



## 2009 SENATE BILL 79

February 18, 2009 – Introduced by Senators DARLING, LAZICH, HOPPER, A. LASEE and OLSEN, cosponsored by Representatives J. OTT, STRACHOTA, TOWNSEND, VUKMIR, GUNDERSON, KERKMAN, BIES, SPANBAUER, KESTELL, VOS and PRIDEMORE. Referred to Committee on Children and Families and Workforce Development.

1     **AN ACT** *to renumber and amend* 48.981 (9); *to repeal and recreate* 48.981  
2           (7) (cr); and *to create* 48.981 (9) (a) 2. of the statutes; **relating to:** public  
3           disclosure of certain information when abuse or neglect results in a child dying  
4           or being placed in serious or critical condition.

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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 (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

**SENATE BILL 79**

Children and Families (DCF) 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 child fatality or near fatality 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 that caused the child fatality or near fatality 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.

**SENATE BILL 79**

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 that caused the child fatality or near fatality 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 DCF 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; 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 DCF 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. In cases in which the child was receiving child welfare services at the time of the egregious incident, within 120 days after receiving the information from the agency or, if an extension of time is necessary, within the time approved by the presiding officer of each house of the legislature, the subunit of DCF must transmit the summary report to the legislature. On transmitting the summary report, that subunit must make the summary report available to the public.

DCF 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: 1) a cumulative report of all summary reports prepared under the bill through the last calendar year and recommendations for changes in state or local policies, procedures, or programs,

**SENATE BILL 79**

including changes in statutes or rules, to prevent egregious incidents; and 2) a full statistical analysis of the child abuse and neglect reports made through the last calendar year, broken down by reports of abuse or neglect by the primary caregivers of children; reports of abuse or neglect of children placed in out-of-home placements by persons residing in those placements; and reports of the deaths of children receiving services under the Children's Code, including the causes of those deaths.

***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:

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 suspected cause of the death or serious or critical condition of the child, as reported by the agency.

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

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

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

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

5. 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 DCF and of any other actions by the licensee or an

**SENATE BILL 79**

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

6. 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 or serious or critical condition of the child.

***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.

***When disclosure is prohibited.*** Finally, under the bill, the subunit of DCF that prepares a summary report may not transmit the summary report to the legislature or make the summary report available to the public if the subunit determines that disclosure of the summary report would jeopardize: 1) any ongoing or future criminal investigation or prosecution or a defendant's right to a fair trial; or 2) any ongoing or future civil investigation or proceeding or the fairness of such a proceeding.

For further information see the ***state and local*** 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.** 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 that has been reported  
5           under this section.

**SENATE BILL 79**

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

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

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

9           c. The suspected cause of the death or serious or critical condition of the child.

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

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

14          f. The identity of any law enforcement agency that referred the report of the  
15 egregious incident and of any law enforcement agency, district attorney, or other  
16 officer or agency to which the report of the egregious incident was referred.

17          3. The subunit of the department that receives the information provided under  
18 subd. 2. shall review that information, together with any information about the child,  
19 the child's family, and the person suspected of the abuse or neglect that is maintained  
20 in the statewide automated child welfare information system and any additional  
21 information requested from the agency that provided the information under subd.  
22 2., and, in collaboration with that agency, shall prepare a summary report that  
23 contains the information specified in subd. 4. or 5., whichever is applicable. Subject  
24 to subd. 7., in cases in which the child was receiving services under this chapter at  
25 the time of the egregious incident, within 120 days after receiving the information

**SENATE BILL 79**

1 provided under subd. 2., that subunit of the department shall transmit the summary  
2 report to the legislature under s. 13.172 (2) or notify the chief clerk of each house of  
3 the legislature that an extension of time is necessary to obtain the information that  
4 the subunit is required to review and to prepare the summary report. If the presiding  
5 officer of each house approves the extension, the subunit shall transmit the summary  
6 report within the time approved by the presiding officers. On transmitting the  
7 summary report, that subunit shall make the summary report available to the  
8 public. The department shall also include in the annual report under sub. (9) a  
9 cumulative report of all summary reports prepared under this subdivision through  
10 the last calendar year.

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

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

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

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

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

**SENATE BILL 79**

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 suspected cause of the death or serious or critical condition of the child,  
4 as reported by the agency under subd. 2. c.

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

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

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

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

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

18 c. A summary of any actions taken by the agency relating to the supervision  
19 of the child’s out-of-home placement.

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

21 e. The licensing history of the out-of-home placement, including the type of  
22 license held by the operator of the placement, the period for which the placement has  
23 been licensed, and a summary of all violations by the licensee of any provisions of  
24 licensure under s. 48.70 (1) or rules promulgated by the department under s. 48.67



**SENATE BILL 79**

1 and of any other actions by the licensee or an employee of the licensee that constitute  
2 a substantial failure to protect and promote the health, safety, and welfare of a child.

3 f. The suspected cause of the death or serious or critical condition of the child,  
4 as reported by the agency under subd. 2. c.

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

8 6. A summary report under subd. 3. may not include any of the following:

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

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

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

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

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

20 7. The subunit of the department that prepares a summary report under subd.  
21 3. may not transmit the summary report to the legislature or make the summary  
22 report available to the public if the subunit determines that disclosure of the  
23 summary report would jeopardize any of the following:

24 a. Any ongoing or future criminal investigation or prosecution or a defendant's  
25 right to a fair trial.

**SENATE BILL 79**

1           b. Any ongoing or future civil investigation or proceeding or the fairness of such  
2 a proceeding.

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

9           **SECTION 2.** 48.981 (9) of the statutes is renumbered 48.981 (9) (a) (intro.) and  
10 amended to read:

11           48.981 (9) (a) (intro.) Annually, the department shall prepare and transmit to  
12 the governor, and to the legislature under s. 13.172 (2), a report on the status of child  
13 abuse and neglect programs and on the status of unborn child abuse programs. The  
14 report shall include ~~a~~ all of the following:

15           1. A full statistical analysis of the child abuse and neglect reports, and the  
16 unborn child abuse reports, made through the last calendar year, an broken down by  
17 reports of abuse or neglect by the primary caregivers of children; reports of abuse or  
18 neglect of children placed in out-of-home placements by persons residing in those  
19 placements; and reports of the deaths of children receiving services under this  
20 chapter, including the causes of those deaths.

21           3. An evaluation of services offered under this section and their effectiveness,  
22 and recommendations.

23           4. Recommendations for additional legislative and other action to fulfill the  
24 purpose of this section. The

