

1977 Senate Bill 414

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CHAPTER 355, Laws of 1977

AN ACT to amend 48.25 (5) and 940.201; to repeal and recreate 48.981; and to create 48.30 (4) and 972.16 of the statutes, relating to the reporting of child abuse or neglect and providing penalties.

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

SECTION 1. Statement of purpose. It is the purpose of this act to protect the health and welfare of children by encouraging the reporting of suspected child abuse and child neglect in a manner which assures that appropriate protective services will be provided to abused and neglected children and that appropriate services will be offered to families of abused and neglected children in order to protect such children from further harm and to promote the well-being of the child in his or her home setting, whenever possible.

SECTION 2. 48.25 (5) of the statutes is amended to read:

48.25 (5) GUARDIAN AD LITEM. The court shall appoint a guardian ad litem for each child subject to a judicial proceeding regarding child abuse or neglect. The court may appoint a guardian ad litem in any other case in which it feels that ~~such~~ the appointment is desirable. The guardian ad litem for the child shall not be the same as counsel for the alleged abuser or neglecter or any governmental or social agency involved.

SECTION 3. 48.30 (4) of the statutes is created to read:

48.30 (4) A child placed in protective custody under s. 48.981 may be held in a hospital, foster home, relative's home or other appropriate medical or child welfare facility which is not used primarily for the detention of delinquent children.

SECTION 4. 48.981 of the statutes is repealed and recreated to read:

48.981 Abused or neglected children. (1) DEFINITIONS. In this section:

(a) "Abuse" means any physical injury inflicted on a child by other than accidental means, or sexual intercourse or sexual contact under s. 940.225. In this paragraph, "physical injury" includes but is not limited to severe bruising, lacerations, fractured bones, burns, internal injuries or any injury constituting great bodily harm under s. 939.22 (14).

(b) "Child" means any person under 18 years of age.

(c) "County agency" means the county child welfare agency as defined in s. 48.56 (1).

(d) "Neglected child" means a child whose parent, guardian, legal custodian or other person exercising temporary or permanent control over the child neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(2) PERSONS REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE OR NEGLECT. A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, or any other medical or mental health professional, social or public assistance worker, school teacher, administrator or counselor, child care worker in any day care center or child caring institution or police or law enforcement officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected shall report as provided in sub. (3). Any other person having reason to believe that a child has been abused or neglected may make such a report. No person making a report under this subsection may be discharged from employment for so doing.

(3) PROCEDURES. (a) *Initial report.* Persons required to report under sub. (2) shall immediately contact, by telephone or personally, the county agency, sheriff or city police department and shall inform the agency or department of the facts and circumstances contributing to a suspicion of child abuse or neglect. The sheriff or police department shall within 24 hours, exclusive of Saturdays, Sundays or legal holidays, refer to the county agency all cases reported to it. The county agency may require that a subsequent report be made in writing.

(b) *Duties of local law enforcement agencies.* 1. Any person reporting suspected abuse or neglect of a child may request an immediate investigation by the sheriff or police department if the person has reason to believe that the child's health or safety is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the child's health or safety is in immediate danger and take any necessary action to protect the child.

2. If an investigation reveals sufficient evidence under s. 48.28 (1) (c) to establish reasonable cause to believe that any child's health or safety is in immediate danger, the investigating officer shall place the child in protective custody and deliver the child to the county agency.

3. If the police or other law enforcement officials determine that criminal action is necessary, they shall refer the case to the district attorney for criminal prosecution.

(c) *Duties of county agencies.* 1. The county agency shall act in accordance with s. 48.57. Within 24 hours of the receipt of an initial report of suspected child abuse or neglect, the county agency shall commence an appropriate and thorough investigation to determine whether the report is "indicated" or "unfounded". The complete investigation shall, if possible, include a visit to the child's home or usual place of abode, observation of the child and an interview with the child and the child's parents or custodians.

2. Additionally, within 72 hours after receipt of an initial report the county agency shall complete and forward to the department under sub. (7) a preliminary investigative report containing the name, address, age and sex of each child involved and the type of abuse or neglect suspected. The preliminary report shall not contain any information which identifies any person other than the child.

3. An investigative report shall be classified as "indicated" or "unfounded". A finding of "indicated" for child abuse reports shall be supported by a preponderance of the evidence available to the agency; a finding of "indicated" for neglect reports shall be supported by a clear and convincing preponderance of the evidence available to the agency. Whenever there is less than the required standard of evidence indicating child abuse or neglect, the report shall be classified as "unfounded". The county agency director or his or her designee shall review and approve the investigative report prior to transmitting the report to the central registry. The person reviewing and approving the report shall not have participated in investigating the suspected abuse or neglect. A report shall not be classified "indicated" solely because the child's parent, or another person exercising temporary or permanent control over the child's care, in good faith selects and depends upon spiritual means or prayer for treatment or cure of disease or for remedial care of the child. This subdivision does not preclude a court from ordering that medical services be provided for the child, if the child's health requires it. Reports classified as "indicated" shall include a description of the services being provided to the child and those responsible for his or her care, as well as all relevant dispositional information, and shall be updated at 6-month intervals. The agency shall make findings as required under this subdivision no later than 60 days after receipt of an initial report, and shall immediately transmit the investigative report to the central registry under sub. (8).

4. After transmitting its investigative report to the central registry, the agency shall destroy its reports concerning cases of child abuse or neglect classified as "unfounded".

5. The county agency may hold temporary physical custody of a child delivered under this section for 24 hours, or a longer period as necessary, not to exceed 72 hours, if the custody period extends over a weekend or holiday, and shall immediately notify the parent, guardian or legal custodian and the juvenile court that it is holding the child in physical custody. Within the time period specified, the agency shall either apply to the court for emergency legal custody under s. 48.28 (1) (em) or return the child to the parent or guardian. The application shall not be considered binding in any other proceeding relating to child abuse or neglect or termination of parental rights or in any criminal child abuse or neglect prosecution.

6. The county agency shall take necessary steps to protect other children in the home.

7. The investigator shall inform any person required to report suspected cases of child abuse or neglect that the report was unfounded or that steps were taken to protect the health and welfare of a child who is the subject of a report made by the person. At least one contact shall be made under this subdivision within 60 days after receipt of the initial report by the agency.

8. The county agency shall cooperate with law enforcement officials, courts of competent jurisdiction and other human service agencies to prevent, identify and treat child abuse and neglect. To the extent possible, the county agency shall coordinate the development and provision of services to children found to be abused or neglected under this section.

9. The county agency shall forward a copy of its investigative report of alleged child abuse or neglect alleging that a child's safety is endangered, classified as "indicated" or "unfounded", to the central registry under sub. (8).

(d) *Independent investigation.* If an agent of an investigating agency is the subject of the initial report, an independent investigation shall be conducted by the department or by another agency designated by the department.

(4) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of a report, ordering or taking of photographs or ordering or performing medical examinations of a child under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed.

(5) CORONER'S REPORT. Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney, the department, the county agency and, if the institution making the report initially is a hospital, to the hospital.

(6) PENALTY. Whoever wilfully violates this section by failure to file a report as required, may be fined not more than \$100 or imprisoned not more than 6 months or both.

(7) FILE OF PRELIMINARY REPORTS. The department shall maintain preliminary reports filed under sub. (3) (c) 2 in a separate file. The reports shall not be copied or duplicated, and all information contained therein shall be confidential except as provided in this subsection. The department may, in response to an inquiry from a county agency about a specific child, notify the agency only that a preliminary report has been filed which names the child and identify the county agency which filed the report. Each preliminary report shall be destroyed 60 days after receipt. No information from the preliminary report may be placed in the central registry.

(8) CENTRAL REGISTRY. (a) The department shall maintain a confidential statewide central registry of child abuse and neglect reports made under sub. (3) (c) 3. The registry shall receive and maintain written reports under sub. (3) (c) 3 from county agencies of suspected child abuse or neglect cases and shall transmit information to authorized persons and agencies under sub. (10).

(b) The central registry shall be operated in such a manner as to enable the department to:

1. Provide historical information to aid local child protective service agencies in determining adequate and necessary services for abused children and their families, including immediate identification and location of prior reports of child abuse and neglect.

2. Serve as a case management tool for the department in reviewing the adequacy of local child protective efforts.

3. Aid research efforts aimed at increasing the general knowledge of child abuse and neglect.

(c) Reports of child abuse and neglect shall be maintained at the central registry in one of 2 categories: unfounded or indicated.

1. A report may be classified as "indicated" only when such a finding is supported by the required standard of evidence available to the county agency, as provided in sub. (3) (c) 3. Indicated reports may be maintained in the central registry only when supplemental information as required under sub. (3) (c) 3 is attached.

2. A report determined by the county agency to be "unfounded" shall be classified "unfounded by reason of insufficient evidence".

(d) Investigative reports classified as "indicated" shall contain the following information: the names and addresses of the child and the child's parents or other persons responsible for his or her health and welfare; the child's age, sex and race; the nature and extent of the child's abuse or neglect, including any evidence of prior injuries, abuse or neglect, to the child or siblings; the names of the persons alleged to be responsible for the abuse or neglect; family composition, including names, ages, sexes and races of other children in the home; demographic data related to census tract data; the source of the report; the person making the report, his or her occupation, and where the reporter can be reached; and the medical, legal or social disposition, including a description of any services provided. The names, addresses and all other identifying characteristics of persons named in such investigative reports shall not be placed in the central registry until the requirements of sub. (9) are met.

(e) Investigative reports classified as "unfounded" shall contain all the information required under par. (d) except names, addresses and other identifying characteristics of the persons specified in par. (d).

(f) An "indicated" report and all names, addresses and other identifying characteristics placed in the central registry from an "indicated" report shall be destroyed 7 years after receipt of the report, unless representatives of the county agency show good reason why the information should not be destroyed.

(9) NOTIFICATION AND HEARING. (a) Within 24 hours after receipt of an investigative report classifying any case as "indicated" under sub. (3) (c) 3, a notice of the finding shall be sent by registered mail or by personal contact from the department to the suspected person. The notice shall contain the following information:

1. An explanation of the finding of "indicated".
2. An explanation that unless a hearing is requested within 15 days from the date of the notice, the names, addresses and other identifying characteristics of persons named in the report shall be placed on the central registry.
3. A description of individuals and institutions who have access to information contained in the central registry.
4. An explanation of the procedure for requesting a hearing, a brief description of the purpose of the hearing and the hearing process, including a statement that the hearing will be held no later than 30 days after a request is made, and a statement that the suspected person has a right to representation by counsel at the hearing at his or her expense.

(b) The department shall keep a record of the notice indicating the manner in which notice was given, the name and position of the person giving notice, the name of the person notified and the time and place of the notification. The information contained in this record shall not be placed on the central registry until the deadline for requesting a hearing has passed without a request being made or if a request for a hearing is made, until after a decision by the hearing examiner sustaining the finding of "indicated" in the investigative report.

(c) The suspected person shall have a right to a hearing no later than 30 days after the request is made. The person has a right to a hearing to determine whether the finding of "indicated" in the investigative report is based on inaccurate or insufficient evidence which would justify reclassifying the report as unfounded or modifying the information to be placed on the central registry consistent with the findings of the hearing examiner. The county agency shall be given notice of the hearing and the burden of proof in the hearing shall be on the county agency. In the hearing, the fact that there was a court finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

(d) The department shall comply with the findings of the hearing examiner regarding the reclassification of a report or the modification of information to be placed on the central registry and if the report is reclassified as "unfounded", shall destroy the report but may maintain in the central registry the information specified in sub. (8) (e). Any notices, records and other documents relating to the hearing shall be confidential and shall not be made available to any individual or institution except by court order.

(10) CONFIDENTIALITY. (a) 1. All reports and records made under this section and maintained by the department, county agencies, the central registry and other appropriate persons, officials and institutions shall be confidential, except that confidentiality of and access to preliminary investigative reports maintained by the department shall be governed solely by sub. (7). Information shall not be made available to any individual or institution except to:

a. The subject of any report, except that the department or other governmental agency shall not release data that would identify the initial reporter;

b. Appropriate staff of the department or county agencies, who may release information to their agents or to an attending physician for treatment and diagnosis, but prior reports or a lack of prior reports shall not be the basis for the determination of whether child abuse or neglect has occurred;

c. Any court conducting child protective proceedings or any court conducting dispositional proceedings under ss. 48.33 to 48.395 in which child abuse or neglect is an issue; and

d. Any person engaged in bona fide research, with the permission of the department, provided, however, that information identifying the subjects of the reports and the reporters shall not be made available to the researcher.

2. Notwithstanding subd. 1, if the parents are the subject of a report, they may authorize the information to be made available to other persons. The authorization shall be in writing.

3. In this paragraph:

a. "County agency agent" means a foster parent or other person given custody of the child or a human service professional of a community board under s. 51.42 if the professional is working with the child under contract with or under the supervision of the county agency.

b. "Subject" means the child, parents and any person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report.

c. "Reporters" means all persons and institutions who report abuse or neglect under this section.

(b) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in the central registry and in reports and records made under this section may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(11) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department and county agencies to the extent feasible shall conduct continuing education and training programs for state and county department staff, persons and officials required to report, the general public and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation and coordination among all agencies in the identification, prevention and treatment of child abuse and neglect. The department and county agencies shall develop public information programs about child abuse and neglect.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department or a county agency may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department or county agency shall give priority to parental organizations combating child abuse and neglect.

(12) ANNUAL REPORTS. No later than August 1 of each year the department shall prepare and transmit to the governor and the legislature a report on the status of child abuse and neglect programs. The report shall include a full statistical analysis of the child abuse and neglect reports made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

SECTION 5. 940.201 of the statutes, as affected by chapter 173, laws of 1977, is amended to read:

940.201 Abuse of children. Whoever tortures a child or subjects a child to cruel maltreatment ~~any child, including, but not limited, to severe bruising, lacerations, fractured bones, burns, internal injuries or any injury constituting great bodily harm under s. 939.22 (14),~~ is guilty of a Class E felony. In this section, "child" means a person under 16 years of age.

SECTION 6. 972.16 of the statutes is created to read:

972.16 Child abuse: commitment for presentence examination. (1) If a person is convicted under s. 940.201, the court may commit the person to the department of health and social services for a presentence social and psychological examination. If the person is so committed, the court and all public officials shall make available to the department upon its request all data in their possession in respect to the case.

(2) If the court commits a person to the department under sub. (1) for presentence examination, the court shall order the person conveyed by the proper county authorities at county expense to some place of detention or examination approved or established by the department.

(3) Upon completion of the examination, but not later than 60 days after the date of the commitment order, a report of the results of the examination and the recommendations of the department shall be sent to the court.

(4) Commitments to the department under this section for presentence examination are terminated when the court orders the person returned to court by the proper county authorities and the department gives custody of the person to the authorities or when following receipt by the court of the department's report and recommendations, the person is brought before the court for any reason; or when during the presentence examination the person absconds and the court issues an arrest warrant.

(5) The court shall consider the findings and recommendations of the department in imposing sentence upon the person.

SECTION 7. **Effective date.** (1) Except as provided in sub. (2), this act takes effect on the day following its publication.

(2) The treatment of section 940.201 of the statutes by this act takes effect June 1, 1978.
