door on the possibility that all records could be open to legal probing, and specifically designates that the information released must be limited to what is in the report of child abuse or neglect.

Assembly Public Hearing
Committee on Health and Human Services

12/6/07
Assembly Bill 556

Submitted by: Kristin Hoffschmidt, MSSW
Member, National Association of Social Workers – WI Chapter

I urge you to support AB 556, which introduces a sample change in the statutory language of WI Stats 904.04, concerning the privilege of confidential communication between clients and professionals. The change proposed in AB 556 states that there is no privilege for information contained in a report of child abuse or neglect.

Currently, WI Stats 904.04 does not specify any limitations to the exception to privilege in cases where the professional has reasonable grounds to suspect child abuse or neglect. A careful definition of this exception to privilege is necessary to protect the legal rights of the client, to confidential communication and to preserve the integrity of the relationship between the client and the professional. While a report of child abuse and neglect is a necessary exception it should not open the door to access to records outside of the information contained in the report.

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The passage of AB 556 will protect clients rights by closing the door on the possibility that all records could be open to legal probing, and specifically designates that the information released must be limited to what is in the report of child abuse or neglect.