



## 2007 SENATE BILL 542

February 27, 2008 - Introduced by Senator DARLING, cosponsored by Representatives TOWNSEND, A. WILLIAMS, GRIGSBY and BERCEAU. Referred to Committee on Tax Fairness and Family Prosperity.

1     **AN ACT** *to amend* 48.981 (9); and *to repeal and recreate* 48.981 (7) (cr) of the  
2             statutes; **relating to:** public disclosure of certain information when abuse or  
3             neglect results in a child dying or being placed in serious or critical condition  
4             or when a child under 13 years of age has been the victim of sexual assault.

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### *Analysis by the Legislative Reference Bureau*

#### ***Introduction***

Under current federal law, to be eligible for a grant under the Child Abuse Prevention and Treatment Act (commonly referred to as "CAPTA"), a state must have in effect a state plan that includes, among other things, provisions that allow for public disclosure of findings and information about a case of child abuse or neglect that has resulted in a child fatality or near fatality. This bill eliminates the current state law that under certain circumstances *permits* disclosure to the general public of certain information relating to a child who has died or been placed in serious or critical condition as a result of suspected abuse or neglect (child fatality or near fatality) and instead *requires* certain information to be transmitted to the legislature and made available to the public when an incident occurs in which a child has died or been placed in serious or critical condition as a result of suspected abuse or neglect or in which a child under 13 years of age has been the victim of sexual assault (egregious incident).

#### ***Current law***

***When disclosure is permitted.*** Under current law, a county department of human services or social services or, in Milwaukee County, the Department of Health

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and Family Services (DHFS) or a child welfare agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (agency) is permitted to disclose to the general public a written summary of certain information relating to a child fatality or near fatality if any of the following circumstances apply:

1. 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.

2. 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.

3. 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.

***What disclosure is permitted.*** The information that may be disclosed in cases of a child fatality or near fatality is as follows:

1. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect; a statement of the determination made by the agency as to whether abuse or neglect occurred and the basis for that determination; a statement of whether any services were offered or provided to the child, the child's family, or the person suspected of the abuse or neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as that child.

2. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report; a statement of the determination made by the agency as to whether abuse or neglect occurred and the basis for that determination; a statement of whether any services were offered or provided to the child, the child's family, or the person suspected of the abuse or neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as that child.

3. Whether the child or the child's family has received any child welfare services prior to the report of 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.

***When disclosure is not permitted.*** 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 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, 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.

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3. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of the proceeding.

4. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

5. 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.

6. Disclosure of the information would reveal the identity of the child, the child's siblings, the child's parents, guardian, or legal custodian, or any other person residing in the same dwelling as the child.

7. Disclosure of the information would reveal the identity of the person who reported the suspected abuse or neglect of the child or any other person who provides information relating to that suspected abuse or neglect.

***The bill***

***When disclosure is required.*** This bill eliminates current law relating to disclosure to the general public of information about a child fatality or near fatality. Instead, the bill requires an agency that has reason to suspect that an egregious incident has occurred to provide to the subunit of DHFS responsible for statewide oversight of child abuse and neglect programs, within two working days after determining that an egregious incident is suspected to have occurred, the age, gender, and race or ethnicity of the child and the date of the egregious incident; the suspected cause of the death or serious or critical condition of the child (if the egregious incident resulted in the death or serious or critical condition of the child); a brief history of the child welfare services offered or provided to the child, the child's family, and the person suspected of the abuse or neglect; a statement of whether the child was placed in his or her home or outside the home when the egregious incident occurred; and the identity of any law enforcement agency that referred the report of the egregious incident to the agency and of any law enforcement agency, district attorney, or other officer or agency to which the agency referred the report of the egregious incident.

The subunit of DHFS then is required to review that information, together with any information about the child, the child's family, and the person suspected of the abuse or neglect that is maintained in the statewide automated child welfare information system and any additional information requested from the agency, and, in collaboration with the agency, to prepare a summary report about the egregious incident. Within six weeks after receiving the information from the agency, the subunit of DHFS must transmit the summary report to the legislature and, on transmitting the summary report, must make the summary report available to the public. DHFS must also include in its annual report to the governor and the legislature on the status of the state's child abuse and neglect programs a cumulative report of all summary reports prepared under the bill through the last calendar year.

***What disclosure is required.*** If the child was placed in his or her home when the egregious incident occurred, the summary report must contain all of the following:

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1. Information about the child, including the age, gender, and race or ethnicity of the child, a description of the child's family, and, if relevant to the egregious incident, a description of any special needs of the child.

2. A statement of whether any child welfare services were being provided to the child, the child's family, or the person suspected of the abuse or neglect, or whether the child, any member of the child's family, or the person suspected of the abuse or neglect was the subject of a referral to the agency for services, at the time of the egregious incident.

3. A summary of all involvement of the child's parents and of the person suspected of the abuse or neglect in receiving child welfare services in the five years preceding the date of the egregious incident.

4. A summary of any actions taken by the agency with respect to the child, the child's family, and the person suspected of the abuse or neglect, including any referrals by the agency of the child, any member of the child's family, or the person suspected of the abuse or neglect for services.

5. The identity of any law enforcement agency that referred the report of the egregious incident to the agency and of any law enforcement agency, district attorney, or other officer or agency to which the agency referred the report of the egregious incident.

6. If the egregious incident resulted in the death or serious or critical condition of the child, the suspected cause of the death or serious or critical condition of the child, as reported by the agency.

7. The findings on which the agency bases its reasonable suspicion that an egregious incident has occurred, including any material circumstances leading to the death, serious or critical condition, or sexual assault of the child.

8. A summary of any services that have been provided to the child's family since the date of the egregious incident.

9. If appropriate, recommendations for changes in state or local policies, procedures, or programs, including changes in statutes or rules, to prevent egregious incidents.

If the child was placed in an out-of-home placement at the time of the egregious incident, the summary report must contain all of the following:

1. Information about the child, including the age, gender, and race or ethnicity of the child and, if relevant to the egregious incident, a description of any special needs of the child.

2. A description of the out-of-home placement, including the basis for the decision to place the child in that placement.

3. A summary of the child's out-of-home placement history.

4. A summary of any actions taken by the agency relating to the supervision of the child's out-of-home placement.

5. A description of all other persons residing in the out-of-home placement.

6. The licensing history of the out-of-home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed, and a summary of all violations by the licensee of any provisions of licensure or rules promulgated by DHFS and of any other actions by the licensee or

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an employee of the licensee that constitute a substantial failure to protect and promote the health, safety, and welfare of a child.

7. The identity of any law enforcement agency that referred the report of the egregious incident to the agency and of any law enforcement agency, district attorney, or other officer or agency to which the agency referred the report of the egregious incident.

8. If the egregious incident resulted in the death or serious or critical condition of the child, the suspected cause of the death or serious or critical condition of the child, as reported by the agency.

9. The findings on which the agency bases its reasonable suspicion that an egregious incident has occurred, including any material circumstances leading to the death, serious or critical condition, or sexual assault of the child.

10. If appropriate, recommendations for changes in state or local policies, procedures, or programs, including changes in statutes or rules, to prevent egregious incidents.

***What disclosure is prohibited.*** A summary report may not include any of the following:

1. Any information that would reveal the identity of the child who is the subject of the summary report, any member of the child's family, or any caregiver of the child.

2. Any information that would reveal the identity of any employee of the agency.

3. Any information that would reveal the identity of the reporter of the egregious incident or of any other person who provides information relating to the egregious incident.

4. Any confidential medical, psychological, or psychiatric information relating to the child or to any member of the child's family that is not relevant to the egregious incident.

5. Any information the disclosure of which is not authorized by state law or rule or federal law or regulation.

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

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

1           **SECTION 1.** 48.981 (7) (cr) of the statutes is repealed and recreated to read:  
2           48.981 (7) (cr) 1. In this paragraph, "egregious incident" means an incident in  
3           which a child has died or been placed in serious or critical condition, as determined  
4           by a physician, as a result of any suspected abuse or neglect, or in which a child under

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1 13 years of age has been the victim of sexual assault in violation of s. 948.02 (1), that  
2 has been reported under this section.

3 2. Notwithstanding par. (a), if an agency that receives a report under sub. (3)  
4 has reason to suspect that an egregious incident has occurred, within 2 working days  
5 after determining that an egregious incident is suspected to have occurred the  
6 agency shall provide all of the following information to the subunit of the department  
7 responsible for statewide oversight of child abuse and neglect programs:

8 a. The name of the agency and the name of a contact person at the agency.

9 b. Information about the child, including the age, gender, and race or ethnicity  
10 of the child and the date of the egregious incident.

11 c. If the egregious incident resulted in the death or serious or critical condition  
12 of the child, the suspected cause of the death or serious or critical condition of the  
13 child.

14 d. A brief history of the services under this chapter offered or provided to the  
15 child, the child's family, and the person suspected of the abuse or neglect.

16 e. A statement of whether the child was placed in his or her home or outside  
17 the home when the egregious incident occurred.

18 f. The identity of any law enforcement agency that referred the report of the  
19 egregious incident to the agency and of any law enforcement agency, district  
20 attorney, or other officer or agency to which the agency referred the report of the  
21 egregious incident.

22 3. The subunit of the department that receives the information provided under  
23 subd. 2. shall review that information, together with any information about the child,  
24 the child's family, and the person suspected of the abuse or neglect that is maintained  
25 in the statewide automated child welfare information system and any additional

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1 information requested from the agency that provided the information under subd.  
2 2., and, in collaboration with that agency, shall prepare a summary report that  
3 contains the information specified in subd. 4. or 5., whichever is applicable. Within  
4 6 weeks after receiving the information provided under subd. 2., that subunit of the  
5 department shall transmit the summary report to the legislature under s. 13.172 (2)  
6 and, on transmitting the summary report, shall make the summary report available  
7 to the public. The department shall also include in the annual report under sub. (9)  
8 a cumulative report of all summary reports prepared under this subdivision through  
9 the last calendar year.

10 4. If the child was placed in his or her home when the egregious incident  
11 occurred, the summary report under subd. 3. shall contain all of the following:

12 a. Information about the child, including the age, gender, and race or ethnicity  
13 of the child, a description of the child's family, and, if relevant to the egregious  
14 incident, a description of any special needs of the child.

15 b. A statement of whether any services under this chapter were being provided  
16 to the child, the child's family, or the person suspected of the abuse or neglect, or  
17 whether the child, any member of the child's family, or the person suspected of the  
18 abuse or neglect was the subject of a referral to the agency for services, at the time  
19 of the egregious incident.

20 c. A summary of all involvement of the child's parents and of the person  
21 suspected of the abuse or neglect in receiving services under this chapter in the 5  
22 years preceding the date of the egregious incident.

23 d. A summary of any actions taken by the agency with respect to the child, the  
24 child's family, and the person suspected of the abuse or neglect, including any

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1 referrals by the agency of the child, any member of the child's family, or the person  
2 suspected of the abuse or neglect for services.

3 e. The identity of any law enforcement agency that referred the report of the  
4 egregious incident to the agency and of any law enforcement agency, district  
5 attorney, or other officer or agency to which the agency referred the report of the  
6 egregious incident.

7 f. If the egregious incident resulted in the death or serious or critical condition  
8 of the child, the suspected cause of the death or serious or critical condition of the  
9 child, as reported by the agency under subd. 2. c.

10 g. The findings on which the agency bases its reasonable suspicion that an  
11 egregious incident has occurred, including any material circumstances leading to the  
12 death, serious or critical condition, or sexual assault of the child.

13 h. A summary of any services that have been provided to the child's family since  
14 the date of the egregious incident.

15 i. If appropriate, recommendations for changes in state or local policies,  
16 procedures, or programs, including changes in statutes or rules, to prevent egregious  
17 incidents.

18 5. If the child was placed in an out-of-home placement at the time of the  
19 egregious incident, the summary report under subd. 3. shall contain all of the  
20 following:

21 a. Information about the child, including the age, gender, and race or ethnicity  
22 of the child and, if relevant to the egregious incident, a description of any special  
23 needs of the child.

24 b. A description of the out-of-home placement, including the basis for the  
25 decision to place the child in that placement.

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- 1           c. A summary of the child's out-of-home placement history.
- 2           d. A summary of any actions taken by the agency relating to the supervision  
3 of the child's out-of-home placement.
- 4           e. A description of all other persons residing in the out-of-home placement.
- 5           f. The licensing history of the out-of-home placement, including the type of  
6 license held by the operator of the placement, the period for which the placement has  
7 been licensed, and a summary of all violations by the licensee of any provisions of  
8 licensure under s. 48.70 (1) or rules promulgated by the department under s. 48.67  
9 and of any other actions by the licensee or an employee of the licensee that constitute  
10 a substantial failure to protect and promote the health, safety, and welfare of a child.
- 11           g. The identity of any law enforcement agency that referred the report of the  
12 egregious incident to the agency and of any law enforcement agency, district  
13 attorney, or other officer or agency to which the agency referred the report of the  
14 egregious incident.
- 15           h. If the egregious incident resulted in the death or serious or critical condition  
16 of the child, the suspected cause of the death or serious or critical condition of the  
17 child, as reported by the agency under subd. 2. c.
- 18           i. The findings on which the agency bases its reasonable suspicion that an  
19 egregious incident has occurred, including any material circumstances leading to the  
20 death, serious or critical condition, or sexual assault of the child.
- 21           j. If appropriate, recommendations for changes in state or local policies,  
22 procedures, or programs, including changes in statutes or rules, to prevent egregious  
23 incidents.
- 24           6. A summary report under subd. 3. may not include any of the following:

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1           a. Any information that would reveal the identity of the child who is the subject  
2 of the summary report, any member of the child's family, or any caregiver of the child.

3           b. Any information that would reveal the identity of any employee of the agency  
4 that provided the information under subd. 2.

5           c. Any information that would reveal the identity of a reporter or of any other  
6 person who provides information relating to the egregious incident.

7           d. Any confidential medical, psychological, or psychiatric information relating  
8 to the child or to any member of the child's family that is not relevant to the egregious  
9 incident.

10          e. Any information the disclosure of which is not authorized by state law or rule  
11 or federal law or regulation.

12          7. Any person acting in good faith in providing information under subd. 2. or  
13 in preparing, transmitting, or making available a summary report under subd. 3. is  
14 immune from any liability, civil, or criminal, that may result by reason of those  
15 actions. For purposes of any proceeding, civil or criminal, the good faith of a person  
16 in providing information under subd. 2. or in preparing, transmitting, or making  
17 available a summary report under subd. 3. shall be presumed.

18          **SECTION 2.** 48.981 (9) of the statutes is amended to read:

19          48.981 (9) ANNUAL REPORTS. Annually, the department shall prepare and  
20 transmit to the governor, and to the legislature under s. 13.172 (2), a report on the  
21 status of child abuse and neglect programs and on the status of unborn child abuse  
22 programs. The report shall include a full statistical analysis of the child abuse and  
23 neglect reports, and the unborn child abuse reports, made through the last calendar  
24 year, an evaluation of services offered under this section and their effectiveness, and  
25 recommendations for additional legislative and other action to fulfill the purpose of

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1 this section. The report shall also include a cumulative report of all summary reports  
2 of egregious incidents prepared under sub. (7) (cr) 3. through the last calendar year.  
3 The department shall provide statistical breakdowns by county, if requested by a  
4 county.

**SECTION 3. Initial applicability.**

6 (1) EGREGIOUS INCIDENT REPORTING. This act first applies to an egregious  
7 incident, as defined in section 48.981 (7) (cr) 1. of the statutes, as affected by this act,  
8 that occur on the effective date of this subsection.

**SECTION 4. Effective date.**

10 (1) EGREGIOUS INCIDENT REPORTING. This act takes effect on the first day of the  
11 3rd month beginning after publication.

12 (END)