

1999 DRAFTING REQUEST**Bill**Received: **09/9/98**Received By: **malaigm**Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2288**By/Representing: **Fossum**This file may be shown to any legislator: **NO**Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - abuse and neglect**Extra Copies: **DHFS**

Topic:

DOA:.....Fossum - Appeals of substantiated abuse or neglect findings

Instructions:

See Attached

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>
/1	malaigm 09/28/98	gilfokm 09/28/98	lpaasch 09/29/98	_____	lrb_docadmin 09/29/98		
/2	malaigm 12/23/98	gilfokm 12/23/98	hhagen 12/28/98	_____	lrb_docadmin 12/28/98		
/3	malaigm 01/19/99	gilfokm 01/19/99	jfrantze 01/20/99	_____	lrb_docadmin 01/20/99		

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **09/9/98**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2288**

By/Representing: **Fossum**

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

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - abuse and neglect**

Extra Copies: **DHFS**

Topic:

DOA:.....Fossum - Appeals of substantiated abuse or neglect findings

Instructions:

See Attached

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>
/1	malaigm 09/28/98	gilfokm 09/28/98	lpaasch 09/29/98	_____	lrb_docadmin 09/29/98		
/2	malaigm 12/23/98	gilfokm 12/23/98	hhagen 12/28/98	_____	lrb_docadmin 12/28/98		

FE Sent For: *13-1-19-99 kmq* *Jo 1/20* *Jo/hh*
END

1999 DRAFTING REQUEST

Bill

Received: **09/9/98**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2288**

By/Representing: **Fossum**

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

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - abuse and neglect**

Extra Copies: **DHFS**

Topic:

DOA:.....Fossum - Appeals of substantiated abuse or neglect findings

Instructions:

See Attached

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>
/1	malaigm 09/28/98	gilfokm 09/28/98	lpaasch 09/29/98	_____	lrb_docadmin 09/29/98		

*1/2-12-23
Kmg*

#12/28

#1/km12/28

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **09/9/98**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2288**

By/Representing: **Fossum**

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

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - abuse and neglect**

Extra Copies: **DHFS**

Topic:

DOA:.....Fossum - Appeals of substantiated abuse or neglect findings

Instructions:

See Attached

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>
1?	malaigm	1-9-98 King	9-29 L.S.	9-29-98 <u>JF</u>			

FE Sent For:

<END>

DHFS

Department of Health and Family Services
1997-99 Biennial Budget Statutory Language Request
June 29, 1998

Title: Appeals of Substantiated Abuse or Neglect Findings

determination under par. (c)4.

Current Language

Under s.48.981(3)(c)4., an agency conducting a child abuse and neglect investigation must determine whether abuse or neglect has occurred or is likely to occur. In most cases, the investigating agency will also determine who it was that abused or neglected the child. Under current statute and policy, there is no formal appeal process for an individual against whom an abuse or neglect allegation has been substantiated to appeal that decision.

Proposed Change

Pursuant to the reauthorization of the federal Child Abuse Prevention and Treatment Act (CAPTA), all states must implement a formal appeals process by which individuals who disagree with an official finding of abuse or neglect can appeal that decision. To meet this requirement it is proposed that section 48.981(3)(e) be amended to permit an appeal of the finding of abuse or neglect in accordance with standards established by the Department.

created

Effect of the Change

This change will create a statewide appeal right applied on the basis of standards established by the Department. It also provides appeal rights for foster parents, and other individuals who disagree with a finding of abuse or neglect.

Rationale for the Change

This will bring Wisconsin into compliance with federal law and creates a basis for an individual to appeal. The state risks loss of federal CAPTA funds if it does not comply with the federal CAPTA provisions within the required timeframes.

Desired Effective Date: Passage of budget bill
Agency: DHFS
Agency Contact: Sherwood Seigel
Phone: 267-7805

"(II) to make recommendations to the court concerning the best interests of the child;

"(x) the establishment of citizen review panels in accordance with subsection (c);

"(xi) provisions, procedures, and mechanisms to be effective not later than 2 years after the date of the enactment of this section—

"(I) for the expedited termination of parental rights in the case of any infant determined to be abandoned under State law; and

"(II) by which individuals who disagree with an official finding of abuse or neglect can appeal such finding;

"(xii) provisions, procedures, and mechanisms to be effective not later than 2 years after the date of the enactment of this section that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction—

"(I) to have committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

"(II) to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

"(III) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or

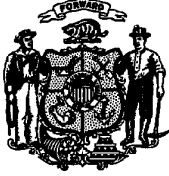
"(IV) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent; and

"(xiii) an assurance that, upon the implementation by the State of the provisions, procedures, and mechanisms under clause (xii), conviction of any one of the felonies listed in clause (xii) constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (although case-by-case determinations of whether or not to seek termination of parental rights shall be within the sole discretion of the State);

"(B) an assurance that the State has in place procedures for responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for—

"(i) coordination and consultation with individuals designated by and within appropriate health-care facilities;

"(ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0087/1

GMM.....
King

DOA:.....Fossum – Appeals of substantiated abuse or neglect findings
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 *Don't Gen. Act*
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

Under current law, an agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (in most cases the county department of human services or social services, but in some cases the department of health and family services (DHFS) or a child welfare agency) must determine, within 60 days after receipt of such a report, whether abuse or neglect has occurred or is likely to occur. Currently, there is no procedure for appealing that determination. This bill requires DHFS to promulgate rules providing for a procedure by which any person who disagrees with a determination that child abuse or neglect has occurred or is likely to occur may appeal that determination.

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

2 SECTION 1. 48.981 (3) (c) 4. of the statutes is amended to read:
3 48.981 (3) (c) 4. The county department or, in a county having a population of
4 500,000 or more, the department or a licensed child welfare agency under contract

1 with the department shall determine, within 60 days after receipt of a report,
 2 whether abuse or neglect has occurred or is likely to occur. The determination shall
 3 be based on a preponderance of the evidence produced by the investigation. A
 4 determination that abuse or neglect has occurred may not be based solely on the fact
 5 that the child's parent, guardian or legal custodian in good faith selects and relies on
 6 prayer or other religious means for treatment of disease or for remedial care of the
 7 child. In making a determination that emotional damage has occurred, the county
 8 department or, in a county having a population of 500,000 or more, the department
 9 or a licensed child welfare agency under contract with the department shall give due
 10 regard to the culture of the subjects. Any person who disagrees with a determination
 11 made under this subdivision may appeal that determination in accordance with the
 12 procedures provided by the department by rules promulgated under par. (e). This
 13 subdivision does not prohibit a court from ordering medical services for the child if
 14 the child's health requires it.

Keep selected period

15 SECTION 2. 48.981 (3) (e) of the statutes is created to read:

16 48.981 (3) (e) *Appeals.* The department shall promulgate rules providing for
 17 a procedure by which any person who disagrees with a determination made under
 18 par. (c) 4. may appeal that determination.

19 (END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0087/4 (2)
GMM:kmg:lp

Soon DNOTE

(MRS)

DOA:.....Fossum – Appeals of substantiated abuse or neglect findings
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

permits a person who ~~has been found to have~~ disagrees with a determination
that ~~abuse or neglect~~ ~~has occurred~~ ~~a child~~ to appeal that
~~determination~~ ~~finding~~ in accordance with procedures
established by DHFS

1 AN ACT ^{Don't Gen Cat.} relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
CHILDREN

Under current law, an agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (in most cases the county department of human services or social services, but in some cases the department of health and family services (DHFS) or a child welfare agency) must determine, within 60 days after receipt of such a report, whether abuse or neglect has occurred or is likely to occur. Currently, there is no procedure for appealing that determination. This bill requires DHFS to promulgate rules providing for a procedure by which any person who disagrees with a determination that child abuse or neglect has occurred or is likely to occur may appeal that determination.

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

- 2 SECTION 1. 48.981 (3) (c) 4. of the statutes is amended to read:
- 3 48.981 (3) (c) 4. The county department or, in a county having a population of
- 4 500,000 or more, the department or a licensed child welfare agency under contract

1 with the department shall determine, within 60 days after receipt of a report,
 2 whether abuse or neglect has occurred or is likely to occur. The determination shall
 3 be based on a preponderance of the evidence produced by the investigation. A
 4 determination that abuse or neglect has occurred may not be based solely on the fact
 5 that the child's parent, guardian or legal custodian in good faith selects and relies on
 6 prayer or other religious means for treatment of disease or for remedial care of the
 7 child. In making a determination that emotional damage has occurred, the county
 8 department or, in a county having a population of 500,000 or more, the department
 9 or a licensed child welfare agency under contract with the department shall give due
 10 regard to the culture of the subjects.

11 ~~Any person who disagrees with a determination~~
~~made under this subdivision may appeal that determination in accordance with the~~
 12 ~~procedures provided by the department by rules promulgated under par. (c).~~ This
 13 subdivision does not prohibit a court from ordering medical services for the child if
 14 the child's health requires it.

15 SECTION 2. 48.981 (3) (e) of the statutes is created to read:

16 48.981 (3) (e) Appeals. The department shall promulgate rules providing for
 17 a procedure by which any person who disagrees with a determination made under
 18 par. (c) 4. may appeal that determination.

19 (END)

~~If a determination that abuse or neglect has occurred includes a
 finding that a specific person has committed the abuse or
 neglect, that person~~

NOTE

(stat)-
keep
scored

(stat)-
keep
scored

D Note

The language suggested by DHS might be found to be too narrow to be in compliance with the Federal Child Abuse Prevention and Treatment Act (CAPTA). Specifically, the DHS language would permit only a person who has been ~~found~~ found to have abused or neglected a child to appeal, while the CAPTA language permits ^{any} individual who disagrees with an official finding of abuse or neglect to appeal. Thus, under the CAPTA language, a person who ~~disagrees with a~~ has not been found to have abused or neglected a child, but who disagrees with a determination that the child has been abused or neglected, may appeal, but, under the DHS language, that person may not appeal. Accordingly, this draft, to conform to CAPTA, permits any person who disagrees with a determination that abuse or neglect has occurred to appeal that determination. The draft, however, does ^{not} permit an appeal of a determination that abuse or neglect has not occurred.

GMM

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0087/2dn
GMM:kmg:hmh

Monday, December 28, 1998

The language suggested by DHFS might be found to be too narrow to be in compliance with the federal Child Abuse Prevention and Treatment Act (CAPTA). Specifically, the DHFS language would permit only a person who has been found to have abused or neglected a child to appeal, while the CAPTA language permits *any individual who disagrees with an official finding of abuse or neglect* to appeal. Thus, under the CAPTA language, a person who has not been found to have abused or neglected a child, but who disagrees with a determination that the child has been abused or neglected, may appeal but, under the DHFS language, that person may not appeal. Accordingly, this draft, to conform to CAPTA, permits any person who disagrees with a determination that abuse or neglect has occurred to appeal that determination. The draft, however, does *not* permit an appeal of a determination that abuse or neglect has not occurred.

Gordon M. Malaise
Senior Legislative Attorney
266-9738

CORRESPONDENCE/Memorandum

State of Wisconsin
Department of Administration

Date: Gordon M. Malaise, Senior Legislative Attorney
Legislative Reference Bureau

To: Gretchen A. Fossum, Budget Analyst
State Budget Office

From:

Subject: Changes to LRB Drafts

Please make changes to the following drafts:

3. LRB Draft 0087/2 Appeals of Substantiated Abuse or Neglect Findings.

The department would like that the ability to appeal be limited to the perpetrator of child abuse or neglect in accordance with procedures established by the department. I will be sending you the communication DHFS received from the U.S. Department of Health and Human Services on the requirement.

Gordon,
This is background
material for
LRB 0087/2.

Gretchen

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-PI-98-10	2. Issuance Date: June 29, 1998
	3. Originating Office: Children's Bureau	
	4. Key Words: CAPTA; Appeals Requirement	

PROGRAM INSTRUCTION

TO: The State Office, Agency or Organization Designated by the Governor to Apply for a State Child Abuse and Neglect State Grant under the Child Abuse Prevention and Treatment Act (CAPTA)

SUBJECT: Guidance on the CAPTA State plan assurance for States to have an appeals process in place no later than October 3, 1998 for individuals who disagree with an official finding of child abuse or neglect

LEGAL AND RELATED REFERENCES:

Section 106(b)(2)(A)(xi)(II) of CAPTA; ACYF-NCCAN-PIQ-97-01, Dated April 30, 1997; and ACYF-NCCAN-PIQ-97-03, Dated September 26, 1997

PURPOSE:

The purpose of this issuance is to provide instruction to the States on the establishment of the appeals process required by section 106(b)(2)(A)(xi)(II) of CAPTA.

BACKGROUND:

The 1996 CAPTA amendments (Public Law 104-235) authorize the annual award of funds to States that submit State plans and meet certain other eligibility criteria. Specifically, subsection (b) of section 106 requires the State to submit with its State plan certain assurances signed by the Governor of the State. One of those assurances is for the State to have provisions, procedures, and mechanisms in place by October 3, 1998 for an appeals process by which individuals who disagree with an official finding of child abuse or neglect can appeal such a finding.

As we have stated in previous issuances, this requirement applies to the perpetrator of child abuse or neglect (ACYF-NCCAN-PIQ-97-03, Q/A #5) and applies to all States receiving funds under a CAPTA State plan, not just States with Central Registries (ACYF-NCCAN-PIQ-97-01, Q/A #19). This requirement is to assure that individuals who have been found by the State to have committed child abuse or neglect are afforded due process.

INSTRUCTION:

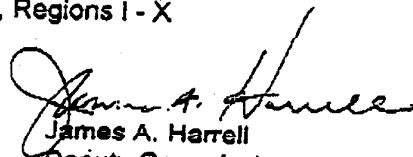
By October 3, 1998, States must have in place an appeals process by which an individual who is officially found to have committed child abuse or neglect can appeal such a finding. States have some flexibility in determining the type of appeals process that best meets their needs. For example, the appeals process can be established through the courts, through some other external appeals process, or through an internal appeals process.

The appeals process, however, must meet the following minimum conditions in order to satisfy the CAPTA requirements:

- (1) The process must afford the individual with a finding of child abuse or neglect an opportunity for due process.
- (2) The office or individual(s) hearing such appeals cannot be involved in any other stage of the case.
- (3) The office or individual(s) established to hear such appeals must have the authority to overturn a previous finding of child abuse or neglect.
- (4) Individuals must be given written notification of their right to appeal, and the method by which they may appeal, at the time they are notified of the official finding of child abuse or neglect.

EFFECTIVE DATE: October 3, 1998

INQUIRIES TO: ACF Regional Offices, Regions I - X


James A. Harrell
Deputy Commissioner
Administration on Children, Youth
and Families



3
RMR

DOA:.....Fossum – Appeals of substantiated abuse or neglect findings
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

has been found to have
abused or neglected a
child

AN ACT <sup>without
Gen. Stat.</sup> relating to: the budget.

finding

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
CHILDREN

Under current law, an agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (in most cases the county department of human services or social services, but in some cases the department of health and family services (DHFS) or a child welfare agency) must determine, within 60 days after receipt of such a report, whether abuse or neglect has occurred or is likely to occur. Currently, there is no procedure for appealing that determination. This bill permits a person who disagrees with a determination that abuse or neglect has occurred to appeal that determination in accordance with procedures established by DHFS.

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

Keep;
don't
delete

2
3
4

~~SECTION 1. 48.981 (3) (c) 4. of the statutes is amended to read:
48.981 (3) (c) 4. 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~~

SECTION 1

1 with the department shall determine, within 60 days after receipt of a report,
 2 whether abuse or neglect has occurred or is likely to occur. The determination shall
 3 be based on a preponderance of the evidence produced by the investigation. A
 4 determination that abuse or neglect has occurred may not be based solely on the fact
 5 that the child's parent, guardian or legal custodian in good faith selects and relies on
 6 prayer or other religious means for treatment of disease or for remedial care of the
 7 child. In making a determination that emotional damage has occurred, the county
 8 department or, in a county having a population of 500,000 or more, the department
 9 or a licensed child welfare agency under contract with the department shall give due
 10 regard to the culture of the subjects. ~~Any person who disagrees with a determination~~

11 ~~made under this subdivision, may appeal that determination~~ ^{finding} ~~(in accordance with~~
 12 ~~procedures established by the department.~~ This subdivision does not prohibit a court
 13 from ordering medical services for the child if the child's health requires it.
 14

(END)

✓ inset 2-13 14
 If ~~the~~ ^a determination contains a finding that a specific person

~~contains a finding that~~
~~a specific person has~~
~~abused or neglected~~
~~a child, that person~~

has abused or neglected a child,
 the county department, department or
 licensed child welfare agency making
 the determination shall ^{provide this notice} ~~notify~~ that

~~person of the person~~
 in writing,
 person at the time ^{that} the person is notified of the determination,
 of the person's right to appeal under par. (e) and of
 the method by which the person may appeal

Insert 2-13

SEC. CR; 48.981 (3) (e)

48.981 (3) (e) Appeal of determination. IF a

determination under par. (c) 4. contains a finding that a specific person has abused or neglected a child, that person may appeal that finding in accordance with procedures established by the departments.

End of use



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0087/3
GMM:kmg:jf

DOA:.....Fossum – Appeals of substantiated abuse or neglect findings
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
CHILDREN

Under current law, an agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (in most cases the county department of human services or social services, but in some cases the department of health and family services (DHFS) or a child welfare agency) must determine, within 60 days after receipt of such a report, whether abuse or neglect has occurred or is likely to occur. Currently, there is no procedure for appealing that determination. This bill permits a person who has been found to have abused or neglected a child to appeal that finding in accordance with procedures established by DHFS.

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

2 SECTION 1. 48.981 (3) (c) 4. of the statutes is amended to read:
3 48.981 (3) (c) 4. The county department or, in a county having a population of
4 500,000 or more, the department or a licensed child welfare agency under contract

1 with the department shall determine, within 60 days after receipt of a report,
2 whether abuse or neglect has occurred or is likely to occur. The determination shall
3 be based on a preponderance of the evidence produced by the investigation. A
4 determination that abuse or neglect has occurred may not be based solely on the fact
5 that the child's parent, guardian or legal custodian in good faith selects and relies on
6 prayer or other religious means for treatment of disease or for remedial care of the
7 child. In making a determination that emotional damage has occurred, the county
8 department or, in a county having a population of 500,000 or more, the department
9 or a licensed child welfare agency under contract with the department shall give due
10 regard to the culture of the subjects. If a determination contains a finding that a
11 specific person has abused or neglected a child, the county department, department
12 or licensed child welfare agency making the determination shall notify that person
13 in writing, at the time that the person is notified of the determination, of the person's
14 right to appeal under par. (e) and of the method by which the person may appeal. This
15 subdivision does not prohibit a court from ordering medical services for the child if
16 the child's health requires it.

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

18 48.981 (3) (e) *Appeal of determination.* If a determination under par. (c) 4.
19 contains a finding that a specific person has abused or neglected a child, that person
20 may appeal that finding in accordance with procedures established by the
21 department.

22 (END)