2013 DRAFTING REQUEST

Bill

Received:	**11/18/2013**	Received By:	**mduchek**
Wanted:	**As time permits**	Same as LRB:	**-1867**
For:	**Amy Loudenbeck (608) 266-9967**	By/Representing:	**Theresa**
May Contact:		Drafter:	**mduchek**
Subject:	**Health - miscellaneous**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Loudenbeck@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Child death review council and teams

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	mduchek 11/18/2013	kfollett 11/18/2013	rschluet 11/18/2013	_____ _____	mbarman 11/18/2013	mbarman 11/20/2013	State Crime

FE Sent For:

@ intro

<END>

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/1	mduchek	11/5 f 11/18	11/5 f 11/18	_____ _____			State Crime

FE Sent For:

<END>

State of Wisconsin
2013 - 2014 LEGISLATURE

Companion RMR

LRB-3663/1
MED:kjf&wlj:rs

2013 BILL

1 AN ACT ***to amend*** 48.396 (1), 48.396 (2) (a), 48.78 (2) (a), 48.981 (7) (a) 15., 253.01,
2 938.396 (1) (a), 938.396 (2) and 938.78 (2) (a); and ***to create*** 15.197 (15), 19.85
3 (1) (j), 51.30 (4) (b) 29., 69.20 (3) (b) 6., 118.125 (2) (o), 146.82 (2) (a) 23., 227.01
4 (13) (uv), subchapter I (title) of chapter 253 [precedes 253.01], subchapter II of
5 chapter 253 [precedes 253.30] and 905.17 of the statutes; **relating to:** creating
6 a statewide program to review child deaths and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill generally provides for the establishment of a child death review program within the Department of Health Services (DHS), a Child Death Review Council (council), and local review teams to conduct child death reviews. Specifically, the bill does all of the following:

Child death review program operated by DHS

The bill requires DHS to develop and maintain a statewide program to review the deaths of children in this state for the purpose of reducing preventable childhood deaths. DHS must do all of the following as part of the program: 1) provide support to the council; 2) collect data pertaining to childhood deaths, including by entering into data–sharing agreements with other state agencies; 3) cooperate with other state agencies to develop and implement programs and policies to prevent child deaths in this state; and 4) after considering any recommendations of the council,

provide certain information to the public about childhood deaths. The bill also requires DHS, after considering any recommendations received from the council, to assist local child death review teams in various ways, including by adopting standards and protocols for use by the recognized local review teams. The bill allows DHS to enter into a contract to perform its duties under the statewide program.

Child Death Review Council

The bill establishes the council within DHS, which must consist of: 1) appointees from various state agencies; 2) one or more representatives of federally recognized American Indian tribes; and 3) at least 17 other members who have demonstrated a continuing interest in the problem of unexplained or preventable childhood deaths. The bill requires the council to: 1) collect and review data pertaining to child deaths that occur in this state; 2) identify trends in childhood deaths in this state; 3) make certain reports and recommendations to the governor, the legislature, DHS, and applicable state agencies related to interventions to prevent childhood deaths, matters related to unexpected or unexplained deaths among children, and data collected by the council and the council's policy recommendations following from that data; 4) make recommendations to DHS regarding assisting local review teams and establishing criteria and a process for recognizing local child death review teams; and 5) make information available to the public about the council and the council's role in public policy related to preventing childhood deaths.

The bill requires the council to review an individual child's death upon a request from a local child death review team recognized by DHS and also allows the council to review an individual child's death when no review is conducted by a recognized local review team.

Local child death review teams

The bill requires DHS to recognize local child death review teams for particular geographical areas in this state and requires local review teams so recognized to review the deaths of children that occur in the geographical area for which the team is recognized, except that the bill: 1) requires a recognized local review team to request that the council instead review a child's death when required by the standards and protocols established by DHS; and 2) allows a recognized local review team to review the death of a child that occurs outside of the geographical area for which the team is recognized under certain circumstances.

The bill requires recognized local review teams to: 1) follow and apply the standards and protocols established by DHS for child death reviews; 2) enter data collected in connection with the review of a child's death into a state–designated case reporting system; 3) identify trends in childhood deaths in the geographical area for which the team is recognized and work with local organizations to make recommendations related to interventions to prevent childhood deaths; and 4) share information with other recognized local review teams.

Records, confidentiality, and immunity

The bill allows the council or a recognized local review team, subject to certain restrictions under the bill and current law, to obtain various types of records that are otherwise not generally subject to disclosure under current law, including mental

health records, records in the possession of children's services agencies, court records of children and juveniles, reports of suspected child abuse or neglect, school records relating to individual pupils, health records, and certain vital records information.

The bill contains the following provisions with respect to confidentiality:

1. The bill provides that reviews of child deaths by the council or a recognized local review team may be conducted in closed session under the open meetings law.

2. The bill provides that information and records acquired by the council or a recognized local review team are confidential and not open to public inspection or copying under the public records law from a recognized local review team or the council. The bill requires all information presented in connection with the child death review and any opinions formed as a result of the child death review to be kept confidential, except for information shared between local review teams and local review teams and the council. The bill provides for a criminal penalty for any person who violates the confidentiality provision.

3. The bill creates a privilege in the rules of evidence for persons who participate in a child death review. Under the privilege, a person who participates in a child death review may refuse to disclose and to prevent any other person from disclosing any information provided or obtained or opinions formed or offered in the course of a child death review, except for information obtained independent of a child death review or information that is available for public inspection or copying under the public records law. Any person participating in a child death review may claim the privilege. Information for which the privilege is validly claimed may not be used in court or administrative proceedings.

Finally, the bill provides that any person participating in a child death review under the provisions created in the bill, including both a person conducting the child death review as well as a person providing information or records, is immune from any civil or criminal liability for any good faith act or omission in connection with that participation.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state*** 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.** 15.197 (15) of the statutes is created to read:

1 15.197 **(15)** CHILD DEATH REVIEW COUNCIL. (a) There is created in the
2 department of health services a child death review council consisting of all of the
3 following members:
4 1. The secretary of health services or his or her designee.
5 2. The secretary of children and families or his or her designee.
6 3. The attorney general or his or her designee.
7 4. The state superintendent of public instruction or his or her designee.
8 5. The secretary of transportation or his or her designee.
9 6. The secretary of natural resources or his or her designee.
10 7. One or more representatives of one or more federally recognized American
11 Indian tribes or bands in this state who are appointed by the secretary of health
12 services.
13 8. At least 17 other members who have demonstrated a continuing interest in,
14 or who have expertise that the secretary of health services determines is relevant to,
15 the problem of unexplained or preventable childhood deaths, appointed by the
16 secretary of health services.
17 **SECTION 2.** 19.85 (1) (j) of the statutes is created to read:
18 19.85 **(1)** (j) Review of a child's death by the child death review council or by
19 a recognized local review team, as defined in s. 253.30 (3).
20 **SECTION 3.** 48.396 (1) of the statutes is amended to read:
21 48.396 **(1)** Law enforcement officers' records of children shall be kept separate
22 from records of adults. Law enforcement officers' records of the adult expectant
23 mothers of unborn children shall be kept separate from records of other adults. Law
24 enforcement officers' records of children and the adult expectant mothers of unborn
25 children shall not be open to inspection or their contents disclosed except under sub.

(1b), (1d), (5), or (6) or s. 48.293 ~~or~~, 253.36, or 938.396 (2m) (c) 1p. or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child or adult expectant mother involved, to the confidential exchange of information between the police and officials of the public or private school attended by the child or other law enforcement or social welfare agencies, or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125, and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. This subsection does not apply to the confidential exchange of information between the police and officials of the tribal school attended by the child if the police determine that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1) (a). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

SECTION 4. 48.396 (2) (a) of the statutes is amended to read:

48.396 **(2)** (a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be entered in books or deposited in files kept for that purpose only. Those records shall

not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 938 or as required or permitted under this subsection, sub. (3) (b) or (c) 1g., 1m., or 1r. or (6), or s. 48.375 (7) (e) or 253.36.

SECTION 5. 48.78 (2) (a) of the statutes is amended to read:

48.78 **(2)** (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual who is or was in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d) or (5m) (d), 48.396 (3) (bm) or (c) 1r., 48.432, 48.433, 48.48 (17) (bm), 48.57 (2m), 48.93, 48.981 (7), 253.36, 938.396 (2m) (c) 1r., 938.51, or 938.78 or by order of the court.

SECTION 6. 48.981 (7) (a) 15. of the statutes is amended to read:

48.981 **(7)** (a) 15. A ~~child fatality~~ recognized local review team ~~recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department,~~ as defined in s. 253.30 (3), or the child death review council.

SECTION 7. 51.30 (4) (b) 29. of the statutes is created to read:

51.30 **(4)** (b) 29. To an authorized member of the child death review council or of a recognized local review team, as defined in s. 253.30 (3), upon an oral or written request from that person, if the individual is a deceased child whose death is the subject of review under subch. II of the ch. 253 and the individual's treatment records are relevant, as determined by the member, to the review of that death. A custodian of treatment records may initiate contact with the child death review council or a recognized local review team to inform the council or team of treatment records of a deceased child that may be relevant to the completion of a review of a child's death under subch. II of ch. 253. The recipient of any treatment records released under this

subdivision shall keep the records confidential, except that a member of a recognized local review team may share records released under this subdivision with the other members of that team, with another recognized local review team conducting a review of that child's death, or with the child death review council.

SECTION 8. 69.20 (3) (b) 6. of the statutes is created to read:

69.20 **(3)** (b) 6. The information will be used by the child death review council or a recognized local review team, as defined in s. 253.30 (3), for the purpose of reviewing the death of a child.

SECTION 9. 118.125 (2) (o) of the statutes is created to read:

118.125 **(2)** (o) Upon the written consent of an adult pupil or the parent or guardian of a minor pupil or to comply with a court order, the school district clerk or his or her designee shall make available to a recognized local review team, as defined in s. 253.30 (3), or the child death review council pupil records requested by the team or council if the pupil records involve or are relevant to, as determined by the team or council, the review of a child's death under subch. II of ch. 253.

SECTION 10. 146.82 (2) (a) 23. of the statutes is created to read:

146.82 **(2)** (a) 23. To the child death review council or a recognized local review team, as defined in s. 253.30 (3), for the purpose of reviewing the death of a child.

SECTION 11. 227.01 (13) (uv) of the statutes is created to read:

227.01 **(13)** (uv) Adopts standards and protocols under s. 253.31 (1) (e) 4.

SECTION 12. Subchapter I (title) of chapter 253 [precedes 253.01] of the statutes is created to read:

CHAPTER 253

SUBCHAPTER I

MATERNAL AND CHILD HEALTH

1 **SECTION 13.** 253.01 of the statutes is amended to read:

2 **253.01 Definition.** In this ~~chapter~~ subchapter, "division" means the division
3 within the department that has primary responsibility for health issues.

4 **SECTION 14.** Subchapter II of chapter 253 [precedes 253.30] of the statutes is
5 created to read:

6 **CHAPTER 253**

7 SUBCHAPTER II

8 CHILD DEATH REVIEWS

9 **253.30 Definitions.** In this subchapter:

10 **(1)** "Child" means an individual under the age of 18.

11 **(2)** "Council" means the child death review council.

12 **(3)** "Recognized local review team" means a local review team under s. 253.33
13 that is recognized by the department under s. 253.31 (1) (e) 1.

14 **253.31 Child death review program. (1)** The department shall develop and
15 maintain a statewide program to review the deaths of children in this state for the
16 purpose of reducing preventable childhood deaths. The department shall develop
17 the program to include the council and recognized local review teams. Under the
18 program, the department shall do all of the following:

19 (a) Provide professional and administrative support to the council.

20 (b) Collect data that pertains to childhood deaths, including by entering into
21 data–sharing agreements with other state agencies that collect similar data.

22 (c) Cooperate with other state agencies to develop and implement programs
23 and policies to prevent the deaths of children in this state.

24 (d) After considering any recommendations received from the council, provide
25 information to the public about the risk factors for and circumstances surrounding

1 childhood deaths in this state and about specific strategies to prevent childhood
2 deaths.
3 (e) After considering any recommendations received from the council, assist
4 local review teams, including by doing all of the following:
5 1. Recognizing local review teams for particular geographical areas in this
6 state, following applications under s. 253.33.
7 2. Facilitating the formation of individual local review teams.
8 3. Providing assistance with training and data collection procedures.
9 4. Adopting standards and protocols for recognized local review teams.
10 5. Creating forms and tools for child death reviews.
11 **(2)** The department may enter into a contract with an entity to perform any of
12 the department's duties under this section.
13 **253.32 Child death review council. (1)** The council shall do all of the
14 following:
15 (a) Collect and review data pertaining to child deaths that occur in this state.
16 (b) Review an individual child's death upon a request from a recognized local
17 review team.
18 (c) Identify trends in childhood deaths in this state, and make
19 recommendations to the legislature and applicable state agencies related to
20 interventions to prevent childhood deaths, including any necessary state resources
21 that are required to implement the recommended interventions.
22 (d) Make recommendations to the legislature, the department, and any other
23 state agency on matters related to unexpected or unexplained deaths among
24 children.
25 (e) Make recommendations to the department for doing all of the following:

1. Assisting recognized local review teams.

2. Establishing criteria and a process for recognizing local review teams.

(f) Make information available to the public about the council and the council's role in public policy related to preventing childhood deaths.

(g) By March 1, 2015, and biennially thereafter, prepare and submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the data collected by the council on the causes of childhood deaths in this state. The council shall include in the report any policy recommendations that result from compiling the data for the report.

(2) The council may review an individual child's death when no review is conducted by a recognized local review team under s. 253.35 (1) or (2).

253.33 Local review teams. A local review team may apply for recognition by the department under s. 253.31 (1) (e) 1. A recognized local review team shall do all of the following:

(1) Follow and apply the standards and protocols for child death reviews that are established by the department.

(2) Review the deaths of children as provided under 253.35.

(3) Enter data collected in connection with the review of a child's death into a state–designated case reporting system, as required by the department.

(4) Identify trends in childhood deaths in the geographical area for which the team is recognized and work with local organizations to make recommendations related to interventions to prevent childhood deaths, including descriptions of any necessary local resources that are required to implement the recommended interventions.

1 **(5)** Share information with other recognized local review teams, as provided
2 in the standards and protocols adopted by the department.

3 **253.35 Child death reviews by local review teams. (1)** (a) Except as
4 provided in par. (b) and sub. (2), a recognized local review team shall review the
5 deaths of children that occur in the geographical area for which the team is
6 recognized according to the standards and protocols adopted by the department.

7 (b) A recognized local review team shall request review of a child's death by the
8 council when required by the standards and protocols established by the
9 department.

10 **(2)** If no local review team is recognized by the department for the geographical
11 area in which a child dies, or if the recognized local review team for the geographical
12 area in which a child dies so requests in lieu of conducting its own review, a
13 recognized local review team may review the death of a child that occurs outside of
14 the geographical area for which the team is recognized in any of the following
15 circumstances:

16 (a) An incident that substantially contributed to the death of the child occurred
17 in the geographical area for which the team is recognized.

18 (b) Before his or her death, the child resided in the geographical area for which
19 the team is recognized.

20 **253.36 Child death reviews; records. (1)** Except as provided in sub. (2),
21 upon receiving an oral or written request for access to or copies of information or
22 records related to a child who is the subject of a review under this subchapter from
23 the council or a representative of a recognized local review team, a person shall
24 provide the requested information or records to the council or recognized local review
25 team if the requested information or records are any of the following:

1 (a) Law enforcement officers' records of children, as provided in s. 48.396 (1).
2 (b) Law enforcement agency records of juveniles, as provided in s. 938.396 (1).
3 (c) Records of a court assigned to exercise jurisdiction under s. 48.16 and chs.
4 48 and 938, as provided in s. 48.396 (2).
5 (d) Records of a court assigned to exercise jurisdiction under s. 938.17 (2) and
6 chs. 48 and 938, as provided in s. 938.396 (2).
7 (e) Records or information about an individual who is or was in the care or legal
8 custody of an agency, as defined in s. 48.78 (1), as provided in s. 48.78.
9 (f) Records or information about an individual who is or was in the care or legal
10 custody of an agency, as defined in s. 938.78 (1), as provided in s. 938.78.
11 **(2)** A law enforcement agency may withhold investigative information or
12 records requested under sub. (1) if the release of the information or records would
13 interfere with a pending proceeding or investigation related to a criminal matter, a
14 delinquency matter under ch. 938, a juvenile in need of protective services under ch.
15 938, a child or unborn child in need of protection or services under ch. 48, or an issue
16 of child protection under ch. 48.
17 **253.37 Child death reviews; confidentiality. (1)** Except as provided in
18 subs. (2) to (4) and s. 51.30 (4) (b) 29., information and records acquired by the council
19 or a recognized local review team in connection with a child death review are
20 confidential and not open to public inspection or copying under s. 19.35 (1). Members
21 of the council or a recognized local review team and any person who attends a child
22 death review or presents information to the council or a recognized local review team
23 related to a child death review shall keep all information presented in connection
24 with the child death review and any opinions formed as a result of the child death
25 review confidential.

1 **(2)** A member of a recognized local review team may share information
2 disclosed to the recognized local review team with another recognized local review
3 team conducting a review of that child's death or with the child death review council.
4 **(3)** Subsection (1) does not affect any person's right to copy or inspect records
5 in the custody of any person other than the council or a recognized local review team.
6 **(4)** A person who attends a child death review or presents information to the
7 council or a recognized local review team is not prohibited under sub. (1) from
8 disclosing or sharing information or records obtained independently of the child
9 death review or in accordance with his or her official job duties as a governmental
10 employee or agent, if that disclosure is otherwise lawfully permitted.
11 **(5)** A person who intentionally violates this section may be fined not more than
12 $1,000 or imprisoned not more than 6 months, or both.
13 **253.38 Child death reviews; actions and proceedings. (1)** USE OF
14 INFORMATION IN COURT AND ADMINISTRATIVE PROCEEDINGS. In accordance with and
15 subject to the privilege under s. 905.17, any information and records provided or
16 obtained in the course of a child death review by a recognized local review team or
17 the council are not subject to discovery or subpoena in a civil or criminal action or an
18 administrative proceeding and are not admissible as evidence during the course of
19 a civil or criminal action or an administrative proceeding.
20 **(2)** IMMUNITY. Any person participating in a child death review under this
21 subchapter is immune from any civil or criminal liability for any good faith act or
22 omission in connection with that participation. The immunity granted under this
23 subsection applies to persons conducting the child death review as well as persons
24 providing information or records pursuant to the child death review. For the purpose

of any civil or criminal action, any person participating in a child death review under this subchapter is presumed to be acting in good faith.

SECTION 15. 905.17 of the statutes is created to read:

905.17 Child death review participant privilege. (1) DEFINITION. In this section, "person participating in a child death review" means any person conducting a child death review under subch. II of ch. 253 and any person providing information or records in connection with a child death review under subch. II of ch. 253.

(2) GENERAL RULE OF PRIVILEGE. A person participating in a child death review has a privilege to refuse to disclose and to prevent any other person from disclosing any information and records provided or obtained or opinions formed or offered in the course of a child death review.

(3) WHO MAY CLAIM THE PRIVILEGE. Any person participating in a child death review may claim the privilege.

(4) EXCEPTION. There is no privilege under this section for information obtained independent of a child death review or information that is available for public inspection or copying under s. 19.35 (1).

SECTION 16. 938.396 (1) (a) of the statutes is amended to read:

938.396 **(1)** (a) *Confidentiality.* Law enforcement agency records of juveniles shall be kept separate from records of adults. Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed except under par. (b) or (c), sub. (1j), (2m) (c) 1p., or (10), or s. 253.36 or 938.293 or by order of the court.

SECTION 17. 938.396 (2) of the statutes is amended to read:

938.396 **(2)** COURT RECORDS; CONFIDENTIALITY. Records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for

that purpose only. Those records shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 48 or as required or permitted under sub. (2g), (2m) (b) or (c), or (10) or s. 253.36.

SECTION 18. 938.78 (2) (a) of the statutes is amended to read:

938.78 **(2)** (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual who is or was in its care or legal custody, except as provided under sub. (3) or s. 48.396 (3) (bm) or (c) 1r., 253.36, 938.371, 938.38 (5) (b) or (d) or (5m) (d), 938.396 (2m) (c) 1r., 938.51, or 938.57 (2m) or by order of the court.

(END)

Parisi, Lori

From: Rep.Loudenbeck
Sent: Tuesday, November 19, 2013 10:53 AM
To: LRB.Legal
Subject: Draft Review: LRB -3663/1 Topic: Child death review council and teams

Thank you!

Please Jacket LRB -3663/1 for the ASSEMBLY.