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Justice for Children Package Testimony

October 22, 2015

Senator Rob Cowles

Over the past year, the Department of Justice, the Attorney General's office, advocacy groups and I have collaborated to address some major crimes against children and victims of sexual assault and create a collaborative approach to protect children and sexual assault victims and provide them with an opportunity for better outcomes. I am very pleased today to have the "Justice for Children package" heard.

These bills are aimed to reform major crimes against children and victims of sexual assault to ultimately keep kids safe. In researching these crimes and collaborating with the Department of Justice, it was clear that something needed to be done to address cases of abuse, neglect, and sexual assault and again, and most importantly, to keep kids safe.

In this package we have put together four bills to aid in the fight against these crimes.

Senate Bill 323 allows victim advocates to play a larger role in cases of sexual assault and human trafficking, both against adults and children. Through research, we have found that survivors of sexual crimes who have received services from a victim advocate have experienced better outcomes and are in less distress through such a difficult and trying time. National statistics estimate nearly 23million women in the United States have experienced sexual violence, while child sexual assault is a grossly under reported crime. We needed to address the needs of our victims in this state. This bill, specifically, gives victims greater access to victim advocates during examinations and consultations performed at a hospital, as well as, during preliminary law enforcement interviews. This bill gives victims, free of charge to them, someone who is there, solely, for their needs.

Senate Bill 324 reforms the neglect statutes and adds substance and clarity. Under current law, you have to prove intent to neglect, in addition to, a felony schedule that is inflexible and leaves out many instances that certainly constitute neglect that is happening in our communities. This bill redefines neglect as the negligent failure to provide necessary care. The bill further defines necessary care as appropriate food, clothing, medical and dental care, shelter, supervision, the opportunity for education, and protection from the exposure to the distribution, manufacture or use of controlled substances; modeled after the statutes governing jurisdiction over children alleged to be in need of protective services (§48.13(10m)). This bill also creates a new felony schedule, while the ceiling and floor remain that same, we have included instances where children are at unreasonable and substantial risk of harm, great bodily harm, or death are included as well as accounting for emotional harm, and if the child neglected becomes the victim of a child sex offense. The new schedule clearly provides greater detail and flexibility to identify neglect while maintaining the discretion District Attorneys and jurors currently have.

Senate Bill 324 also creates the crime of repeated acts of neglect of the same child. This is modeled after the crime of repeated acts of sexual assault of the same child (§948.025). This gives prosecutors a new tool to identify situations in which a very young or non-verbal child has been neglected. For very young or non-verbal children, dates and specific instances maybe challenging to identify. This new crime does not change any of the elements necessary to convict someone of neglect.

Senate Bill 325 is similar to Senate Bill 324 in that it too creates a new crime. The bill creates repeated acts of physical abuse of the same child. Again, modeled after repeated acts of sexual assault of the same child (§948.025) this crime helps prosecutors convict the more grievous cases of physical abuse against children, many of whom are very young or possibly non-verbal. Through our research, the children who are victims of these crimes are very young. In the State of Wisconsin, from 2008-2012, 61% of physical abuse deaths of children were aged 3 or younger, with 35% of the deaths were children under the age of one. We hope that the two new crimes created in this package will save such young children who are victims to these horrible crimes.

Senate Bill 326 expands referral of all reports of suspected or threatened child abuse or neglect to law enforcement. Under current law, suspected cases of child abuse and neglect are referred by mandated reporters to Child Protective Services and not law enforcement. Child abuse and Neglect are the only two felonies not referred to law enforcement. This bill requires that Child Protective Services refer all suspected or threatened cases to law enforcement and coordinate a response if necessary. This legislation lets law enforcement decide if law enforcement needs to be involved. Unfortunately, we have amassed several examples from all over the state where law enforcement was not involved in an investigation of neglect or abuse and the child/children suffered continued maltreatment and, in the saddest cases, death. Law enforcement has different tools available for investigating, such as the ability to obtain search warrants and subpoenas. We feel that this legislation is going to be a vastly improved approach to identifying cases of abuse and neglect and help to keep kids out of harm's way.

It is so important to ensure that victims of such terrible crimes are protected in Wisconsin and receive justice from those who have wronged them. By aligning our District Attorneys, Law Enforcement, Victim Advocates, Child Protective Services and our communities together we can create a proven environment to protect the victims of these crimes and aim towards achieving greater outcomes for these victims.

I want to thank all those involved with these bills especially Attorney General Schimel, and Representatives Heaton, Macco, Murtha and Tranel for their work on this package of bills.

With these bills, I hope we can strive to give kids a violence-free and safe childhood and deter acts of abuse neglect and sexual assault in our communities. I hope that these bills can bring criminals to justice and of course, keep kids safe.



DAVE HEATON

STATE REPRESENTATIVE • 85TH ASSEMBLY DISTRICT

Testimony Representative Dave Heaton on SB 325 **Senate Committee on Judiciary and Public Safety** *Thursday October 22, 2015*

Mr. Chairman, members of the Committee, thank you for holding this public hearing and giving me an opportunity to speak to you today in support of Senate Bill 325 (SB 325). I want to thank Senator Cowles for taking the lead on this important legislation. I would also like to thank Attorney General Brad Schimel for his instrumental role in crafting this legislation.

One of the greatest honors and most important duties of legislators, is that we speak for those who cannot speak for themselves. The same can be said of prosecutors who speak for victims of crime that they may have justice. That is why I am honored to co-author this important legislation with Senator Cowles, legislation that helps prosecutors speak for and defend our most vulnerable citizens and our most valued treasures – our children.

Currently, Wisconsin law does not define repeated physical abuse of a child as criminal activity. SB 325 closes this loophole by defining these acts under the crime of repeated acts of physical abuse of the same child and provides prosecutors a new tool to combat child abuse. Prosecutors and police officers can tell you how challenging it is to interview children who are victims of abuse, and how difficult it can be for a child to testify in court. Children often have difficulty remembering exact dates and times.

The new crime created by SB 325 is modeled after Wisconsin's current crime of repeated acts of *sexual* abuse against a child. Under this bill, prosecutors will be able to charge an offender with repeated acts of physical abuse of the same child by proving that at least three (3) acts of physical abuse occurred over a set period of time.

Domestic abuse is a serious problem for too many families in our state. With this legislation, we are taking a hard stand to protect the children of Wisconsin from abuse. Mr. Chairman and committee members, thank you once again for the opportunity to testify before you today.



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Governor Scott Walker
Secretary Eloise Anderson

Secretary's Office

Date: October 22, 2015
To: Members of the Senate Committee on Judiciary and Public Safety
From: Sara Buschman, Assistant Deputy Secretary
Re: Information Memo on SB323, SB324, SB325, and SB326

Senator Wanggaard and Senate Committee on Judiciary and Public Safety,

The Department of Children and Families appreciates the opportunity to submit information for your consideration on the following four bills: SB 323, SB 324, SB 325, and SB 326.

The underlying goals of the four proposed bills are to keep children safe from maltreatment and to strengthen the coordination between the child welfare and law enforcement systems in protecting the safety of children. The Department of Children and Families is firmly committed to these goals: protecting the safety of children is a core mission of the Department and effective collaboration with law enforcement is a critical building block in achieving this mission.

A number of the provisions in the bills enhance children's safety and well-being in productive ways. However, a number of the provisions in SB 324 and SB 326 may have unintended negative consequences that will impair the healthy and positive growth and development of children. The Department encourages that further discussion among all stakeholders be pursued to refine SB 324 and SB 326 to avoid unintended negative consequences to the children affected by the bill.

SB 324 changes the standard of neglect for criminal purposes and establishes a criminal penalty for all types of neglect. The proposed changes in the neglect standard of neglect include some criteria that are not well-defined and some criteria that broadens the standard to cover actions that do not necessarily involve safety threats to a child's safety. For example, the criterion "the opportunity for education" as a new category of neglect is not well-defined and does not have a statutory definition and therefore could be interpreted in ways other than which the authors intend. In addition, the proposed new criterion "exposure to the use of controlled substances" could involve a parent using prescription drugs in a responsible manner that does not create a threat to the child.

The Department recognizes that the current criminal neglect statutes may not provide the tools for law enforcement to intervene in circumstances where that is the appropriate intervention. However, SB 324 creates the possibility that a parent may face criminal charges even for low level incidents of neglect. This could have significant negative unintended consequences for children. Many types of neglect that are addressed in the child welfare system and that would be covered by the criminal neglect standard in the proposed bill are situations that involve low to moderate risk to the child that can be ameliorated by providing appropriate supports and services

to the parent, so that the parent is able to provide a safe, stable, and nurturing home. For example, in cases where neglect is occurring due to mental illness, with appropriate intervention and supports and services through the child welfare system, the parent can change their behavior and maintain a safe and loving home for their children without disruption to the children that would be caused due to a parent's incarceration under these provisions.

Furthermore, to the extent that a single parent is incarcerated due to the new criminal penalties in the bill, the child may need to be removed to an out-of-home placement, such as a foster home. In addition to the neglect that the child experienced, separation from a parent and removal from home imposes additional trauma on the child. Scientific research has shown that trauma in childhood impedes the healthy development of the brain, resulting in negative impacts on the child's physical health, cognitive development, behavior, and social and emotional relationships in both the short and long term.

SB 326 also creates the potential for negative unintended consequences for the children impacted by the bill. SB 326 requires child welfare agencies to refer all suspected cases of abuse and neglect to law enforcement within 12 hours and requires that law enforcement coordinate with the child welfare agency on the investigation of all cases. Currently, child welfare agencies refer to law enforcement agencies all sexual abuse cases and other cases as specified in the local Memorandum of Understanding in place between each child welfare agency and local law enforcement agencies. Child welfare agencies already involve law enforcement immediately in high risk cases.

Involvement of law enforcement in all low-moderate risk cases may create negative unintended consequences for the child and family. Many families involved in the child welfare system distrust and/or are intimidated by law enforcement. National research has shown that for low to moderate risk child welfare cases, a non-threatening, supportive approach enhances parental engagement and participation in services, and thereby increases the likelihood that the family can achieve safety and stability. The notification and involvement of law enforcement for all cases of abuse and neglect has the potential to stigmatize the family and hinder the family's future ability to access employment, housing and develop positive social connections. It may also deter non-mandated reporters, such as neighbors and relatives, from reporting concerns about possible abuse and neglect, leaving children at risk.

The requirement in SB 326 that investigations must be coordinated between child welfare agencies and law enforcement may hinder both systems from performing their duties. The child welfare and the criminal justice systems are designed to support different goals that are important to society. The child welfare system is focused on protecting children, preserving family unity and finding permanency for children when the family cannot be preserved. The agency staff, attorneys and court personnel are guided by the best interests of the child. The criminal justice system is focused on investigating and prosecuting crimes on behalf of the state. These two systems overlap in some areas but are governed by completely different statutory provisions and court procedures. The investigatory process used to support each system is necessarily different. Linking the two processes together in all cases may impede the ability of each system to reach the goals that are important to each.

It is important to coordinate in cases where each has a major stake in the outcome and to reduce the burden on those the systems are endeavoring to protect. That coordination exists today in most jurisdictions and could be strengthened. As stated at the outset, the Department supports strong, effective collaboration between the child welfare and law enforcement systems. The

Department would like to work with the authors and stakeholders to discuss how we can strengthen and improve current collaborative mechanisms between the two systems without creating unintended negative consequences such as those described above.

The Department would also like to bring to the attention of the Committee a possible technical revision to SB 323. As currently drafted, SB 323 provides access to a victim advocate for victims of sexual assault, human trafficking, and children who were victims of physical as well as sexual abuse. Given that the bill appears to be focused on victims of a sexually abusive action, it may be appropriate to narrow the scope of child abuse cases covered in the bill to sexual abuse cases.

The Department has no comments on SB 325 which creates stronger criminal penalties for individuals who commit repeated physical abuse to a child. The Department views that the bill provides a useful additional tool to help ensure that children are not subject to egregious abusers.

In summary, the Department appreciates the authors of these bills for opening the conversation on a topic that we all care deeply about: protecting our children and strengthening families. We would like to encourage additional thoughtful discussion among all stakeholders on SB 324 and SB326 to refine the bills so that they achieve their intended goals of protecting the safety of children without creating negative unintended consequences. The Department welcomes participating in any future discussions on these bills.