

1983 Assembly Bill 296

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1983 Wisconsin Act 172

AN ACT *to repeal* 48.981 (3) (c) 6 and 9, 48.981 (7) to (9) and 48.981 (10) (a) 2 and 3; *to renumber* 48.981 (10) (title); *to renumber and amend* 48.981 (3) (c) 7 and 8, 48.981 (10) (a) 1. (intro.), a and b, 48.981 (10) (a) 1.c and d, 48.981 (10) (b) and 48.981 (11) and (12); *to amend* 48.207 (3), 48.981 (1) (a), (c) and (d), 48.981 (2), 48.981 (3) (title), (a) and (b) 1 and 2, 48.981 (4) and 48.981 (6); *to repeal and recreate* 48.981 (3) (c) 1 to 5 and 48.981 (3) (d); and *to create* 48.981 (1) (a) 3 to 5, (cm) and (e) to (h), 48.981 (3) (c) 8 and 48.981 (7) (a) 3 to 9 and 11 and (b) to (e) of the statutes, *relating to* reporting of child abuse and neglect, and providing a penalty.

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

SECTION 1. 48.207 (3) of the statutes is amended to read:

48.207 (3) A child ~~placed in protective~~ taken into custody under s. 48.981 may be held in a hospital, foster home, relative's home or other appropriate medical or child welfare facility which is not used primarily for the detention of delinquent children.

SECTION 2. 48.981 (1) (a), (c) and (d) of the statutes are amended to read:

48.981 (1) (a) "Abuse" means any ~~physical~~ of the following:

1. Physical injury inflicted on a child by other than accidental means, ~~or sexual.~~

2. Sexual intercourse or sexual contact under s. 940.225. ~~In this paragraph, "physical injury" includes but is not limited to severe bruising, lacerations, fractured bones, burns, internal injuries or any injury constituting great bodily harm under s. 939.22 (14).~~

(c) "County agency" means ~~the a~~ a county child welfare agency as defined in under s. 48.56 (1) or a community human services board under s. 46.23.

(d) ~~"Neglected child" means a child whose~~ "Neglect" means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over the child neglects, refuses or is unable a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

SECTION 3. 48.981 (1) (a) 3 to 5, (cm) and (e) to (h) of the statutes are created to read:

48.981 (1) (a) 3. A violation of s. 940.203.

4. Permitting or requiring a child to violate s. 944.30.

5. Emotional damage.

(cm) "Emotional damage" means harm to a child's psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which is caused by the child's parent, guardian, legal custodian or other person exercising temporary or permanent control over the child and for which the child's parent, guardian or legal custodian has failed to obtain the treatment necessary to remedy the harm. "Emotional damage" may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(e) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22 (14).

(f) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(g) "Reporter" means a person who reports suspected abuse or neglect or a belief that abuse will occur under this section.

(h) "Subject" means the child who is the victim or alleged victim of abuse or neglect, the child's parent or any other person specified in a report or record who is alleged or determined to have abused or neglected the child.

SECTION 4. 48.981 (2) of the statutes is amended to read:

48.981 (2) PERSONS REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE OR NEGLECT. A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, ~~or any~~ other medical or mental health professional, social or public assistance worker, school teacher, administrator or counselor, child care worker in any a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, member of the treatment staff employed by or working under contract with a board established under s. 46.23, 51.42 or 51.437, physical therapist, occupational therapist, speech thera-

pist, emergency medical technician — advanced (paramedic), ambulance attendant or police or law enforcement officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with an injury and that abuse of the child will occur shall report as provided in sub. (3). Any other person including an attorney having reason to believe suspect that a child has been abused or neglected or reason to believe that a child has been threatened with an injury and that abuse of the child will occur may make such a report. No person making a report under this subsection may be discharged from employment for so doing.

SECTION 5. 48.981 (3) (title), (a) and (b) 1 and 2 of the statutes are amended to read:

48.981 (3) (title) REPORTS; INVESTIGATION. (a) (title) *Referral of report of suspected child abuse or neglect.* Persons required to report under sub. (2) shall immediately contact, by telephone or personally, the county agency, sheriff or city police department and, in the case of American Indian children, the tribal government and shall inform the agency or department of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse will occur. The sheriff or police department shall within 24 12 hours, exclusive of Saturdays, Sundays or legal holidays, refer to the county agency and, in the case of American Indian children, the tribal government all cases reported to it. The county agency may require that a subsequent report be made in writing. Each county agency shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

(b) 1. Any person reporting ~~suspected abuse or neglect of a child~~ under this section may request an immediate investigation by the sheriff or police department if the person has reason to ~~believe suspect~~ believe suspect that ~~the a~~ child's health or safety is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the child's health or safety is in immediate danger and take any necessary action to protect the child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (d) 5 to take a child into custody, the investigating officer shall ~~place~~ take the child in protective into custody and deliver the child to the intake worker under s. 48.20.

SECTION 6. 48.981 (3) (c) 1 to 5 of the statutes are repealed and recreated to read:

48.981 (3) (c) 1. Within 24 hours after receiving a report under sub. (3) (a), the county agency shall, in accordance with the authority granted it under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child is in need of protection or services. The investigation shall include observation of or an interview with the child, or both, and, if possible, a visit to the child's home or usual living quarters and an interview with the child's parents, guardian or legal custodian. At the initial visit to the child's home or living quarters, the person making the investigation shall identify himself or herself and the county agency involved to the child's parents, guardian or legal custodian. The county agency may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's home or living quarters only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

2. If the person making the investigation determines that any child in the home requires immediate protection, he or she shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

3. If the county agency determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services, the county agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian refuses to accept the services, the county agency may request that a petition be filed under s. 48.13 alleging that the child who is

the subject of the report or any other child in the home is in need of protection or services.

4. The county agency shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or that the child has been threatened with an injury and that abuse of the child is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county agency shall give due regard to the culture of the subjects and shall establish that the person alleged to be responsible for the emotional damage is unwilling to remedy the harm. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The county agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child. The county agency shall update the record every 6 months.

SECTION 7. 48.981 (3) (c) 6 and 9 of the statutes are repealed.

SECTION 8. 48.981 (3) (c) 7 and 8 of the statutes are renumbered 48.981 (3) (c) 6 and 7 and amended to read:

48.981 (3) (c) 6. ~~The investigator shall inform any person required to report suspected cases of child abuse or neglect that the report was unfounded or that steps were~~ county agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of a the child who is the subject of a the report made by the person. At least one contact shall be made under this subdivision within 60 days after receipt of the initial report by the agency.

7. The county agency shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human service agencies to prevent, identify and treat child abuse and neglect. ~~To the extent possible, the~~ The county agency shall coordinate the development and provision of services to abused and neglected children found to be abused or neglected under this section and to families where abuse or neglect has occurred or to children and families where circumstances justify a belief that abuse will occur.

SECTION 9. 48.981 (3) (c) 8 of the statutes is created to read:

48.981 (3) (c) 8. Using the format prescribed by the department, each county agency shall provide the department with information about each report it receives and about each investigation it conducts. This information shall be used by the department to monitor services provided by county agencies. The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect, and for planning and policy development.

SECTION 10. 48.981 (3) (d) of the statutes is repealed and recreated to read:

48.981 (3) (d) *Independent investigation.* If an agent or employe of a county agency required to investigate under this subsection is the subject of a report, or if the county agency determines that, because of the relationship between the county agency and the subject of a report, there is a substantial probability that the county agency would not conduct an unbiased investigation, it shall, after taking any action necessary to protect the child, notify the department. Upon receipt of the notice, the department or an agency designated by it shall conduct an independent investigation. The powers and duties of the department or other agency making an independent investigation are those given to county agencies under sub. (3) (c). In this paragraph, "agent" includes, but is

not limited to, a foster parent or other person given custody of the child or a human service professional of a community board established under s. 46.23, 51.42 or 51.437, if the professional is working with the child under contract with or under the supervision of the county agency.

SECTION 10m. 48.981 (4) of the statutes is amended to read:

48.981 (4) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed.

SECTION 11. 48.981 (6) of the statutes is amended to read:

48.981 (6) PENALTY. Whoever wilfully violates this section by failure to ~~file a~~ report as required, may be fined not more than ~~\$100~~ \$1,000 or imprisoned not more than 6 months or both.

SECTION 12. 48.981 (7) to (9) of the statutes are repealed.

SECTION 13. 48.981 (7) (a) 3 to 9 and 11 and (b) to (e) of the statutes are created to read:

48.981 (7) (a) 3. An attending physician for purposes of diagnosis and treatment.

4. A child's foster parent or other person having custody of the child.

5. A professional employe of a community board established under s. 46.23, 51.42 or 51.437 who is working with the child under contract with or under the supervision of the county agency.

6. A multidisciplinary child abuse and neglect team recognized by the county agency.

7. Another county agency currently investigating a report of suspected child abuse or neglect involving the subject of the record or report.

8. A law enforcement officer or agency for purposes of investigation or prosecution.

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

11. The county corporation counsel or district attorney representing the interests of the public in proceedings under subd. 10.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), a parent who is the subject of a report may authorize the disclosure of a record to any other person. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(d) The department may have access to any report or record maintained by a county agency under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

SECTION 14. 48.981 (10) (title) of the statutes is renumbered 48.981 (7) (title).

SECTION 15. 48.981 (10) (a) 1. (intro.), a and b of the statutes are renumbered 48.981 (7) (a) (intro.), 1 and 2 and amended to read:

48.981 (7) (a) (intro.) All reports and records made under this section and maintained by the department, county agencies, ~~the central registry and other appropriate persons, officials and institutions shall be confidential, except that confidentiality of and access to preliminary investigative reports maintained by the department shall be governed solely by sub. (7). Information shall not be made available to any individual or institution except to.~~ Reports and records may be disclosed only to the following persons:

1. The subject of any a report, except that the ~~department or other governmental person or agency shall~~ maintaining the record or report may not ~~release data~~ disclose any information that would identify the ~~initial~~ reporter;

2. Appropriate staff of the department or a county agencies, ~~who may release information to their agents or to an attending physician for treatment and diagnosis, but prior reports or a lack of prior reports shall not be the basis for the determination of whether child abuse or neglect has occurred;~~ agency.

SECTION 16. 48.981 (10) (a) 1. c and d of the statutes are renumbered 48.981 (7) (a) 10 and 12 and amended to read:

48.981 (7) (a) 10. Any A court conducting child protective proceedings related to a petition under s. 48.13 or any a court conducting dispositional proceedings under subch. VI in which abuse or neglect of the child who is the subject of the report or record is an issue; and.

12. Any A person engaged in bona fide research, with the permission of the department, provided, however, that information. Information identifying the subjects of the reports and the reporters shall may not be made available disclosed to the researcher.

SECTION 17. 48.981 (10) (a) 2 and 3 of the statutes are repealed.

SECTION 18. 48.981 (10) (b) of the statutes is renumbered 48.981 (7) (f) and amended to read:

48.981 (7) (f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained ~~in the central registry and~~ in reports and records made under this section, may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

SECTION 19. 48.981 (11) and (12) of the statutes are renumbered 48.981 (8) and (9), and 48.981 (9), as renumbered, is amended to read:

48.981 (9) ANNUAL REPORTS. No later than ~~August~~ October 1 of each year the department shall prepare and transmit to the governor and the legislature a report on the status of child abuse and neglect programs. The report shall include a full statistical analysis of the child abuse and neglect reports made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

SECTION 20. **Nonstatutory provision.** Six months after the effective date of this act, the department of health and social services shall destroy all identifying records of the central child abuse registry maintained under section 48.981 (8), 1981 stats.