

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1867/1dn
MED:kjf:rs

November 15, 2013

For clarity, I made the following additional changes:

1. I provided in s. 253.31 (1) (e) 1. that DHS must recognize local review teams *for particular geographical areas in this state*, in accordance with other provisions in the bill.
2. I added a provision in chapter 227, stats., specifically providing that the policies and procedures adopted by DHS need not be promulgated as administrative rules.
3. I provided that only information and records acquired by a child death review team or the Child Death Review Council *in connection with a child death review* are confidential. Other records, such as administrative records, that are unrelated to child death reviews would not be subject to this confidentiality provision.

Are these changes OK?

Regarding vital records, I created an exception in this version to s. 69.20 (3) (b), stats., to allow the Child Death Review Council and local review teams to, by use of a written agreement specifying the conditions under which the information will be used, obtain information that is otherwise nondisclosable under s. 69.20 (2) (a), stats., including information designated as being collected for statistical or medical and statistical use only, certain birth certificates, and certain fact-of-death information in death certificates. Otherwise, current law should already allow for the council and teams to obtain uncertified copies of vital records. Let me know if this is insufficient to accomplish your intent. Let me know if you think you need anything else regarding access to vital records.

Regarding records related to children, the bill now includes provisions allowing for access to records under ss. 48.396 (1) (law enforcement child records), 48.396 (2) (court records relating to children under chapter 48), and 48.78 (child welfare agency records) and the juvenile justice counterparts ss. 938.396 (1), 938.396 (2), and 938.78. Note that current law, ss. 48.396 (5) and 938.396 (1j), stats., contains some specific provisions governing access to records requests denied under ss. 48.396 (1) and 938.396 (1), stats.

Regarding police reports, law enforcement agency investigation records, and other death investigation reports, I did not specifically include these in the bill because they are already public records under Wisconsin's Public Records law. Generally, these materials are available to anyone, subject to a common law balancing test that weighs

the presumption in favor of access against governmental interests in secrecy, which may include interests relating to crime detection or investigation. A notable exception to this applies to materials in the possession of a district attorney's office, which are generally not accessible until the conclusion of a pending prosecution. Let me know if you think you would like to include provisions that would allow access beyond what would be allowed under the Public Records Law, or if you want to discuss this further.

Please review the additional language added to s. 253.37 (see subs. (3) and (4)). Do these accomplish the intent?

Regarding s. 253.38 (1) in the bill - I left this provision in as you requested but, as we discussed, I added a cross-reference to s. 905.17 to make it clear that these two provisions are talking about the same thing. I also modified the language in ss. 253.38 (1) and 905.17 slightly just to harmonize the two. With your permission, I discussed these provisions further with Anne Sappenfield at Leg. Council. I told her I would send her my analysis of the issue and ask Michelle to send her a copy of the bill. She said she would take a look at it and I can then follow up with her once she has had the chance to do so.

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