

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB144)

Received: 03/26/99

Received By: malaigm

Wanted: Soon

Identical to LRB:

For: Gregory Huber (608) 266-0654

By/Representing: Aide

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: Children - abuse and neglect

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Disclosure of a child abuse or neglect report for purposes of investigating an allegation of suspected child abuse or neglect

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 03/26/99	gilfokm 03/26/99		_____			
/1			jfrantze 03/29/99	_____	lrb_docadmin 03/29/99	lrb_docadmin 03/29/99	
				_____		lrb_docadmin 03/29/99	

FE Sent For:

<END>

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1?	malaigm	1-3-26-99 Kmg	[Signature] 3/29	[Signature] 3/29			

FE Sent For:

<END>



Tommy G. Thompson
Governor

Joe Leean
Secretary

State of Wisconsin

Department of Health and Family Services

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March 24, 1999

MEMORANDUM

To: Kevin Lewis
Department of Health and Family Services

From: Jean Gilpin and Therese Durkin
DHFS Office of Legal Counsel

Subject: AB 144 Proposed Amendment

The proposed text of an amendment to AB 144 that you showed us does not solve the problem raised by the original bill's language. The concern stems from the need to satisfy restrictions on record access imposed by federal regulations that control federal funding of child abuse programs.

Those regulations, in 45 CFR Part 1340 at 1340.14(i), limit access to and uses of child abuse and neglect reports. The focus of the federal regulations is protection of the child or investigation of the abuser, not investigation of other people who might come into contact with the child (and might be under some form of DOC custody) but who are not accused of abuse or neglect. Note also that the word "subject" has a special definition in the current text of Wisconsin's statute s. 48.981, so use of the word "subject" in the bill amendment should be avoided except when talking about the child or abuser.

We suggest the attached language as a possible alternate amendment.

Finally, it should be noted that the federal regulations limit disclosure of the reporter's (complainant's) identity, specifically providing that the person about whom the report has been made is not to receive the identity of the reporter. However, we have not built any language into the amendment to address that issue because we are unsure what materials a person in DOC custody would ordinarily be given by the DOC system.

Post-it* Fax Note	7671	Date	3/25	# of Pages	2
To	GORDON MALAISE	From	KEVIN LEWIS		
Co./Dept.	LRB	Co.	DHFS		
Phone #	6-9738	Phone #	6-3262		
Fax #	4-8522	Fax #	6-7882		

1. Page 3, line 5, delete "has".

2. Page 3, delete lines 6 to 9 and substitute: "is in community placement. Disclosures under this subdivision shall be for the purposes of investigating allegations of known or suspected child abuse or neglect and providing services to a person who is the subject of the report. In making its"

social service and medical needs and the provision of needed social and medical services.

(1) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) An agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect;

(viii) A person about whom a report has been made, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without information identifying individuals named in a report or record, unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval, and the child, through his/her representative as cited in paragraph (i) of this section, gives permission to release the information.

(3) If a State chooses, it may authorize by statute disclosure to additional persons and agencies, as determined by the State, for the purpose of carrying out background and/or employment-related screening of individuals who are or may be engaged in specified categories of child related activities or employment. Any information disclosed for this purpose is subject to the confidentiality requirements in paragraph (1)(1) and may be subject to additional safeguards as determined by the State.

(4) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(5) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

[48 FR 3702, Jan. 26, 1983, as amended at 60 FR 14887, April 15, 1995; 52 FR 3905, Feb. 6, 1987; 53 FR 27639, July 5, 1990].

§ 1340.15 Services and treatment for disabled infants.

(a) *Purpose.* The regulations in this section implement certain provisions of the Act, including section 107(b)(10)

governing disabled condition

"(b) Def neglect" adequate the defin glect" in § 1340.2(d) cal negle ited to, indicated fant with

(2) The cally ind failure to threaten! treatment trition,

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State of Wisconsin
1999 - 2000 LEGISLATURE

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ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 144

an allegation of
suspected child abuse or neglect or unborn child abuse
or providing services to a person who is the subject
of the report

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 5: delete "has".

3 2. Page 3, line 6: delete lines 6 to 9 and substitute "is subject to community
4 placement for purposes of investigating, ~~faking an action, making a decision,~~
5 ~~reviewing an action taken or reviewing a decision made relating to a violation or an~~
6 ~~alleged violation by a person who is subject to community placement of a condition~~
7 ~~of that community placement). In making its".~~

8 (END)