



1999 ASSEMBLY BILL 778

February 22, 2000 - Introduced by Representatives HUNDERTMARK, SPILLNER, STONE, LADWIG, KELSO, OWENS, MUSSER, PETTIS, MILLER and ALBERS, cosponsored by Senators ROBSON, WELCH, HUELSMAN, WIRCH, DARLING and ROSENZWEIG. Referred to Committee on Children and Families.

1 **AN ACT to amend** 48.981 (3) (cm), 48.981 (7) (cm) and 48.981 (7) (d); and **to create**
2 48.981 (3) (c) 5m., 48.981 (7) (a) 15g. and 48.981 (7) (cr) of the statutes; **relating**
3 **to:** appeals of substantiated child abuse or neglect findings, public disclosure
4 of certain child abuse and neglect information when there is a child fatality or
5 near fatality and access to child abuse and neglect information by a citizen
6 review panel established or designated by the department of health and family
7 services or a county department of human services or social services.

Analysis by the Legislative Reference Bureau

Under current law, a county department of human services or social services (county department) or, in Milwaukee County, the department of health and family services (DHFS) or a child welfare agency under contract with DHFS must determine, within 60 days after receipt of a report of suspected or threatened child abuse or neglect, whether abuse or neglect has occurred or is likely to occur. Currently, an appeal of such a determination made by a county department may be made under the municipal administrative procedure law or, if the county of the county department has elected not to be governed by that law, under a county ordinance that provides a procedure for an appeal of such a determination, and an appeal of such a determination made by DHFS may be made under the state administrative procedure and review law. Current law does not provide a procedure for appealing such a determination by a child welfare agency.

ASSEMBLY BILL 778

This bill requires DHFS to establish procedures for conducting an appeal of a determination that a specific person has abused or neglected a child and to include in those procedures a procedure permitting such an appeal to be held in abeyance pending the outcome of any criminal or child in need of protection or services (CHIPS) proceeding based on the alleged abuse or neglect or any investigation that may lead to the filing of a criminal complaint or a CHIPS petition based on the alleged abuse or neglect. Under the bill, if a county department, DHFS or a child welfare agency determines that a specific person has abused or neglected a child, the county department, DHFS or child welfare agency must notify the person of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by DHFS.

Under current law, a county department, DHFS or a child welfare agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (agency) must keep its records confidential and may disclose those records only under certain exceptions. This bill requires an agency to disclose to any member of the general public, on request, a written summary of certain information relating to any child who has died or been placed in serious or critical condition as a result of suspected abuse or neglect that has been reported to the agency (child fatality or near fatality) if certain circumstances apply and certain other circumstances do not apply.

Specifically, an agency must disclose all of the information specified in the next paragraph if a person has been charged with a crime for causing the death or serious or critical condition of a child as a result of suspected abuse or neglect or if a person who is deceased would have been so charged, but for the fact that the person is deceased; if a judge, district attorney, law enforcement officer or agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public that the suspected abuse or neglect has been investigated or that child welfare services have been provided to the child or the child's family; or if a parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information. An agency may not disclose such information if any of the following circumstances apply: 1) the agency determines that disclosure of the information would be contrary to the best interests of the child, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report of suspected abuse or neglect or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person; 2) the district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial; 3) disclosure of the information is not authorized by federal law or regulation; or 4) the investigation of the abuse or neglect report has not been completed, in which case the agency may only disclose that the report is under investigation.

ASSEMBLY BILL 778

The information that must be disclosed on request in cases of a child fatality or near fatality is as follows:

1. The name and age of the child, but only if that information has previously been disclosed to the public.

2. A description of any investigation made, services offered or provided and any other action taken by the agency with respect to the child and the child's family in response to the report of suspected abuse or neglect, and a statement of the determination of the agency as to whether abuse or neglect occurred and the basis for that determination.

3. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency, the date of the previous report, whether a determination was made in response to the previous report that abuse or neglect had occurred or was likely to occur and whether any services were offered or provided to the child or the child's family or any other action taken by the agency in response to the previous report.

4. Whether the child or the child's family has received any child welfare prior to the report of the suspected abuse or neglect that caused the child fatality or near fatality or prior to any previous report of suspected or threatened abuse or neglect.

5. The results of any review conducted relating to the child fatality or near fatality.

The bill prohibits certain information from being disclosed to the general public on request in cases of a child fatality or near fatality. Information that may not be disclosed is as follows:

1. Any reports of suspected or threatened child abuse or neglect made to the agency, any child abuse or neglect records maintained by the agency and the contents of those reports and records.

2. Any information that would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, unless that information has previously been disclosed to the public, and any information that would reveal the identity of the person who reports the suspected abuse or neglect or any other person who provides information relating to the suspected abuse or neglect.

3. Any confidential medical, psychological or psychiatric information or other, similar sensitive personal information of the child or any member of the child's family.

Under current federal law, each state that receives a grant under the federal Child Abuse Prevention and Treatment Act (CAPTA) must establish not less than three citizen review panels, or must designate one or more existing entities as citizen review panels, to evaluate the extent to which local agencies responsible for providing child protective services are effectively discharging their responsibilities and must ensure that otherwise confidential child abuse and neglect reports and records are made available to those panels. This bill permits a citizen review panel established or designated by DHFS or a county department to have access to the otherwise confidential child abuse and neglect reports and records.

ASSEMBLY BILL 778

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.981 (3) (c) 5m. of the statutes is created to read:

2 48.981 (3) (c) 5m. If the county department or, in a county having a population
3 of 500,000 or more, the department or a licensed child welfare agency under contract
4 with the department determines under subd. 4. that a specific person has abused or
5 neglected a child, the county department, department or licensed child welfare
6 agency, within 15 days after the date of the determination, shall notify the person in
7 writing of the determination, the person's right to appeal the determination and the
8 procedure by which the person may appeal the determination, and the person may
9 appeal the determination in accordance with the procedures established by the
10 department under this subdivision. The department shall establish procedures for
11 conducting an appeal under this subdivision. Those procedures shall include a
12 procedure permitting an appeal under this subdivision to be held in abeyance
13 pending the outcome of any criminal proceedings or any proceedings under s. 48.13
14 based on the alleged abuse or neglect or the outcome of any investigation that may
15 lead to the filing of a criminal complaint or a petition under s. 48.13 based on the
16 alleged abuse or neglect. Those procedures need not be promulgated as rules.

17 **SECTION 2.** 48.981 (3) (cm) of the statutes is amended to read:

18 48.981 (3) (cm) *Contract with licensed child welfare agencies.* A county
19 department may contract with a licensed child welfare agency to fulfill the county
20 department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 6., 6m. and 8. The
21 department may contract with a licensed child welfare agency to fulfill the

ASSEMBLY BILL 778

1 department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 6., 6m., 7.,
2 8. and 9. in a county having a population of 500,000 or more. The confidentiality
3 provisions specified in sub. (7) shall apply to any licensed child welfare agency with
4 which a county department or the department contracts.

5 **SECTION 3.** 48.981 (7) (a) 15g. of the statutes is created to read:

6 48.981 (7) (a) 15g. A citizen review panel established or designated by the
7 department or a county department.

8 **SECTION 4.** 48.981 (7) (cm) of the statutes is amended to read:

9 48.981 (7) (cm) An Notwithstanding par. (a), an agency may disclose
10 information from its records for use in proceedings under s. 48.25 (6), 813.122 or
11 813.125.

12 **SECTION 5.** 48.981 (7) (cr) of the statutes is created to read:

13 48.981 (7) (cr) 1. Notwithstanding par. (a) and subject to subds. 3. and 4., upon
14 the request of any member of the general public, an agency shall disclose, within 5
15 working days after the request, a written summary of the information specified in
16 subd. 2. relating to any child who has died or been placed in serious or critical
17 condition, as determined by a physician, as a result of any suspected abuse or neglect
18 that has been reported under this section if any of the following circumstances apply:

19 a. A person has been charged with a crime for causing the death or serious or
20 critical condition of the child as a result of the suspected abuse or neglect, or the
21 district attorney indicates that a person who is deceased would have been charged
22 with a crime for causing the death or serious or critical condition of the child as a
23 result of the suspected abuse or neglect, but for the fact that the person is deceased.

24 b. A judge, district attorney, law enforcement officer, law enforcement agency
25 or any other officer or agency whose official duties include the investigation or

ASSEMBLY BILL 778

1 prosecution of crime has previously disclosed to the public, in the performance of the
2 official duties of the officer or agency, that the suspected abuse or neglect of the child
3 has been investigated under sub. (3) or that child welfare services have been
4 provided to the child or the child's family under this chapter.

5 c. A parent, guardian or legal custodian of the child or the child, if 14 years of
6 age or over, has previously disclosed or authorized the disclosure of the information
7 specified in subd. 2.

8 2. If an agency is required to disclose information under subd. 1. relating to a
9 child who has died or been placed in serious or critical condition as a result of any
10 suspected abuse or neglect that has been reported under this section, the agency
11 shall disclose all of the following information:

12 a. The name and age of the child, but only if that information has previously
13 been disclosed to the public.

14 b. A description of any investigation made, services offered or provided and any
15 other action taken by the agency with respect to the child and child's family in
16 response to the report of the suspected abuse or neglect, and a statement of the
17 determination made by the agency under sub. (3) (c) 4. and the basis for that
18 determination.

19 c. Whether any previous report of suspected or threatened abuse or neglect of
20 the child has been made to the agency, the date of the previous report, whether a
21 determination was made in response to the previous report that abuse or neglect had
22 occurred or was likely to occur and whether any services were offered or provided to
23 the child or the child's family or any other action taken by the agency in response to
24 the previous report.

ASSEMBLY BILL 778

1 d. Whether the child or the child's family has received any services under this
2 chapter prior to the report of suspected abuse or neglect that caused the child's death
3 or serious or critical condition or any previous report of suspected or threatened
4 abuse or neglect.

5 e. The results of any review conducted by the department, a multidisciplinary
6 child abuse and neglect team, a child fatality review team, a citizen review panel, a
7 court-appointed special advocate program or any other agency relating to the death
8 or serious or critical condition of the child.

9 3. An agency may not disclose any of the information described in subd. 2. if
10 any of the following applies:

11 a. The agency determines that disclosure of the information would be contrary
12 to the best interests of the child who is the subject of the report, the child's siblings
13 or any other child residing in the same dwelling as the child who is the subject of the
14 report or that disclosure of the information is likely to cause mental, emotional or
15 physical harm or danger to the child who is the subject of the report, the child's
16 siblings, any other child residing in the same dwelling as the child who is the subject
17 of the report or any other person.

18 b. The district attorney determines that disclosure of the information would
19 jeopardize any ongoing or future criminal investigation or prosecution or would
20 jeopardize a defendant's right to a fair trial.

21 c. Disclosure of the information is not authorized by federal law or regulation.

22 d. The investigation under sub. (3) of the report of the suspected abuse or
23 neglect has not been completed, in which case the agency may only disclose that the
24 report is under investigation. If an agency discloses under this subd. 3. d. that a
25 report is under investigation and if after completing that investigation the agency

ASSEMBLY BILL 778

1 determines that the report has not been substantiated, the agency may only disclose
2 a statement that the investigation has been completed and that the report has not
3 been substantiated.

4 4. In disclosing information under subd. 2., an agency may not disclose any of
5 the following:

6 a. Any reports made to, or records maintained by, the agency under this section
7 or the contents of those reports or records.

8 b. Any information that would reveal the identity of the child who is the subject
9 of the report, the child's siblings, the child's parent, guardian or legal custodian or
10 any other person residing in the same dwelling as the child, unless that information
11 has previously been disclosed to the public, or that would reveal the identity of a
12 reporter or any other person who provides information relating to the suspected
13 abuse or neglect of the child.

14 c. Any confidential medical, psychological or psychiatric information or other,
15 similar sensitive personal information relating to the child or any member of the
16 child's family.

17 5. Any person whose request for information under subd. 1. is denied may
18 petition the court to order the disclosure of the information specified in subd. 2. On
19 receiving a petition under this subdivision, the court shall notify the agency, the
20 district attorney, the child and the child's parent, guardian or legal custodian of the
21 petition. If any person notified objects to the disclosure, the court may hold a hearing
22 to take evidence and hear argument relating to the disclosure of the information.
23 The court shall make an in camera inspection of the information sought to be
24 disclosed and shall order disclosure of the information, unless the court finds that
25 any of the circumstances specified in subd. 3. apply.

