

1999 DRAFTING REQUEST

Bill

Received: **02/21/2000**

Received By: **malaigm**

Wanted: **Soon**

Identical to LRB:

For: **Peggy Rosenzweig (608) 266-2512**

By/Representing: **Kevin Lewis**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - abuse and neglect**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Child abuse and neglect information disclosure and appeals

Instructions:

Rerdraft s0297/1 as companion bill for the senate.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 02/21/2000	jgeller 02/22/2000		_____			S&L
/1			kfollet 02/23/2000	_____	lrb_docadmin 02/23/2000	lrb_docadmin 02/25/2000	

FE Sent For:

<END>

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/?	malaigm	11 2/23 Jg	Kyf 2/23	Kyf/f 2/23			

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<END>

1999

Date (time) needed Soon

LRB - 4584, 1

BILL

GMM. jlg:

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to:

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: create → anal: → title: → head

For the subheading [old =S], execute: create → anal: → title: → sub

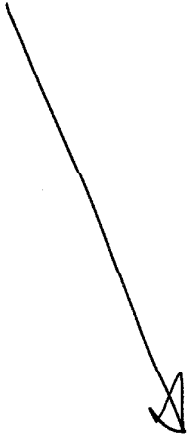
For the sub-subheading [old =P], execute: create → anal: → title: → sub-sub

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

SECTION #.

4584/1

~~ASSEMBLY SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL (LRB-2801/2)~~



Regen

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.

Insert
A

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

8 SECTION 1. 48.981 (3) (c) 5m. of the statutes is created to read:
9 48.981 (3) (c) 5m. If the county department or, in a county having a population
10 of 500,000 or more, the department or a licensed child welfare agency under contract
11 with the department determines under subd. 4. that a specific person has abused or
12 neglected a child, the county department, department or licensed child welfare

1 agency, within 15 days after the date of the determination, shall notify the person in
2 writing of the determination, the person's right to appeal the determination and the
3 procedure by which the person may appeal the determination, and the person may
4 appeal the determination in accordance with the procedures established by the
5 department under this subdivision. The department shall establish procedures for
6 conducting an appeal under this subdivision. Those procedures shall include a
7 procedure permitting an appeal under this subdivision to be held in abeyance
8 pending the outcome of any criminal proceedings or any proceedings under s. 48.13
9 based on the alleged abuse or neglect or the outcome of any investigation that may
10 lead to the filing of a criminal complaint or a petition under s. 48.13 based on the
11 alleged abuse or neglect. Those procedures need not be promulgated as rules.

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

13 48.981 (3) (cm) *Contract with licensed child welfare agencies.* A county
14 department may contract with a licensed child welfare agency to fulfill the county
15 department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 6., 6m. and 8. The
16 department may contract with a licensed child welfare agency to fulfill the
17 department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 6., 6m., 7.,
18 8. and 9. in a county having a population of 500,000 or more. The confidentiality
19 provisions specified in sub. (7) shall apply to any licensed child welfare agency with
20 which a county department or the department contracts.

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

22 48.981 (7) (a) 15g. A citizen review panel established or designated by the
23 department or a county department.

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

1 48.981 (7) (cm) ~~An~~ Notwithstanding par. (a), an agency may disclose
2 information from its records for use in proceedings under s. 48.25 (6), 813.122 or
3 813.125.

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

5 48.981 (7) (cr) 1. Notwithstanding par. (a) and subject to subd. 3., an agency
6 may disclose to the general public a written summary of the information specified
7 in subd. 2. relating to any child who has died or been placed in serious or critical
8 condition, as determined by a physician, as a result of any suspected abuse or neglect
9 that has been reported under this section if any of the following circumstances apply:

10 a. A person has been charged with a crime for causing the death or serious or
11 critical condition of the child as a result of the suspected abuse or neglect, or the
12 district attorney indicates that a person who is deceased would have been charged
13 with a crime for causing the death or serious or critical condition of the child as a
14 result of the suspected abuse or neglect, but for the fact that the person is deceased.

15 b. A judge, district attorney, law enforcement officer, law enforcement agency
16 or any other officer or agency whose official duties include the investigation or
17 prosecution of crime has previously disclosed to the public, in the performance of the
18 official duties of the officer or agency, that the suspected abuse or neglect of the child
19 has been investigated under sub. (3) or that child welfare services have been
20 provided to the child or the child's family under this chapter.

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

24 2. If an agency is permitted to disclose information under subd. 1. relating to
25 a child who has died or been placed in serious or critical condition as a result of any

1 suspected abuse or neglect that has been reported under this section, the agency may
2 disclose all of the following information from its records:

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

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

19 c. Whether the child or the child's family has received any services under this
20 chapter prior to the report of suspected abuse or neglect that caused the child's death
21 or serious or critical condition or any previous report of suspected or threatened
22 abuse or neglect.

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

1 a. The agency determines that disclosure of the information would be contrary
2 to the best interests of the child who is the subject of the report, the child's siblings
3 or any other child residing in the same dwelling as the child who is the subject of the
4 report or that disclosure of the information is likely to cause mental, emotional or
5 physical harm or danger to the child who is the subject of the report, the child's
6 siblings, any other child residing in the same dwelling as the child who is the subject
7 of the report or any other person.

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

11 c. The agency determines that disclosure of the information would jeopardize
12 any ongoing or future civil investigation or proceeding or would jeopardize the
13 fairness of such a proceeding.

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

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

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

1999 ASSEMBLY BILL

Insert A

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.



ASSEMBLY BILL

Insert A

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.

permits

the public

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 requires an agency to disclose to any member of the general public, on request, 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.

§ 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.

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) disclosure of the information is not authorized by federal law or regulation; or 4) 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.

§ 1. The

§ 2. The

Insert A-1 to Insert A

state law or rule or

Insert A-1 to Insert A

§ 5. The

ASSEMBLY BILL

Insert A

from an agency's records that may

to the public

The information that must be disclosed on request in cases of a child fatality or near fatality is as follows:

1. The name and age of the child, but only if that information has previously been disclosed to the public.
2. A description of any investigation made, services offered or provided and any other action taken by the agency with respect to the child and the child's family in response to the report of suspected abuse or neglect, and a statement of the determination of the agency as to whether abuse or neglect occurred and the basis for that determination.
3. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency, the date of the previous report, whether a determination was made in response to the previous report that abuse or neglect had occurred or was likely to occur and whether any services were offered or provided to the child or the child's family or any other action taken by the agency in response to the previous report.

Insert A-2
to Insert A

#3

4. 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.
5. The results of any review conducted relating to the child fatality or near fatality.

services

The bill prohibits certain information from being disclosed to the general public on request in cases of a child fatality or near fatality. Information that may not be disclosed is as follows:

1. Any reports of suspected or threatened child abuse or neglect made to the agency, any child abuse or neglect records maintained by the agency and the contents of those reports and records.
2. Any information that 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, unless that information has previously been disclosed to the public, and any information that would reveal the identity of the person who reports the suspected abuse or neglect or any other person who provides information relating to the suspected abuse or neglect.
3. Any confidential medical, psychological or psychiatric information or other similar sensitive personal information of the child or any member of the child's family.

Under current federal law, each state that receives a grant under the federal Child Abuse Prevention and Treatment Act ~~must~~ 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.

ASSEMBLY BILL

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:

SECTION 1. 48.981 (3) (c) 5m. of the statutes is created to read:

48.981 (3) (c) 5m. If 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 determines under subd. 4. that a specific person has abused or neglected a child, the county department, department or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing 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 the department under this subdivision. The department shall establish procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect. Those procedures need not be promulgated as rules.

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

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

(end of insert)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4584/1
GMM.....

(INSERT A-1 TO INSERT A)

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.

(END OF INSERT)

(INSERT A-2 TO INSERT A)

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.

(END OF INSERT)

**SUBMITTAL
FORM**

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 02/23/2000

To: Senator Rosenzweig

Relating to LRB drafting number: LRB-4584

Topic

Child abuse and neglect information disclosure and appeals

Subject(s)

Children - abuse and neglect

1. **JACKET** the draft ~~for~~ introduction Peggy Rosenzweig
in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738