

In 8-13-13
By FR, if possible

TWLj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to amend* 48.78 (2) (a) (intro.), 48.981 (7) (a) 15. and 253.01; and *to create*
2 15.197 (15), 19.85 (1) (j), 51.30 (4) (b) 29., 118.125 (2) (o), 146.82 (2) (a) 23.,
3 subchapter I (title) of chapter 253 [precedes 253.01], subchapter II of chapter
4 253 [precedes 253.30] and 905.17 of the statutes; **relating to:** creating a
5 statewide program to review child deaths and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

6 SECTION 1. 15.197 (15) of the statutes is created to read:
7 15.197 (15) CHILD DEATH REVIEW COUNCIL. (a) There is created in the
8 department of health services a child death review council consisting of all of the
9 following members:

SECTION 1

- 1 1. The secretary of health services or his or her designee.
- 2 2. The secretary of children and families or his or her designee.
- 3 3. The attorney general or his or her designee.
- 4 4. The state superintendent of public instruction or his or her designee.
- 5 5. The secretary of transportation or his or her designee.
- 6 6. The secretary of natural resources or his or her designee.
- 7 7. One or more representatives of one or more federally recognized American
- 8 Indian tribes or bands in this state who are appointed by the secretary of health
- 9 services.
- 10 8. At least 17 other members who have demonstrated a continuing interest in,
- 11 or who have expertise that the secretary of health services determines is relevant to,
- 12 the problem of unexplained or preventable childhood deaths, appointed by the
- 13 secretary of health services.

***NOTE: Are my changes here sufficient?

14 **SECTION 2.** 19.85 (1) (j) of the statutes is created to read:

15 19.85 (1) (j) Review of a child's death by the child death review council or by

16 a recognized local review team, as defined in s. 253.30 (3).

17 **SECTION 3.** 48.78 (2) (a) (intro.) of the statutes is amended to read:

18 48.78 (2) (a) (intro.) No agency may make available for inspection or disclose

19 the contents of any record kept or information received about an individual who is

20 or was in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b)

21 or (d) or (5m) (d), 48.396 (3) (bm) or (c) 1r., 48.432, 48.433, 48.48 (17) (bm), 48.57 (2m),

22 48.93, 48.981 (7), 253.36, 938.396 (2m) (c) 1r., 938.51, or 938.78 or by order of the

23 court.

24 **SECTION 4.** 48.981 (7) (a) 15. of the statutes is amended to read:

1 48.981 (7) (a) 15. A child fatality recognized local review team recognized by
2 ~~the county department or, in a county having a population of 500,000 or more, the~~
3 ~~department or a licensed child welfare agency under contract with the department,~~
4 as defined in s. 253.30 (3), or the child death review council.

INS
3-4

5 **SECTION 5.** 51.30 (4) (b) 29. of the statutes is created to read:

6 51.30 (4) (b) 29. To an authorized member of the child death review council or
7 of a recognized local review team, as defined in s. 253.30 (3), upon an oral or written
8 request from that person, if the individual is a deceased child whose death is the
9 subject of review under subch. II of the ch. 253 and the individual's treatment records
10 are relevant, as determined by the member, to the review of that death. A custodian
11 of treatment records may initiate contact with the child death review council or a
12 recognized local review team to inform the council or team of treatment records of
13 a deceased child that may be relevant to the completion of a review of a child's death
14 under subch. II of ch. 253. The recipient of any treatment records released under this
15 subdivision shall keep the records confidential, except that a member of a recognized
16 local review team may share records released under this subdivision with the other
17 members of that team, with another recognized local review team conducting a
18 review of that child's death, or with the child death review council.

****NOTE: Please review these changes and let me know if further changes are
needed.

19 **SECTION 6.** 118.125 (2) (o) of the statutes is created to read:

20 118.125 (2) (o) The school district clerk or his or her designee shall, upon a
21 request by a recognized local review team, as defined in s. 253.30 (3), or by the child
22 death review council, make pupil records available to the team or council if the pupil

Insert 3-20

1 records involve or are relevant to, as determined by the team or council, the review
2 of a child's death under subch. II of ch. 253.

***NOTE: Do the changes here reflect your intent?

3 SECTION 7. 146.82 (2) (a) 23. of the statutes is created to read:

4 146.82 (2) (a) 23. To the child death review council or a recognized local review
5 team, as defined in s. 253.30 (3), for the purpose of reviewing the death of a child.

***NOTE: I added language here to clarify that these records may only be disclosed
in connection with a review of a child's death. Is this OK?

6 SECTION 8. Subchapter I (title) of chapter 253 [precedes 253.01] of the statutes
7 is created to read:

8 **CHAPTER 253**

9 **SUBCHAPTER I**

10 **MATERNAL AND CHILD HEALTH**

11 SECTION 9. 253.01 of the statutes is amended to read:

12 **253.01 Definition.** In this chapter subchapter, "division" means the division
13 within the department that has primary responsibility for health issues.

14 SECTION 10. Subchapter II of chapter 253 [precedes 253.30] of the statutes is
15 created to read:

16 **CHAPTER 253**

17 **SUBCHAPTER II**

18 **CHILD DEATH REVIEWS**

19 **253.30 Definitions.** In this subchapter:

20 (1) "Child" means an individual under the age of 18.

21 (2) "Council" means the child death review council.

22 (3) "Recognized local review team" means a local review team under s. 253.33
23 that is recognized by the department under s. 253.31 (1) (e) 1.

1 **253.31 Child death review program.** (1) The department shall develop and
2 maintain a statewide program to review the deaths of children in this state for the
3 purpose of reducing preventable childhood deaths. The department shall develop
4 the program to include the council and recognized local review teams. Under the
5 program, the department shall do all of the following:

6 (a) Provide professional and administrative support to the council.

7 (b) Collect data that pertains to childhood deaths, including by entering into
8 data-sharing agreements with other state agencies that collect similar data.

9 (c) Cooperate with other state agencies to develop and implement programs
10 and polices to prevent the deaths of children in this state.

11 (d) After considering any recommendations received from the council, provide
12 information to the public about the risk factors for and circumstances surrounding
13 childhood deaths in this state and about specific strategies to prevent childhood
14 deaths.

15 (e) After considering any recommendations received from the council, assist
16 local review teams, including by doing all of the following:

17 1. Recognizing local review teams.

18 2. Facilitating the formation of individual local review teams.

19 3. Providing assistance with training and data collection procedures.

20 4. Adopting standards and protocols for recognized local review teams.

21 5. Creating forms and tools for child death reviews.

22 (2) The department may enter into a contract with an entity to perform any of
23 the department's duties under this section.

24 **253.32 Child death review council.** (1) The council shall do all of the
25 following:

1 (a) Collect and review data pertaining to ^eall child deaths that occur in this state.

2 (b) Review an individual child's death upon a request from a recognized local
3 review team.

4 (c) Identify trends in childhood deaths in this state, and make
5 recommendations to the legislature and applicable state agencies related to
6 interventions to prevent childhood deaths, including any necessary state resources
7 that are required to implement the recommended interventions.

8 (d) Make recommendations to the legislature, the department, and any other
9 state agency on matters related to unexpected or unexplained deaths among
10 children.

****NOTE: The question was written whether this limited who the council may make
recommendations to. I do not believe it would. However, if you want to add something
else here, let me know.

For doing all of the following:

11 (e) Make recommendations to the department ^{1.} related to ^{2.} assisting recognized
12 local review teams.

2. Establishing

13 (f) Recommend criteria and a process for recognizing local review teams.

****NOTE: Should this par. (f) be merged with par. (e)?

14 ^{e (f)} (g) Make information available to the public about the council and the council's
15 role in public policy related to preventing childhood deaths.

16 ^{e (g)} (h) By March 1, 2015, and biennially thereafter, prepare and submit to the
17 governor and the chief clerk of each house of the legislature, for distribution to the
18 legislature under s. 13.172 (2), a report on the data collected by the council on the
19 causes of childhood deaths in this state. The council shall include in the report any
20 policy recommendations that result from compiling the data for the report.

****NOTE: Are my changes here correct? I did not add "recommendations" as
requested because it already says that in the last sentence.

1 (2) The council may review an individual child's death when no review is
2 conducted by a recognized local review team under s. 253.35 (1) or (2).

3 **253.33 Local review teams.** A local review team may apply for recognition
4 by the department. A recognized local review team shall do all of the following:

5 (1) Follow and apply the standards and protocols for child death reviews that
6 are established by the department.

7 (2) Review the deaths of children as provided under 253.35.

8 (3) Enter data collected in connection with the review of a child's death into a
9 state-designated case reporting system, as required by the department.

10 (4) Identify trends in childhood deaths in the geographical area for which the
11 team is recognized and work with local organizations to make recommendations
12 related to interventions to prevent childhood deaths, including descriptions of any
13 necessary local resources that are required to implement the recommended
14 interventions.

***NOTE: Please review my changes here.

15 (5) Share information with other recognized local review teams, as provided
16 in the standards and protocols adopted by the department.

17 **253.35 Child death reviews by local review teams.** (1) (a) Except as
18 provided in par. (b) ^{and sub. (2)} a recognized local review team shall review the deaths of all
19 children that occur in the geographical area for which the team is recognized.

INS
7-19

20 (b) A recognized local review team shall request review of a child's death by the
21 council when required by the standards or protocols established by the department.

***NOTE: I modified the language here about referral to match the changes you
made to 253.32 (1) (b). Is this OK?

22 (2) If no local review team is recognized by the department for the geographical
23 area in which a child dies, or if the recognized local review team for the geographical

in lieu of conducting its own review

1 area in which a child dies so requests, a recognized local review team may review the
2 death of a child that occurs outside of the geographical area for which the team is
3 recognized in any of the following circumstances:

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****NOTE: If a local review team requests another team to review a death under this sub. (2), may, or must, the original team still conduct a review itself? In other words, can there be two reviews of the same death by different teams?

4 (a) An incident that substantially contributed to the death of the child occurred
5 in the geographical area for which the team is recognized.

6 (b) Before his or her death, the child resided in the geographical area for which
7 the team is recognized.

8 **253.36 Child death reviews; records.** (1) Except as provided in sub. (3),
9 upon receiving an oral or written request for access to or copies of information and
10 records related to a child who is the subject of a review under this subchapter from
11 the council or a representative of a recognized local review team, a person shall
12 provide the requested information and records to the council or recognized local
13 review team.

****NOTE: The term "person" in Wisconsin law already includes agencies and entities (see s. 990.01 (26), stats.).

14 (2) Notwithstanding s. 69.21 or any other state law to the contrary, any state
15 or local agency, board, commission, committee, council, department, or public body
16 corporate and politic that receives a request under sub. (1) shall release the
17 requested records to the council or recognized local review team.

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****NOTE: In this version of the draft, we have added several provisions to permit access to various types of records. If the added references are sufficient, the language here should be narrowed, and the reference here to "any other state law to the contrary" should be taken out because it is not specific. If there are other records not covered by the added provisions, let me know. Moreover, I recommend determining what under s. 69.21(2) is sought and instead placing language there.
****NOTE: Section 69.20 (2) prohibits access to certain information in vital records, with certain exceptions, which are laid out in s. 69.20 (3). Will local review teams need access to information under s. 69.20 (2) as well?

Move sentence to end

1 (3) A law enforcement agency may withhold investigative information or
2 records requested under sub. (1) if the release of the information or records would
3 interfere with a pending proceeding or investigation related to a criminal matter, a
4 delinquency matter under ch. 938, a juvenile in need of protective services under ch.
5 938, a child or unborn child in need of protection or services under ch. 48, or an issue
6 of child protection under ch. 48.

7 **253.37 Child death reviews; confidentiality.** (1) Except as provided in sub.
8 (2) and s. 51.30 (4) (b) 29., information and records acquired by the council or a
9 recognized local review team are confidential and not open to public inspection or
10 copying under s. 19.35 (1). Members of the council or a recognized local review team
11 and any person who attends a child death review or presents information to the
12 council or a recognized local review team related to a child death review shall keep
13 all information presented in connection with the child death review and any opinions
14 formed as a result of the child death review confidential.

15 (2) A member of a recognized local review team may share information
16 disclosed to the recognized local review team with another recognized local review
17 team conducting a review of that child's death or with the child death review council.

****NOTE: Please review this change and let me know if further changes are needed.

18 (3) A person who intentionally violates this section may be fined not more than
19 \$1,000 or imprisoned not more than 6 months, or both.

20 **253.38 Child death reviews; actions and proceedings.** (1) USE OF
21 INFORMATION IN COURT AND ADMINISTRATIVE PROCEEDINGS. The information and any
22 records acquired in the course of a child death review by a recognized local review
23 team or the council are not subject to discovery or subpoena in a civil or criminal

1 action or an administrative proceeding and are not admissible as evidence during the
2 course of a civil or criminal action or an administrative proceeding.

3 (2) IMMUNITY. Any person participating in a child death review under this
4 subchapter is immune from any civil or criminal liability for any good faith act or
5 omission in connection with that participation. The immunity granted under this
6 subsection applies to persons conducting the child death review as well as persons
7 providing information or records pursuant to the child death review. For the purpose
8 of any civil or criminal action, any person participating in a child death review under
9 this subchapter is presumed to be acting in good faith.

***NOTE: Please review these provisions, which include the material relating to use of child death review materials in court proceedings, and immunity for persons participating in a child review. Please let me know if this captures your intent. Also, I provided here that a person participating in a child death review is presumed to be acting in good faith. Is this OK? Do you want to add anything about the standard of proof to overcome this presumption?

10 SECTION 11. 905.17 of the statutes is created to read:

11 **905.17 Child death review participant privilege.** (1) DEFINITION. In this
12 section, “person participating in a child death review” means any person conducting
13 a child death review under subch. II of ch. 253 and any person providing information
14 or records in connection with a child death review under subch. II of ch. 253.

15 (2) GENERAL RULE OF PRIVILEGE. A person participating in a child death review
16 has a privilege to refuse to disclose and to prevent any other person from disclosing
17 any information provided or obtained or opinions formed or offered in the course of
18 a child death review.

***NOTE: I wasn't sure exactly what changes you wanted here. Please let me know what you think might be necessary here.

19 (3) WHO MAY CLAIM THE PRIVILEGE. Any person participating in a child death
20 review may claim the privilege.

1 (4) EXCEPTION. There is no privilege under this rule for information obtained
2 independent of a child death review or information that is available for public
3 inspection or copying under s. 19.35 (1). *g*

****NOTE: This provision creates a privilege that protects a “person participating in a child death review,” which is defined above, from having to testify about information provided or obtained or opinions formed or offered in the course of a child death review, and permits those persons to claim the privilege. Does this accomplish your intent in this matter?

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(END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1867/P3ins
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****NOTE: I did not make a change here because this provision specifically references the definition in s. 253.30 (3) to avoid any misinterpretation, and under our drafting standards we try to have the term used in one place precisely match the reference (i.e., "recognized local review team" is what is used in s. 253.30 (3)).

INSERT 7-19

****NOTE: I have made the requested change here, deleting the word "all." However, because this language still requires the team to review the deaths of children that occur in the team's area, this could still be interpreted to essentially mean the same thing. If your intent is to allow the team the latitude to only review certain deaths, you may want to change the word "shall" here to "may." *

INSERT 8-3

****NOTE: I modified this so that it's clear that the other review team would be conducting the review in lieu of one by the team for the geographical area in which the child died, and added a cross-reference to this provision in sub. (1) (a) because this is an exception to the requirement that a local review team review the deaths of children that occur in its geographical area.

INSERT 8-17

****NOTE: We should eliminate this provision and instead place provisions in ss. 69.20 and 69.21, stats., as needed, to allow the child death review teams to have access to whatever vital records and vital records information might be needed. Let me know if you would like to discuss this further.

If the teams will need access to confidential materials other than those already addressed in the bill, we should address those materials specifically rather than including this catch-all provision.

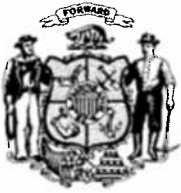
2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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1 Not Upon the written consent of an adult pupil or the parent or guardian of a minor
2 pupil or to comply with a court order, the school district clerk or his or her designee
3 shall make available to a recognized local review team, as defined in s. 253.30 (3), or
4 the child death review council pupil records requested by the team or council if the
5 pupil records involve or are relevant to, as determined by the team or council, the
6 review of a child's death under subch. II of ch. 253. ✓

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TODAY if POSS.

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✓

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2-16

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20 or (d) or (5m) (d), 48.396 (3) (bm) or (c) 1r., 48.432, 48.433, 48.48 (17) (bm), 48.57 (2m),
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20 118.125 (2) (o) Upon the written consent of an adult pupil or the parent or
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8 **CHAPTER 253**

9 **SUBCHAPTER I**

10 **MATERNAL AND CHILD HEALTH**

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20 (1) "Child" means an individual under the age of 18.

21 (2) "Council" means the child death review council.

22 (3) "Recognized local review team" means a local review team under s. 253.33
23 that is recognized by the department under s. 253.31 (1) (e) 1.

24 **253.31 Child death review program.** (1) The department shall develop and
25 maintain a statewide program to review the deaths of children in this state for the

1 purpose of reducing preventable childhood deaths. The department shall develop
2 the program to include the council and recognized local review teams. Under the
3 program, the department shall do all of the following:

4 (a) Provide professional and administrative support to the council.

5 (b) Collect data that pertains to childhood deaths, including by entering into
6 data-sharing agreements with other state agencies that collect similar data.

7 (c) Cooperate with other state agencies to develop and implement programs
8 and ~~policies~~ ^{policies} to prevent the deaths of children in this state.

9 (d) After considering any recommendations received from the council, provide
10 information to the public about the risk factors for and circumstances surrounding
11 childhood deaths in this state and about specific strategies to prevent childhood
12 deaths.

13 (e) After considering any recommendations received from the council, assist
14 local review teams, including by doing all of the following:

- 15 1. Recognizing local review teams ^{for particular geographical areas in this state,}
_{following applications under s. 253.33}
- 16 2. Facilitating the formation of individual local review teams.
- 17 3. Providing assistance with training and data collection procedures.
- 18 4. Adopting standards and protocols for recognized local review teams.
- 19 5. Creating forms and tools for child death reviews.

20 (2) The department may enter into a contract with an entity to perform any of
21 the department's duties under this section.

22 **253.32 Child death review council.** (1) The council shall do all of the
23 following:

24 (a) Collect and review data pertaining to child deaths that occur in this state.

1 (b) Review an individual child's death upon a request from a recognized local
2 review team.

3 (c) Identify trends in childhood deaths in this state, and make
4 recommendations to the legislature and applicable state agencies related to
5 interventions to prevent childhood deaths, including any necessary state resources
6 that are required to implement the recommended interventions.

7 (d) Make recommendations to the legislature, the department, and any other
8 state agency on matters related to unexpected or unexplained deaths among
9 children.

10 (e) Make recommendations to the department for doing all of the following:

- 11 1. Assisting recognized local review teams.
12 2. Establishing criteria and a process for recognizing local review teams.

13 (f) Make information available to the public about the council and the council's
14 role in public policy related to preventing childhood deaths.

15 (g) By March 1, 2015, and biennially thereafter, prepare and submit to the
16 governor and the chief clerk of each house of the legislature, for distribution to the
17 legislature under s. 13.172 (2), a report on the data collected by the council on the
18 causes of childhood deaths in this state. The council shall include in the report any
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21 conducted by a recognized local review team under s. 253.35 (1) or (2).

22 **253.33 Local review teams.** A local review team may apply for recognition
23 by the department. ^{under s. 253.31 (1) (e) ✓} A recognized local review team shall do all of the following:

24 (1) Follow and apply the standards and protocols for child death reviews that
25 are established by the department.

1 (2) Review the deaths of children as provided under 253.35.

2 (3) Enter data collected in connection with the review of a child's death into a
3 state-designated case reporting system, as required by the department.

4 (4) Identify trends in childhood deaths in the geographical area for which the
5 team is recognized and work with local organizations to make recommendations
6 related to interventions to prevent childhood deaths, including descriptions of any
7 necessary local resources that are required to implement the recommended
8 interventions.

9 (5) Share information with other recognized local review teams, as provided
10 in the standards and protocols adopted by the department.

11 **253.35 Child death reviews by local review teams.** (1) (a) Except as
12 provided in par. (b) and sub. (2), a recognized local review team shall review the
13 deaths of children that occur in the geographical area for which the team is
14 recognized, *according to the standards and protocols adopted by the department*

****NOTE: I have made the requested change here, deleting the word "all."
However, because this language still requires the team to review the deaths of children
that occur in the team's area, this could still be interpreted to essentially mean the same
thing. If your intent is to allow the team the latitude to review only certain deaths, you
may want to change the word "shall" here to "may."

15 (b) A recognized local review team shall request review of a child's death by the
16 council when required by the standards *and* protocols established by the department.

17 (2) If no local review team is recognized by the department for the geographical
18 area in which a child dies, or if the recognized local review team for the geographical
19 area in which a child dies so requests in lieu of conducting its own review, a
20 recognized local review team may review the death of a child that occurs outside of
21 the geographical area for which the team is recognized in any of the following
22 circumstances:

***NOTE: I modified this so that it's clear that the other review team would be conducting the review in lieu of one by the team for the geographical area in which the child died, and I added a cross-reference to this provision in sub. (1) (a) because this is an exception to the requirement that a local review team review the deaths of children that occur in its geographical area.

1 (a) An incident that substantially contributed to the death of the child occurred
2 in the geographical area for which the team is recognized.

3 (b) Before his or her death, the child resided in the geographical area for which
4 the team is recognized.

5 **253.36 Child death reviews; records.** (1) Except as provided in sub. (3),
6 upon receiving an oral or written request for access to or copies of information and
7 records related to a child who is the subject of a review under this subchapter from
8 the council or a representative of a recognized local review team, a person shall
9 provide the requested information and records to the council or recognized local
10 review team *if the requested information or records are any of the following:*

11 (2) Notwithstanding s. 69.21 or any other state law to the contrary, any state
12 or local agency, board, commission, committee, council, department, or public body
13 corporate and politic that receives a request under sub. (1) shall release the
14 requested records to the council or recognized local review team.

***NOTE: We should eliminate this provision and instead place provisions in ss. 69.20 and 69.21, stats., as needed, to allow the child death review teams to have access to whatever vital records and vital records information might be needed. Let me know if you would like to discuss this further.

If the teams will need access to confidential materials other than those already addressed in the bill, we should address those materials specifically rather than including this catch-all provision.

15 (3) A law enforcement agency may withhold investigative information or
16 records requested under sub. (1) if the release of the information or records would
17 interfere with a pending proceeding or investigation related to a criminal matter, a
18 delinquency matter under ch. 938, a juvenile in need of protective services under ch.

Ins.
8-10

in connection with a child death review

subs.

938, a child or unborn child in need of protection or services under ch. 48, or an issue of child protection under ch. 48.

^{to (4)} **253.37 Child death reviews; confidentiality.** (1) Except as provided in ^(sub.) (2) and s. 51.30 (4) (b) 29., information and records acquired by the council or a recognized local review team are confidential and not open to public inspection or copying under s. 19.35 (1). Members of the council or a recognized local review team and any person who attends a child death review or presents information to the council or a recognized local review team related to a child death review shall keep all information presented in connection with the child death review and any opinions formed as a result of the child death review confidential.

(2) A member of a recognized local review team may share information disclosed to the recognized local review team with another recognized local review team conducting a review of that child's death or with the child death review council.

⁽⁵⁾ (3) A person who intentionally violates this section may be fined not more than \$1,000 or imprisoned not more than 6 months, or both.

In s 9-14

In accordance with and subject to any privilege under s. 9-5.17 any

253.38 Child death reviews; actions and proceedings. (1) USE OF INFORMATION IN COURT AND ADMINISTRATIVE PROCEEDINGS. The information and ^{any} records ^{provided or obtained} (acquired) in the course of a child death review by a recognized local review team or the council are not subject to discovery or subpoena in a civil or criminal action or an administrative proceeding and are not admissible as evidence during the course of a civil or criminal action or an administrative proceeding.

(2) IMMUNITY. Any person participating in a child death review under this subchapter is immune from any civil or criminal liability for any good faith act or omission in connection with that participation. The immunity granted under this subsection applies to persons conducting the child death review as well as persons

1 providing information or records pursuant to the child death review. For the purpose
2 of any civil or criminal action, any person participating in a child death review under
3 this subchapter is presumed to be acting in good faith.

4 SECTION 11. 905.17 of the statutes is created to read:

5 **905.17 Child death review participant privilege.** (1) DEFINITION. In this
6 section, "person participating in a child death review" means any person conducting
7 a child death review under subch. II of ch. 253 and any person providing information
8 or records in connection with a child death review under subch. II of ch. 253.

9 (2) GENERAL RULE OF PRIVILEGE. A person participating in a child death review
10 has a privilege to refuse to disclose and to prevent any other person from disclosing
11 any information ^{for records} provided or obtained or opinions formed or offered in the course of
12 a child death review.

13 (3) WHO MAY CLAIM THE PRIVILEGE. Any person participating in a child death
14 review may claim the privilege.

15 (4) EXCEPTION. There is no privilege under this ^{section} rule for information obtained
16 independent of a child death review or information that is available for public
17 inspection or copying under s. 19.35 (1).

18 (END)

11

15

18

Handwritten notes in a box: 1/25, 10/17

D-Note

INSERT ANALYSIS

This bill generally provides for the establishment of a child death review program within the Department of Health Services (DHS) a Child Death Review Council (council), and local review teams to conduct child death reviews. Specifically, the bill does all of the following:

Child death review program operated by DHS

The bill requires DHS to develop and maintain a statewide program to review the deaths of children in this state for the purpose of reducing preventable childhood deaths. DHS must do all of the following as part of the program: a) provide support to the council; b) collect data pertaining to childhood deaths, including by entering into data-sharing agreements with other state agencies; c) cooperate with other state agencies to develop and implement programs and policies to prevent child deaths in this state; and d) after considering any recommendations of the council, provide certain information to the public about childhood deaths. The bill also requires DHS, after considering any recommendations received from the council, to assist local child death review teams in various ways, including by adopting standards and protocols for use by the recognized local review teams. The bill allows DHS to enter into a contract to perform its duties under the statewide program.

Child Death Review Council

The bill establishes the council within DHS, which must consist of appointees from various state agencies, one or more representatives of federally recognized American Indian tribes, and at least 17 other members who have demonstrated a continuing interest in the problem of unexplained or preventable childhood deaths. The bill requires the council to: a) collect and review data pertaining to child deaths that occur in this state; b) identify trends in childhood deaths in this state; c) make certain reports and recommendations to the Governor, the legislature, DHS, and applicable state agencies related to interventions to prevent childhood deaths, matters related to unexpected or unexplained deaths among children, and data collected by the council and the council's policy recommendations following from that data; d) make recommendations to DHS regarding assisting local review teams and establishing criteria and a process for recognizing local child death review teams; and e) make information available to the public about the council and the council's role in public policy related to preventing childhood deaths.

The bill requires the council to review an individual child's death upon a request from a local child death review team recognized by DHS and also allows the council to review an individual child's death when no review is conducted by a recognized local review team.

Local child death review teams

The bill allows DHS to recognize local child death review teams for particular geographical areas in this state and requires local review teams so recognized to review the deaths of children that occur in the geographical area for which the team is recognized, except that the bill: 1) requires a recognized local review team to request that the council instead review a child's death when required by the

X standards ^{or} protocols established by DHS, and 2) allows a recognized local review team to review the death of a child that occurs outside of the geographical area for which the team is recognized under certain circumstances.

The bill requires recognized local review teams to: a) follow and apply the standards and protocols established by DHS for child death reviews; b) enter data collected in connection with the review of a child's death into a state-designated case reporting system; c) identify trends in childhood deaths in the geographical area for which the team is recognized and work with local organizations to make recommendations related to interventions to prevent childhood deaths; and d) share information with other recognized local review teams.

Records, confidentiality, and immunity

The bill allows the council or a recognized local review team, subject to certain restrictions under the bill and current law, to obtain various types of records that are otherwise not generally subject to disclosure under current law, including mental health records, records in the possession of children's services agencies, court records of children and juveniles, reports of suspected child abuse or neglect, school records relating to individual pupils, health records, and certain vital records information.

The bill contains the following provisions with respect to confidentiality:

1. The bill provides that reviews of child deaths by the council or a recognized local review team may be conducted in closed session under the ~~Open Meetings Law~~.

2. The bill provides that information and records acquired by the council or a recognized local review team are confidential and not open to public inspection or copying under the ~~Public Records Law~~ from a recognized local review team or the council. The bill requires all information presented in connection with the child death review and any opinions formed as a result of the child death review to be kept confidential, except for information shared between local review teams and local review teams and the council, and provides for a criminal penalty for any person who violates the confidentiality provision.

3. The bill creates a privilege in the rules of evidence for persons who participate in a child death review. Under the privilege, a person who participates in a child death review may refuse to disclose and to prevent any other person from disclosing any information provided or obtained or opinions formed or offered in the course of a child death review, except for information obtained independent of a child death review or information that is available for public inspection or copying under the ~~Public Records Law~~. Any person participating in a child death review may claim the privilege. Information for which the privilege is validly claimed may not be used in court or administrative proceedings.

Finally, the bill provides that any person participating in a child death review under the provisions created in the bill, including both persons conducting the child death review as well as persons providing information or records, is immune from any civil or criminal liability for any good faith act or omission in connection with that participation.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a

X
X
X
X
X

The bill

report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

INSERT 2-16



1 **SECTION 1.** 48.396 (1) of the statutes is amended to read:

2 48.396 (1) Law enforcement officers' records of children shall be kept separate

3 from records of adults. Law enforcement officers' records of the adult expectant

4 mothers of unborn children shall be kept separate from records of other adults. Law

5 enforcement officers' records of children and the adult expectant mothers of unborn

6 children shall not be open to inspection or their contents disclosed except under sub.

7 (1b), (1d), (5), or (6) or s. 48.293 ~~or~~, 253.36, or 938.396 (2m) (c) 1p. or by order of the

8 court. This subsection does not apply to the representatives of newspapers or other

9 reporters of news who wish to obtain information for the purpose of reporting news

10 without revealing the identity of the child or adult expectant mother involved, to the

11 confidential exchange of information between the police and officials of the public or

12 private school attended by the child or other law enforcement or social welfare

13 agencies, or to children 10 years of age or older who are subject to the jurisdiction of

14 the court of criminal jurisdiction. A public school official who obtains information

15 under this subsection shall keep the information confidential as required under s.

16 118.125, and a private school official who obtains information under this subsection

17 shall keep the information confidential in the same manner as is required of a public

18 school official under s. 118.125. This subsection does not apply to the confidential

19 exchange of information between the police and officials of the tribal school attended

20 by the child if the police determine that enforceable protections are provided by a

21 tribal school policy or tribal law that requires tribal school officials to keep the

1 information confidential in a manner at least as stringent as is required of a public
 2 school official under s. 118.125. A law enforcement agency that obtains information
 3 under this subsection shall keep the information confidential as required under this
 4 subsection and s. 938.396 (1) (a). A social welfare agency that obtains information
 5 under this subsection shall keep the information confidential as required under ss.
 6 48.78 and 938.78.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292; 1999 a. 32, 89; 2003 a. 82; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 302, 338; 2011 a. 270.

7 **SECTION 2.** 48.396 (2) (a) of the statutes is amended to read:

8 48.396 (2) (a) Records of the court assigned to exercise jurisdiction under this
 9 chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be
 10 entered in books or deposited in files kept for that purpose only. Those records shall
 11 not be open to inspection or their contents disclosed except by order of the court
 12 assigned to exercise jurisdiction under this chapter and ch. 938 or as required or
 13 permitted under this subsection, sub. (3) (b) or (c) 1g., 1m., or 1r. or (6), or s. 48.375
 14 (7) (e) or 253.36.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292; 1999 a. 32, 89; 2003 a. 82; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 302, 338; 2011 a. 270.

INSERT 3-18

15 **SECTION 3.** 69.20 (3) (b) 6. of the statutes is created to read:

16 69.20 (3) (b) 6. The information will be used by ^{the} child death review council or
 17 a recognized local review team, as defined in s. 253.30 (3), for the purpose of
 18 reviewing the death of a child.

INSERT 4-5

19 **SECTION 4.** 227.01 (13) (uv) of the statutes is created to read:

1 227.01 (13) (uv) ^g Is the standards and protocols ^g adopted by the department of
 2 health services under s. 253.31 (1) (e) 4.

INSERT 8-10

- 3 (a) Law enforcement officers' records of children, as provided in s. 48.396 (1). ✓
- 4 (b) Law enforcement officers' records ^{agency} of juveniles, as provided in s. 938.396 (1). ✓
- 5 (c) Records of a court assigned to exercise jurisdiction under s. 48.16 and chs. ✓
 6 48 and 938, as provided in s. 48.396 (2). ✓
- 7 (d) Records of a court assigned to exercise jurisdiction under s. 938.17 (2) and ✓
 8 chs. 48 and 938, as provided in s. 938.396 (2). ✓
- 9 (e) Records or information about an individual who is or was in the care or legal ✓
 10 custody of an agency, as defined in s. 48.78 (1), as provided in s. 48.78. ✓
- 11 (f) Records or information about an individual who is or was in the care or legal ✓
 12 custody of an agency, as defined in s. 938.78 (1), as provided in s. 938.78. ✓

INSERT 9-14

- 13 (3) Subsection (1) does not affect any person's right to copy or inspect records ✓
 14 in the custody of any person other ^{than} the council or a recognized local review team.
- 15 (4) A person who attends a child death review or presents information to the ✓
 16 council or a recognized local review team is not prohibited under sub. (1) from ✓
 17 disclosing or sharing information or records obtained independently of the child
 18 death review or in accordance with his or her official job duties as a governmental
 19 employee or agent, if that disclosure is otherwise lawfully permitted.

INSERT 10-17

20 **SECTION 5.** 938.396 (1) (a) of the statutes is amended to read: ✓

1 938.396 (1) (a) *Confidentiality*. Law enforcement agency records of juveniles
 2 shall be kept separate from records of adults. Law enforcement agency records of
 3 juveniles may not be open to inspection or their contents disclosed except under par.
 4 (b) or (c), sub. (1j), (2m) (c) 1p., or (10), or s. 253.36 or 938.293 or by order of the court.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 3826 to 3827, 9121 (6) (a); 2007 a. 97; 2009 a. 302, 309, 338; 2011 a. 35, 165, 260, 270; s. 35.17 correction in (2g) (n) (title).

5 **SECTION 6.** 938.396 (2) of the statutes is amended to read:

6 938.396 (2) COURT RECORDS; CONFIDENTIALITY. Records of the court assigned to
 7 exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising
 8 jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for
 9 that purpose only. Those records shall not be open to inspection or their contents
 10 disclosed except by order of the court assigned to exercise jurisdiction under this
 11 chapter and ch. 48 or as required or permitted under sub. (2g), (2m) (b) or (c), or (10)
 12 or s. 253.36.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 3826 to 3827, 9121 (6) (a); 2007 a. 97; 2009 a. 302, 309, 338; 2011 a. 35, 165, 260, 270; s. 35.17 correction in (2g) (n) (title).

13 **SECTION 7.** 938.78 (2) (a) of the statutes is amended to read:

14 938.78 (2) (a) No agency may make available for inspection or disclose the
 15 contents of any record kept or information received about an individual who is or was
 16 in its care or legal custody, except as provided under sub. (3) or s. 48.396 (3) (bm) or
 17 (c) 1r., 253.36, 938.371, 938.38 (5) (b) or (d) or (5m) (d), 938.396 (2m) (c) 1r., 938.51,
 18 or 938.57 (2m) or by order of the court.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283; 1999 a. 9; 2001 a. 38, 59, 109; 2003 a. 292, 321; 2005 a. 25, 277, 293, 344, 406, 434; 2007 a. 20 ss. 3834, 9121 (6) (a); 2007 a. 97; 2009 a. 79, 302, 338; 2011 a. 32, 270; 2013 a. 20.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1867/1dn
MED&PKK:kjf&wlj:jl

Date

For clarity, I made the following additional changes:

X 1. I provided in s. 253.31 (1) ^{1.} (e) 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.

X 3. I provided that only information and ^e 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?

X 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 non-disclosable 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.

X 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 think this also makes clear to someone reading s. 253.38 (1) that the exception in 905.17 (4) applies. I also modified the language in ss. 253.38 (1) and 905.17 slightly just to harmonize the two. Let me know if any further changes are needed.

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

She said she would take a look at it and

nope 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. I can then follow up with her once she has had the chance to do so.

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.

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

Duchek, Michael

From: Merdler, Michelle
Sent: Friday, November 15, 2013 11:13 AM
To: Duchek, Michael
Subject: Re: CDR draft

Mike,

That sounds great, and please do talk to Anne. I have chatted with her previously about the draft and school records. She said to feel free to contact her with any further questions.

Thanks!

Michelle

Connected by Motorola

"Duchek, Michael" <Michael.Duchek@legis.wisconsin.gov> wrote:

Michelle,

The CDR draft is in our editing room and I hope to have it out to you today. I do still need to run the changes regarding children's records by those drafters.

I was also wondering if it would be OK if I could give Anne Sappenfield a call regarding the stuff in the bill relating to privilege, discovery, and subpoena. I just wanted to see if she could weigh in on it as I know you've worked with her before.

Let me know, thanks,

-Mike

Duchek, Michael

From: Merdler, Michelle
Sent: Friday, November 08, 2013 3:39 PM
To: Duchek, Michael
Subject: RE: CDR Law Enforcement Records

Mike,

You are brilliant! That is perfect, and it takes into consideration their concerns about the clarity of the language surrounding discovery and subpoena

Best,

Michelle

From: Duchek, Michael
Sent: Friday, November 08, 2013 3:29 PM
To: Merdler, Michelle
Subject: RE: CDR Law Enforcement Records

Michelle,

Regarding #2 below, what do you think about leaving it in, but adding a cross-reference (citation) there to 905.17 so that someone reading it knows that these are essentially saying the same thing?

-Mike

From: Merdler, Michelle
Sent: Friday, November 08, 2013 3:10 PM
To: Duchek, Michael
Subject: RE: CDR Law Enforcement Records

Mike,

I have included my comments in red. Let me know if they are not clear.

1. In re-reviewing s. 253.37 in the bill, it occurred to me that the provision requires any person to keep anything shared with a child death review team confidential. This provision could be read to prohibit a person, once he or she has shared information *within his or her own personal knowledge or experience* with the council or a local child death review team, from further disclosing that information, and I don't think that is the intent. I assume the intent is to simply prohibit people from sharing anything they learn from the child death review, but not something they already knew and not something that could be learned elsewhere. **Should we create an exception from this provision to foreclose this reading?**
I agree with your reasoning here – going over my materials when it comes to confidentiality, it discusses how team members should agree not to disclose any confidential information acquired at the review, except within the mandates of their agencies responsibilities. Thus, the intent is to keep people from sharing the sensitive information they learn/discuss at the meeting not the information they already knew due to personal knowledge/job.
2. In re-reviewing s. 253.38 in the bill, it appears that this provision, which says that child death review information are not subject to discovery or subpoena, is essentially is duplicative with s. 905.17 in the bill. Section 905.17, by

creating a privilege, means that child death review information and opinions cannot be used in court. Chapter 804, stats., addresses discovery, with s. 804.01 (2) (a), stats., addressing the scope of discovery and providing that privileged matters are not subject to discovery. See also s. 804.09 (1), stats., which governs the production of documents and electronically stored information and is subject to s. 804.01 (2) (a) and provides that privileged materials cannot be required to be produced. Section 911.01, stats., governs the applicability of the privileges in chapter 905, and provides that the privileges apply at all stages of all actions, cases and proceedings. In addition, under s. 227.45 (1), the rules of privilege should apply to administrative proceedings as well. **Therefore, I would recommend simply taking out s. 253.38 (1) (but we can leave in s. 253.38 (2)).**

I see what you are saying here with the two sections being duplicative, however, I feel that everyone involved would prefer to have both sections remain. They have concerns that it would not be clear to everyone if 253.38 is removed. So please leave both sections in.

3. The bill does not include records related to adoption proceedings under s. 48.93., stats. **Let me know if they would like access to these as well.**

In all my discussions with them, adoption proceeding records have never come up, and I think we should go with the records we have currently included or plan to include in the draft. I think it is more important that we cover the basics – which we have done.

Thank you!

Michelle Merdler

From: Duchek, Michael
Sent: Friday, November 08, 2013 2:18 PM
To: Merdler, Michelle
Subject: RE: CDR Law Enforcement Records

Michelle,

Since I know you want an introducible draft, I thought I'd share a few other things before we get it out to you that I might suggest addressing:

1. In re-reviewing s. 253.37 in the bill, it occurred to me that the provision requires any person to keep anything shared with a child death review team confidential. This provision could be read to prohibit a person, once he or she has shared information *within his or her own personal knowledge or experience* with the council or a local child death review team, from further disclosing that information, and I don't think that is the intent. I assume the intent is to simply prohibit people from sharing anything they learn from the child death review, but not something they already knew and not something that could be learned elsewhere. **Should we create an exception from this provision to foreclose this reading?**
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Thanks,

-Mike

From: Merdler, Michelle
Sent: Friday, November 08, 2013 10:27 AM
To: Duchek, Michael
Subject: RE: CDR Law Enforcement Records

Mike,

That sounds excellent!

Have a great weekend,

Michelle

From: Duchek, Michael
Sent: Friday, November 08, 2013 10:21 AM
To: Merdler, Michelle
Subject: RE: CDR Law Enforcement Records

Sorry Michelle,

Yes, it was helpful.

I am planning on working with the drafters who draft with children regarding access to records regarding children.

As for other law enforcement records, these are already available under the Public Records Law subject to a balancing test that considers, for example, ongoing criminal investigations. So I think that is probably enough without anything in the draft, but I will include a drafter's note to explain things in a bit more detail. Does that sound OK? Otherwise yes we can try to have it done by the end of next week but I will let you know if that's not possible.

-Mike

From: Merdler, Michelle
Sent: Friday, November 08, 2013 10:16 AM
To: Duchek, Michael
Subject: RE: CDR Law Enforcement Records

Mike,

Was the below list helpful? Also, I am wondering what your anticipated timeframe is for making these final changes. Our office is hopeful that the changes could be done by the end of next week, however, please let me know if that will not be possible. We certainly understand that you are busy and may not be able to get everything done!

Thanks!

Michelle

Michelle Merdler

Office of Senator Luther Olsen
14th Senate District
Michelle.Merdler@legis.wisconsin.gov
608-266-0751
[Senator Olsen on Facebook](#)

From: Merdler, Michelle
Sent: Wednesday, November 06, 2013 4:17 PM
To: Duchek, Michael
Subject: CDR Law Enforcement Records

Mike,

This is what I have for a list of law enforcement records. I am hoping that it will be helpful!

Police report of the incident/law enforcement agency investigation records.
Death investigation reports including blood alcohol and or drug concentration, scene reports and photos, interviews with families/caretakers and witnesses.
Also, information on prior criminal activity/criminal history (criminal/juvenile records), parole and probation information and records, and autopsy reports.

Finally, they are fine with including saying something along the lines of "As long as the release of such records will not jeopardize an ongoing criminal investigation or proceeding".

Let me know what you think!

Have a good night,

Michelle

Michelle Merdler
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[Senator Olsen on Facebook](#)

Duchek, Michael

From: Merdler, Michelle
Sent: Monday, October 28, 2013 3:28 PM
To: Duchek, Michael
Subject: RE: CDR Draft

Mike,

I would like a /1 version, thank you for checking!

Michelle

From: Duchek, Michael
Sent: Monday, October 28, 2013 10:24 AM
To: Merdler, Michelle
Subject: RE: CDR Draft

Michelle,

I will take another look at it, and make the requested changes. Do you want a /1 version then?

-Mike

From: Merdler, Michelle
Sent: Monday, October 28, 2013 9:20 AM
To: Duchek, Michael
Subject: RE: CDR Draft

Mike,

I have two final changes to the CDR draft.

I talked it over with the other individuals involved, and well they would prefer the broad access, they agree that we should amend the draft to include provisions in 69.20 and 69.21.

Also, on page 7, 253.35, we should leave the word 'shall' and add "according to the protocols adopted by the department" in line 13 after the word 'deaths. We want teams to review deaths in their areas, but sometimes deaths due to medical conditions/reasons are not reviewed, and these circumstances will be covered in the protocols. We feel that this language will allow teams the latitude needed to review most of the deaths in their area. Please let me know if you disagree.

If you have any questions, please contact me.

Best,

Michelle

Michelle Merdler
Office of Senator Luther Olsen
14th Senate District
Michelle.Merdler@legis.wisconsin.gov

608-266-0751

[Senator Olsen on Facebook](#)

From: Duchek, Michael
Sent: Tuesday, August 20, 2013 3:01 PM
To: Merdler, Michelle
Subject: RE: CDR Draft

Hey Michelle,

So s. 69.20 discusses access to certain specific kinds of information in various kinds of vital records and other things like records indexes, while s. 69.21 discusses access to vital records themselves. Vital records basically includes birth certificates, death certificates, divorce or annulment records, and records relates to marriages and domestic partnerships. Basically my recommendation is to figure out what kinds of information or records the CDR teams actually need access to and address that in the bill specifically, instead of the provision on page 8, line 11. As drafted, it's very broad and we really try to avoid using phrases like "notwithstanding any other law to the contrary" because it gets hard to really figure out specifically what the law is if those kinds of phrases are included.

Anyway, my guess is that the CDR teams would want access to death certificates, but would they need access to any other kind of vital records or certain information therein, etc.?

And is there anything else not already covered in the draft that the CDR teams would need access to (i.e., besides pupil records, mental health records, reports of abuse, and health records)? If not, then I'd suggest taking out that provision and simply amending some provisions in chapter 69 to provide the CDR teams with access to whatever they might need related to vital records.

Does that make sense?

-Mike

From: Merdler, Michelle
Sent: Monday, August 19, 2013 2:44 PM
To: Duchek, Michael
Subject: CDR Draft

Mike,

Thank you for the new copy of the CDR draft. I am hoping that you could further explain your note related to 253.36 (2) and ss. 69.20 and 69.21 on page 8. Please email or call me when you have time.

Thanks!

Michelle Merdler
Office of Senator Luther Olsen
14th Senate District
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Duchek, Michael

From: Merdler, Michelle
Sent: Wednesday, August 21, 2013 12:45 PM
To: Duchek, Michael
Subject: RE: CDR Draft

Mike,

I agree with you that amending 69.20 being a better option than the current phrasing. I will check and see if CDR teams need access to records other than birth and death certificates, pupil records, mental health, etc already in the draft. I will get back to as soon as possible with that information.

Thank you for all your hard work on this topic.

Best,

Michelle

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Basford, Sarah

From: Merdler, Michelle
Sent: Thursday, December 05, 2013 1:14 PM
To: LRB.Legal
Subject: Draft Review: LRB -1867/1 Topic: Child death review council and teams

Please Jacket LRB -1867/1 for the SENATE.

Thank you!

Michelle

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