

1999 SENATE BILL 420

March 1, 2000 – Introduced by Senators ROSENZWEIG, ROBSON, WIRCH, HUELSMAN, WELCH and DARLING, cosponsored by Representatives HUNDERTMARK, MILLER, STONE, LADWIG and SPILLNER. Referred to Committee on Human Services and Aging.

1 **AN ACT to amend** 48.981 (3) (cm), 48.981 (7) (cm) and 48.981 (7) (d); and **to create**
2 48.981 (3) (c) 5m., 48.981 (7) (a) 15g. and 48.981 (7) (cr) of the statutes; **relating**
3 **to:** appeals of substantiated child abuse or neglect findings, public disclosure
4 of certain child abuse and neglect information when there is a child fatality or
5 near fatality and access to child abuse and neglect information by a citizen
6 review panel established or designated by the department of health and family
7 services or a county department of human services or social services.

Analysis by the Legislative Reference Bureau

Under current law, a county department of human services or social services (county department) or, in Milwaukee County, the department of health and family services (DHFS) or a child welfare agency under contract with DHFS must determine, within 60 days after receipt of a report of suspected or threatened child abuse or neglect, whether abuse or neglect has occurred or is likely to occur. Currently, an appeal of such a determination made by a county department may be made under the municipal administrative procedure law or, if the county of the county department has elected not to be governed by that law, under a county ordinance that provides a procedure for an appeal of such a determination, and an appeal of such a determination made by DHFS may be made under the state administrative procedure and review law. Current law does not provide a procedure for appealing such a determination by a child welfare agency.

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This bill requires DHFS to establish procedures for conducting an appeal of a determination that a specific person has abused or neglected a child and to include in those procedures a procedure permitting such an appeal to be held in abeyance pending the outcome of any criminal or child in need of protection or services (CHIPS) proceeding based on the alleged abuse or neglect or any investigation that may lead to the filing of a criminal complaint or a CHIPS petition based on the alleged abuse or neglect. Under the bill, if a county department, DHFS or a child welfare agency determines that a specific person has abused or neglected a child, the county department, DHFS or child welfare agency must notify the person of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by DHFS.

Under current law, a county department, DHFS or a child welfare agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (agency) must keep its records confidential and may disclose those records only under certain exceptions. This bill permits an agency to disclose to the public a written summary of certain information relating to any child who has died or been placed in serious or critical condition as a result of suspected abuse or neglect that has been reported to the agency (child fatality or near fatality) if certain circumstances apply and certain other circumstances do not apply.

Specifically, an agency may disclose all of the information specified in the next paragraph if 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; if 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; or if 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. 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 who is the subject of the report of suspected abuse or neglect 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 who is the subject of the report 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.

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 such a proceeding.

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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 who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, and information that would reveal the identity of those persons has not previously been disclosed to the public.

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

The information from an agency's records that may be disclosed to the public 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 the child who was the subject of the report.

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 previous report, a statement of the determination made by the agency as to whether abuse or neglect occurred or was likely to occur 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 the child who is the subject of the report.

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

Under current federal law, each state that receives a grant under the federal Child Abuse Prevention and Treatment Act must establish not less than three citizen review panels, or must designate one or more existing entities as citizen review panels, to evaluate the extent to which local agencies responsible for providing child protective services are effectively discharging their responsibilities and must ensure that otherwise confidential child abuse and neglect reports and records are made available to those panels. This bill permits a citizen review panel established or designated by DHFS or a county department to have access to the otherwise confidential child abuse and neglect reports and records.

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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 (3) (c) 5m. of the statutes is created to read:

2 48.981 (3) (c) 5m. If the county department or, in a county having a population
3 of 500,000 or more, the department or a licensed child welfare agency under contract
4 with the department determines under subd. 4. that a specific person has abused or
5 neglected a child, the county department, department or licensed child welfare
6 agency, within 15 days after the date of the determination, shall notify the person in
7 writing of the determination, the person's right to appeal the determination and the
8 procedure by which the person may appeal the determination, and the person may
9 appeal the determination in accordance with the procedures established by the
10 department under this subdivision. The department shall establish procedures for
11 conducting an appeal under this subdivision. Those procedures shall include a
12 procedure permitting an appeal under this subdivision to be held in abeyance
13 pending the outcome of any criminal proceedings or any proceedings under s. 48.13
14 based on the alleged abuse or neglect or the outcome of any investigation that may
15 lead to the filing of a criminal complaint or a petition under s. 48.13 based on the
16 alleged abuse or neglect. Those procedures need not be promulgated as rules.

17 **SECTION 2.** 48.981 (3) (cm) of the statutes is amended to read:

18 48.981 (3) (cm) *Contract with licensed child welfare agencies.* A county
19 department may contract with a licensed child welfare agency to fulfill the county
20 department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 6., 6m. and 8. The
21 department may contract with a licensed child welfare agency to fulfill the

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1 department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 6., 6m., 7.,
2 8. and 9. in a county having a population of 500,000 or more. The confidentiality
3 provisions specified in sub. (7) shall apply to any licensed child welfare agency with
4 which a county department or the department contracts.

5 **SECTION 3.** 48.981 (7) (a) 15g. of the statutes is created to read:

6 48.981 (7) (a) 15g. A citizen review panel established or designated by the
7 department or a county department.

8 **SECTION 4.** 48.981 (7) (cm) of the statutes is amended to read:

9 48.981 (7) (cm) ~~An~~ Notwithstanding par. (a), an agency may disclose
10 information from its records for use in proceedings under s. 48.25 (6), 813.122 or
11 813.125.

12 **SECTION 5.** 48.981 (7) (cr) of the statutes is created to read:

13 48.981 (7) (cr) 1. Notwithstanding par. (a) and subject to subd. 3., an agency
14 may disclose to the general public a written summary of the information specified
15 in subd. 2. relating to any child who has died or been placed in serious or critical
16 condition, as determined by a physician, as a result of any suspected abuse or neglect
17 that has been reported under this section if any of the following circumstances apply:

18 a. A person has been charged with a crime for causing the death or serious or
19 critical condition of the child as a result of the suspected abuse or neglect, or the
20 district attorney indicates that a person who is deceased would have been charged
21 with a crime for causing the death or serious or critical condition of the child as a
22 result of the suspected abuse or neglect, but for the fact that the person is deceased.

23 b. A judge, district attorney, law enforcement officer, law enforcement agency
24 or any other officer or agency whose official duties include the investigation or
25 prosecution of crime has previously disclosed to the public, in the performance of the

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1 official duties of the officer or agency, that the suspected abuse or neglect of the child
2 has been investigated under sub. (3) or that child welfare services have been
3 provided to the child or the child's family under this chapter.

4 c. A parent, guardian or legal custodian of the child or the child, if 14 years of
5 age or over, has previously disclosed or authorized the disclosure of the information
6 specified in subd. 2.

7 2. If an agency is permitted to disclose information under subd. 1. relating to
8 a child who has died or been placed in serious or critical condition as a result of any
9 suspected abuse or neglect that has been reported under this section, the agency may
10 disclose all of the following information from its records:

11 a. A description of any investigation made by the agency in response to the
12 report of the suspected abuse or neglect, a statement of the determination made by
13 the agency under sub. (3) (c) 4. with respect to the report and the basis for that
14 determination, a statement of whether any services were offered or provided to the
15 child, the child's family or the person suspected of the abuse or neglect and a
16 statement of whether any other action was taken by the agency to protect the child
17 who is the subject of the report or any other child residing in the same dwelling as
18 the child who is the subject of the report.

19 b. Whether any previous report of suspected or threatened abuse or neglect of
20 the child has been made to the agency and the date of the report, a statement of the
21 determination made by the agency under sub. (3) (c) 4. with respect to the report and
22 the basis for that determination, a statement of whether any services were offered
23 or provided to the child, the child's family or the person suspected of the abuse or
24 neglect and a statement of whether any other action was taken by the agency to

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1 protect the child who is the subject of the report or any other child residing in the
2 same dwelling as the child who is the subject of the report.

3 c. Whether the child or the child's family has received any services under this
4 chapter prior to the report of suspected abuse or neglect that caused the child's death
5 or serious or critical condition or any previous report of suspected or threatened
6 abuse or neglect.

7 3. An agency may not disclose any of the information described in subd. 2. if
8 any of the following applies:

9 a. The agency determines that disclosure of the information would be contrary
10 to the best interests of the child who is the subject of the report, the child's siblings
11 or any other child residing in the same dwelling as the child who is the subject of the
12 report or that disclosure of the information is likely to cause mental, emotional or
13 physical harm or danger to the child who is the subject of the report, the child's
14 siblings, any other child residing in the same dwelling as the child who is the subject
15 of the report or any other person.

16 b. The district attorney determines that disclosure of the information would
17 jeopardize any ongoing or future criminal investigation or prosecution or would
18 jeopardize a defendant's right to a fair trial.

19 c. The agency determines that disclosure of the information would jeopardize
20 any ongoing or future civil investigation or proceeding or would jeopardize the
21 fairness of such a proceeding.

22 d. Disclosure of the information is not authorized by state law or rule or federal
23 law or regulation.

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1 e. The investigation under sub. (3) of the report of the suspected abuse or
2 neglect has not been completed, in which case the agency may only disclose that the
3 report is under investigation.

4 f. Disclosure of the information would reveal the identity of the child who is the
5 subject of the report, the child's siblings, the child's parent, guardian or legal
6 custodian or any other person residing in the same dwelling as the child, and
7 information that would reveal the identity of those persons has not previously been
8 disclosed to the public.

9 g. Disclosure of the information would reveal the identity of a reporter or any
10 other person who provides information relating to the suspected abuse or neglect of
11 the child.

12 4. Any person who requests the information specified in subd. 2. under the
13 circumstances specified in subd. 1. and whose request is denied may petition the
14 court to order the disclosure of that information. On receiving a petition under this
15 subdivision, the court shall notify the agency, the district attorney, the child and the
16 child's parent, guardian or legal custodian of the petition. If any person notified
17 objects to the disclosure, the court may hold a hearing to take evidence and hear
18 argument relating to the disclosure of the information. The court shall make an in
19 camera inspection of the information sought to be disclosed and shall order
20 disclosure of the information, unless the court finds that any of the circumstances
21 specified in subd. 3. apply.

22 5. Any person acting in good faith in disclosing or refusing to disclose the
23 information specified in subd. 2. under the circumstances specified in subd. 1. is
24 immune from any liability, civil or criminal, that may result by reason of that
25 disclosure or nondisclosure. For purposes of any proceeding, civil or criminal, the

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1 good faith of a person in disclosing or refusing to disclose the information specified
2 in subd. 2. under the circumstances specified in subd. 1. shall be presumed.

3 **SECTION 6.** 48.981 (7) (d) of the statutes is amended to read:

4 48.981 (7) (d) ~~The Notwithstanding par. (a), the~~ department may have access
5 to any report or record maintained by an agency under this section.

6 (END)