

AG Schimel: Calls for heightened privacy protections for crime victims

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MADISON, Wis. – Today, Senator Jerry Petrowski (R-Marathon) and Representative John Spiros (R-Marshfield) introduced Senate Bill 492/ Assembly Bill 570 with the help and support of Attorney General Brad Schimel. A product of three years of work, this bill will protect the rights of crime victims to keep their privileged mental health records confidential and provide clear guidance as to when these sensitive records may be accessed in court.

“Sexual assault survivors have experienced unthinkable trauma and tragedy, and the forced disclosure of sensitive health records makes participating in the criminal justice system and holding an abuser accountable almost impossible,” said Attorney General Schimel. “With this bill, victims and survivors don’t have to choose between experiencing further trauma or holding an abuser accountable.”

Under current law, and most often in sexual assault or domestic violence cases, criminal defendants seek access to victims’ privileged mental health records. SB 492/AB 570, the product of controlling Wisconsin case law, provides a clear procedure for all parties to follow when seeking access to a crime victim’s private mental health care records and clarifies the required burden defendants must meet in order to obtain an in-camera review of those records.

“This bill provides heightened protection for victims and clear guidance for all parties involved as to if, when, and how these sensitive records can be accessed,” said Senator Petrowski. “We really worked hard to make sure that this bill protects a

victim's right to privacy without depriving a defendant of their due process rights – it was a hard but important balance to strike.”

SB 492/AB 570 balances a crime victim's rights with a defendant's. A crime victim will have the ability to testify after declining an in-camera review of personal records, however, in doing so, the defendant gains the ability to comment on the procedure and the victim's non-disclosure. If the court conducts an in-camera review of the records and concludes that they contain information that must be disclosed to the defense, the victim can deny the disclosure, but would then be barred from testifying at trial – as is current practice.

“When someone is the victim of an assault they will often seek the help of a therapist, a decision that we should be supporting in order to allow victims to begin their healing process,” said Representative Spiros. “It is imperative that they be able to rely on the confidentiality of those discussions. These victims have been through enough and shouldn't have to worry that their most private records will be so easily accessible.”

The bills have been introduced and referred to Senate Committee on Judiciary and Public Safety and the Assembly Committee on Judiciary where they await further action.