



2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB284)

Received: **09/08/2005**

Received By: **gmalaise**

Wanted: **09/09/2005**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**

By/Representing: **Jennifer Stegall**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - abuse and neglect
Children - day care
Children - out-of-home placement
Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Roessler@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Deletion of neglect by caregiver; definition of relative for purposes of day care licensing; disclosure of information to relative caregivers; status of relatives after TPR

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>
/?	gmalaise 09/08/2005	wjackson 09/08/2005		_____			
/1			chaugen 09/09/2005	_____	lemery 09/09/2005	lemery 09/09/2005	
/2	gmalaise	wjackson	rschluet	_____	Inorthro	Inorthro	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	09/13/2005	09/13/2005	09/13/2005 _____		09/13/2005	09/13/2005	
/3	gmalaise 09/14/2005	wjackson 09/14/2005	jfrantze 09/14/2005 _____		lnorthro 09/14/2005	lnorthro 09/14/2005	

FE Sent For:

<END>

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Table with 8 columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. It tracks the drafting process across three versions (1/?, 1/1, 1/2) involving multiple drafters and dates.

Handwritten signatures and dates: 9/14, 9/14

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	09/13/2005	09/13/2005	09/13/2005 _____		09/13/2005	09/13/2005	

1/3 WJ 9/14

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/?	gmalaise 09/08/2005	wjackson 09/08/2005					
/1		1/2wj 9/13	chaugen 09/09/2005		lemery 09/09/2005	lemery 09/09/2005	

9/13
26

FE Sent For:

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Extra Copies: *Wlj*

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/?	gmalaise	<i>1 Wlj 9/8</i>	<i>ch 9/9</i>	<i>ch 9/9</i>			

FE Sent For:

<END>

Malaise, Gordon

From: Stegall, Jennifer
Sent: Tuesday, September 06, 2005 2:36 PM
To: Hermes, Ron
Cc: Malaise, Gordon; Rose, Laura
Subject: SB 284

Hi,

The Health Committee is going to exec on SB 284 on Sept. 15th.

Here are the issues that need to be addressed:

- (1) Amend the bill to delete references to neglect by a noncaregiver.
- (2) Amend the definition of "neglect" to say "failure on the part of a caregiver" in order to align that definition with the definition of "caregiver."
- (3) Amend the bill to provide an exception to the expanded definition of a relative as it relates to day care licensing.
- (4) Allow for sharing of information about a child that will or may be placed with relatives in the same manner that the agency can, under current law, share information with licensed foster parents who will be placed with that family.
- (5) Clarify that relatives of a child are still relatives after a termination of parental rights until an adopting is finalized.
- (6) Amend to expand the information provided to foster parents and other caregivers about a child in their care.

I will forward you an e-mail from Gordon Malaise (drafter) regarding numbers 1 and 2. Also, Sen. Roessler would like the Department to work with Ed Schilling from FDL County Social Services on number 6. I will share the testimony you provided with the WI. Counties Association to get input from them regarding the suggested changes as well.

Given that we need the amendment ready for next Thursday, I plan to call Gordon today with the needed changes. I will give him the information on numbers 1-5 and ask him to hold on doing anything with number 6 until the Department and Ed Schilling have a chance to talk.

Please let me know as soon as possible if the Department has any concerns.

Thanks,

Jennifer

Malaise, Gordon

From: Stegall, Jennifer
Sent: Tuesday, September 06, 2005 3:00 PM
To: Malaise, Gordon
Cc: Rose, Laura; Hermes, Ron
Subject: SB 284

Attachments: Stegall, Jennifer.vcf; RE: SB 284; testimony

Hi Gordon,

Per our conversation, I have attached the e-mail you sent Laura Rose and I regarding the definition of "neglect." Senator Roessler likes your suggestions and would like those included in the substitute amendment. You suggested:

- (1) The bill should be amended to delete references to neglect by a noncaregiver in Sections 24 and 25.
- (2) It would help to clarify the statutes to amend the definition of "neglect" to say "failure on the part of a caregiver" in order to align that definition with the definition of "caregiver."

The Department of Health and Family Services suggested several additional modifications that Senator Roessler agrees should be included in the sub. amendment. These changes are detailed in the DHFS testimony which I have attached to this e-mail. I have briefly listed the additional changes below along with the page number you can find the issue discussed in the Department's testimony.

- (1) Amend the bill to provide an exception to the expanded definition of a relative as it relates to day care licensing (bottom of page 2).
- (2) Allow for sharing of information about a child that will or may be placed with relatives in the same manner that the agency can, under current law, share information with licensed foster parents who will be placed with that family (bottom of page 3).
- (3) Clarify that relatives of a child are still relatives after a termination of parental rights until an adopting is finalized (bottom of page 3).

On page 4 of the Department's testimony, the following change is suggested: Amend to expand the information provided to foster parents and other caregivers about a child in their care. Senator Roessler has encouraged the Department and FDL County to work on this issue to figure out if there is middle ground. Therefore, we may need to include some language relating to this change in the substitute amendment. As soon as I have more specifics for you on this piece, I will let you know.

The Senate Health Committee is scheduled to meet on September 15th to exec. SB 284. We will need the substitute amendment by that date. I am sorry about the short notice. The decision was just made today.

Please contact me with any questions or concerns.

Thanks for you help.

Jennifer

Jennifer Stegall
Office of Senator Carol Roessler
608-266-5300/1-888-736-8720
Jennifer.Stegall@legis.state.wi.us



Stegall,
Jennifer.vcf (4 KB)



RE: SB 284



testimony

Malaise, Gordon

From: Stegall, Jennifer
Sent: Thursday, August 25, 2005 3:34 PM
To: Malaise, Gordon; Rose, Laura
Subject: RE: SB 284

Thanks for taking a look at this issue. I will touch base with you on Friday or Monday to let you know if Sen. Roessler wants to have an amendment drafted now or wait until after the hearing to see if we need any other changes.

Thanks again!!

Jennifer

-----Original Message-----

From: Malaise, Gordon
Sent: Thursday, August 25, 2005 1:02 PM
To: Rose, Laura; Stegall, Jennifer
Subject: RE: SB 284

Jennifer and Laura:

I agree with Laura that Cathy's point is well taken. As Cathy and Laura point out, "neglect" is defined at s. 48.981 (1) (d) as the failure . . . on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child . . . to provide necessary care . . ." and those persons are included in the definition of "caregiver" at s. 48.981 (1) (am) 1., 2., 3., and 7. Accordingly, only a caregiver may neglect a child, which only makes sense because a noncaregiver has no duty to provide necessary care, food, clothing, medical or dental care or shelter for a child.

Accordingly, the bill should be amended to delete references to neglect by a noncaregiver in SECTIONS 24 and 25. Also, it would help clarify the statutes to amend the definition of "neglect" to say "failure on the part of a caregiver" in order to align that definition with the definition of "caregiver."

Gordon

-----Original Message-----

From: Rose, Laura
Sent: Thursday, August 25, 2005 11:56 AM
To: Stegall, Jennifer; Malaise, Gordon
Subject: RE: SB 284

Hi, Jennifer and Gordon,

The definition of neglect doesn't refer specifically only to "caregivers" as the only people who can commit neglect. However, the persons listed in the definition of neglect (parent, guardian, legal custodian, or other person exercising temporary or permanent control over a child) are also all listed under the definition of "caregiver". Therefore, it seems as though the intent of the neglect definition is that it should apply only to caregivers. Maybe the definition of neglect should be modified to clarify this intent. Gordon, what do you think? And, if this is truly the case, then Cathy's point is well taken.

Hope this isn't too garbled. . .

Laura

-----Original Message-----

From: Stegall, Jennifer
Sent: Thursday, August 25, 2005 10:54 AM

To: Rose, Laura; Malaise, Gordon
Subject: FW: SB 284

Laura and Gordon,

Below are comments from Cathy Connolly from the Department of Health and Family Services regarding Senate Bill 284. Do you agree with her concern?

Thanks,

Jennifer Stegall
Office of Senator Carol Roessler
608-266-5300/1-888-736-8720
Jennifer.Stegall@legis.state.wi.us

-----Original Message-----

From: Connolly, Cathleen
Sent: Monday, August 22, 2005 4:12 PM
To: Stegall, Jennifer
Cc: Dibble, Mary; Mitchell, Mark
Subject: SB 284

Hi Jennifer,

Section 24 and 25 of SB 28 creates language: 48.981(3)(a)2d. "The sheriff or police department may refer to the county department....a case reported to the sheriff or police department in which a person who is not a caregiver is

suspected of abuse or neglect or of threatened abuse or neglect of a child;"

and Section 25 says

"If the agency determines that a person who is not a caregiver is suspected of abuse or neglect or of threatened"

The problem is that by statutory definition, neglect can only be committed by a caregiver [parent, guardian, legal custodian or other person with temporary or permanent control over a child, s. 48.981(d)]. There is no such thing as neglect by a noncaregiver. We think the sections should just refer to abuse, not neglect.

If the drafter has a different analysis I would be happy to know.
Thanks Cathy

Malaise, Gordon

From: Hermes, Ron
Sent: Thursday, September 01, 2005 3:51 PM
To: Stegall, Jennifer
Subject: testimony

Attachments: DHFS SB 285 testimony.pdf; DHFS SB 284 testimony.pdf



DHFS SB 285 testimony.pdf (32 ...
DHFS SB 284 testimony.pdf (55 ...

Hi Jennifer-
Attached is a copy of both testimonies I gave yesterday.

Ron



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

**2005 Senate Bill 284
Testimony
Department of Health and Family Services
Before the
Senate Committee on Health, Children, Families, Aging and Long Term Care
August 31, 2005**

Good afternoon, Chairwoman Roessler and committee members. Thank you for the opportunity to testify on Senate Bill 284. My name is Ron Hermes and I'm the Legislative Liaison for the Department of Health and Family Services.

The Department supports the following four areas of change to the Children's Code and Juvenile Justice Code included in SB 284:

- Abuse investigations of non-caregivers;
- The definition of relative;
- When a court may hold a child in custody without a petition alleging a child is in need of protection or services being filed; and
- When a court may place a child in the guardianship of a county other than Milwaukee.

Under current law when a report of suspected or threatened abuse or neglect of a child is received by the sheriff or police department it must be referred to the local child welfare agency. The child welfare agency must then initiate an investigation of referrals to determine if the child is in need of protection. SB 284 makes the following changes to child abuse investigations and response:

- Permits instead of requires a sheriff or police department to refer to a child welfare agency a case in which the person suspected of abuse or neglect is not a caregiver;
- Permits, instead of requires, the child welfare agency to initiate an investigation into a report of non-caregiver abuse; and
- Requires the sheriff or police department to refer and the child welfare agency to investigate all referrals in cases where:
 - The caregiver is suspected of the abuse or neglect;
 - The caregiver is suspected of failing to protect the child from abuse or neglect;
 - It cannot be determined who abused or neglected the child; and/or
 - There is reason to suspect that an unborn child has been abused or there is reason to believe that an unborn child is at substantial risk of abuse.

The Department believes that permitting law enforcement to refer and child welfare agencies to investigate cases involving non-caregiver abuse will allow more effective and efficient use of resources available to child protective services. Currently, child welfare agencies do not have the authority to intervene with the maltreater in non-caregiver cases. Therefore, resources are being used to investigate cases that the agency does not have authority to intervene in.

Wisconsin.gov

August 31, 2005

Page 2

Information obtained from the statewide e-WISACWIS reporting and case management system indicates that in calendar years 2002, 2003, and 2004, over 90% of the non-caregiver cases were closed at the conclusion of the initial assessment, or investigation by the CPS staff. It was determined that the family would protect the child from further harm and meet whatever needs the child had as a result of the abuse, without CPS taking additional action.

This provision also allows flexibility at the local level for law enforcement and child welfare agencies. Law enforcement will have the discretion to refer cases that need child welfare services and child welfare agencies will have the discretion to be involved in cases where a child or family would benefit from child welfare involvement.

This provision may also reduce the possibility that child welfare investigations could interfere with law enforcement investigations. A child protection worker is required to inform a maltreater of the allegations against him or her at the first meeting. That may or may not be the strategy used by law enforcement early in their investigation.

SB 284 also expands the definition of relative in both Chapters 48 and 938 and substantially conforms the various definitions of relative with a few exceptions. Under current law, the general definition of relative under Chapter 48.02 (15) includes: parent, grandparent, great-grand, stepparent, brother, sister, first cousin, nephew, niece, uncle or aunt, whether the relationship is by blood, marriage, or adoption.

The definition is expanded to include, a stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, second cousin, step-uncle, step-aunt, any person of a preceding generation as denoted by the prefix grand, great, or great-great, and the spouse of any relative, even if the marriage is terminated by death or divorce. This change may result in more available placements for children with their extended families.

Under SB 284, all current definitions are conformed to the expanded definition with the following exceptions:

- Parents are excluded from the definition of a kinship care relative, long-term kinship care relative, and relative for the purposes of eligibility to be appointed as the guardian of a child in need of protection or services.
- The definition of relative under the Interstate Compact on the Placement of Children is not changed.

The provision will provide more uniformity in child welfare programs. For example, currently a child can be placed with a stepbrother if the child is under the Kinship Care program, but if the payments end, it would be an illegal placement because a stepbrother is not a relative as defined in s. 48.02 (15), Stats.

We are interested in exploring a possible exception to the expanded definition to as it relates to day care licensing. The expansion could lead to an increased number of unlicensed family day care settings.

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Page 3

SB 284 adds a ground for extending custody of a child for 72 hours prior to the filing of a CHIPS petition. Under current law a child taken into custody and not released must have a hearing within 48 hours of the time the decision was made to take the child into custody, exclusive of Saturdays, Sundays and legal holidays, and a CHIPS petition must be filed at the time of the hearing. If a hearing is held and the court finds certain conditions exist then the court may hold the child in custody for an additional 72 hours exclusive of Saturdays, Sundays and legal holidays.

SB 284 adds as one of the grounds for extending custody, that there is probable cause to believe that additional time is required to determine whether the filing of a CHIPS petition is necessary. Only one 72 hour extension to file the petition is allowed under any ground. Allowing caseworkers to keep a child in custody an additional 72 hours to investigate a case before filing a petition should result in more accurate and complete petitions or in an earlier return of the child to his or her home because the caseworker is able to determine that a petition is unnecessary.

SB 284 allows a juvenile court, following the termination of parental rights, to transfer guardianship and custody of a child to a county department, other than Milwaukee County, for placement of the child for adoption by the child's foster parent or treatment foster parent, only if the county department has agreed to accept guardianship and custody of the child and the foster parent or treatment foster parent has agreed to adopt.

The Department believes that current law, under 48.57(1)(hm), is clear that courts may only order counties to assume guardianship of a child when a foster care or treatment foster care placement is to be converted into an adoptive placement. However, we do not oppose the clarifying language.

The Department is also requesting the bill be amended to add the following three proposals that we believe will help move children to permanency more quickly and ensure their needs are adequately met while in out-of-home care.

First, we would like to propose an amendment that will allow sharing information about a child that will or may be placed with relatives in the same manner that the agency can, under current law, share information with licensed foster parents about a child who will or may be placed with that family. When a social worker is seeking a placement for a child, it is important that the worker be able to communicate information to the placement family to ensure that the child and the family are protected.

Second, we propose an amendment clarifying that relatives of a child are still relatives after a termination of parental rights until an adoption is finalized. After the adoption is completed birth relatives would not be considered relatives of the adopted child. This does reflect the state's current operating standard. We believe this helps to meet state and federal requirements which dictate that relatives be considered as out-of-home care and adoptive placements. Decisions on placement can occur after termination of parental rights, and this change will ensure that relatives continue to be given consideration as temporary or permanent placements for a child.

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Page 4

Lastly, an amendment that expands the information provided to foster parents and other caregivers about a child in their care. Currently foster parents and other caregivers must be given notice of court hearings and permanency plan reviews that pertain to a child in their home. However, the social worker and the court are not authorized to share court orders and permanency plans with foster parents or other caregivers. The intent of this proposal is to allow foster parents and other caregivers to receive appropriate information so they are better able to meet the needs of children placed in their home.

We acknowledge that some counties are concerned about sharing too much information about the birth parents with the foster parents. We understand that in some counties, like Fond du Lac County, arrangements are made to share relevant information with the foster parents without sharing the entire permanency plan. We are willing to work with Fond du Lac County and others to ensure that foster parents and other caregivers are receiving the appropriate information they need to adequately care for the child in their care and to prepare the child for a permanent placement.

Again, thank you for the opportunity to testify on SB 284 and for giving consideration to the Department's proposed amendments. I would be happy to answer any questions.

For further information please contact:

Ron Hermes

Office of the Secretary

Department of Health and Family Services

P.O. Box 8916

Madison, WI 53708-8916

Phone: 608-266-3262

E-Mail: HermeR@dhfs.state.wi.us

2005

Date (time) needed Fr. 9/9

LRBs 020 / 1

**SUBSTITUTE AMENDMENT
[TO A BILL]**

GMM: Wlj :

Use the appropriate components and routines developed for substitute amendments.

S **A** (SUBSTITUTE AMENDMENT)

TO 2005 **S****B** ~~AB~~ 284 (LRB ~~_____~~)

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; **relating to:**

.....
.....
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[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.

D