

## Justice for Children Package Testimony

November 5, 2015

Senator Rob Cowles

Over the past year, the Department of Justice, the Attorney General's office, advocacy groups, Senator Cowles, our office, and Assembly authors have collaborated to address some major crimes against children and victims of sexual assault to create a collaborative approach to protect them and provide them with an opportunity for better outcomes. We are very pleased today to have the "Justice for Children package" heard.

These bills are aimed to reform major crimes against children and victims of sexual assault, but ultimately keep kids safe. In researching these crimes and collaborating with the Department of Justice, it was clear that something needed to be done to address cases of abuse, neglect, and sexual assault and again, and most importantly, to keep kids safe.

In this package we have put together four bills to aid in the fight against these crimes.

Assembly Bill 430 allows victim advocates to play a larger role in cases of sexual assault and human trafficking, both against adults and children. Through research, we have found that survivors of sexual crimes who have received services from a victim advocate have experienced better outcomes and are in less distress through such a difficult and trying time. National statistics estimate nearly 23 million women in the United States have experienced sexual violence, while child sexual assault remains a grossly under reported crime. We needed to address the needs of our victims in this state.

This bill, specifically, gives victims greater access to victim advocates during examinations and consultations performed at a hospital, as well as, during preliminary law enforcement interviews. This bill gives victims, free of charge to them, someone who is there, solely, for their needs. Additionally, we have introduced an amendment to address concerns raised by some of the interested parties on this legislation to try provide better and less traumatic experiences for children who have been victimized by such a horrible crime. I want to thank all of those involved to help strengthen this bill and provide better advocacy for Victims of sexual assault.

Assembly Bill 431 reforms the neglect statutes and adds substance and clarity. Under current law, you have to prove intent to neglect, in addition to, a felony schedule that is inflexible and leaves out many instances that certainly constitute neglect that are happening in our communities. This bill redefines neglect as the negligent failure to provide necessary care. The bill further defines necessary care, as amended, as now adequate food, clothing, medical and dental care, shelter, supervision, the opportunity for education, and protection from the exposure to the distribution, manufacture or use of controlled substances; modeled after the statutes governing jurisdiction over children alleged to be in need of protective services (§48.13(10m)). This bill also creates a new felony schedule, while the ceiling and floor remain that same, we have included instances where children are at unreasonable and substantial risk of harm, great bodily harm, or death, as well as accounting for emotional harm, and if the child neglected becomes the victim of a child sex offense. The new schedule clearly provides greater detail and flexibility to identify neglect while maintaining the discretion District Attorneys and jurors currently have.

Assembly Bill 431 also creates the crime of repeated acts of neglect of the same child. This is modeled after the crime of repeated acts of sexual assault of the same child (§948.025). This gives prosecutors a new tool to identify situations in which a very young or non-verbal child has been neglected. For very young or non-verbal children, dates and specific instances maybe challenging to identify. This new crime does not change any of the elements necessary to convict someone of neglect. Furthermore, we have introduced an amendment to provide even greater clarity and substance to address a number of concerns raised in the Senate hearing. I again want to thank all those involved to help strengthen this legislation.

Assembly Bill 428 is similar to Assembly Bill 431 in that it too creates a new crime. The bill creates repeated acts of physical abuse of the same child. Again, modeled after repeated acts of sexual assault of the same child (§948.025) this crime helps prosecutors convict the more grievous cases of physical abuse against children, many of whom are very young or possibly non-verbal. Through our research, the children who are victims of these crimes are very young. In the State of Wisconsin, from 2008-2012, 61% of physical abuse deaths of children were aged 3 or younger, with 35% of the deaths were children under the age of one. We hope that the two new crimes created in this package will save such young children who are victims to these horrible crimes.

Assembly Bill 429 expands referral of all reports of suspected or threatened child abuse or neglect to law enforcement. Under current law, suspected cases of child abuse and neglect are referred by mandated reporters to Child Protective Services and not law enforcement. Child abuse and Neglect are the only two felonies not referred to law enforcement. This bill requires that Child Protective Services refer all suspected or threatened cases to law enforcement and coordinate a response if necessary. This legislation lets law enforcement decide if law enforcement needs to be involved, and changes the model to allow early-intervention of law enforcement, if necessary. We feel that having law enforcement involved and aware from the beginning can, at an absolute minimum, reduce duplicate investigations and provide fewer interviews where the victim will have to relive their traumatic experience. Unfortunately, we have amassed several examples from all over the state where law enforcement was not involved in an investigation of neglect or abuse and the child/children suffered continued maltreatment and, in the saddest cases, death. Law enforcement has different tools available for investigating, such as the ability to obtain search warrants and subpoenas. Through collaboration with stakeholder groups, we have introduced an amendment to help provide greater flexibility for County Human Services to refer cases, along a sliding timeline schedule, for referral ranging from 12 to 48 hours to reach law enforcement. We feel that referring all cases to law enforcement will be a vastly improved approach to identifying cases of abuse and neglect and help to keep kids out of harm's way.

Additionally, The Wisconsin Police Chiefs Association, Sheriffs and Deputy Sheriffs Association, and Wisconsin Professional Police Association all are publicly supporting this legislation. Their position is that these calls are potential felonies and they want to be involved sooner rather than later, or at least aware of referrals that have happened in their communities, because the consequence could be that a children will continue to suffer. The State Prosecutors Association and Wisconsin District Attorneys Association are also supporting this legislation.

It is so important to ensure that victims of such terrible crimes are protected in Wisconsin and receive justice from those who have wronged them. By aligning our District Attorneys, Law Enforcement, Victim Advocates, Child Protective Services and our communities together we can create a proven environment to protect the victims of these crimes and aim towards achieving greater outcomes for these victims.

I want to thank all those involved with these bills especially Attorney General Schimel, and Representatives Heaton, Macco, Murtha and Tranel for their work on this package of bills.

With these bills, I hope we can strive to give kids a violence-free and safe childhood and deter acts of abuse neglect and sexual assault in our communities. I hope that these bills can bring criminals to justice and of course, keep kids safe.



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**PREPARED TESTIMONY OF ATTORNEY GENERAL BRAD D. SCHIMEL**

Support for Assembly Bill 428, Assembly Bill 429,  
Assembly Bill 430, and Assembly Bill 431  
Assembly Committee on Criminal Justice and Public Safety  
Thursday, November 5, 2015

Good morning Mr. Chairman and members of the Assembly Committee on Criminal Justice and Public Safety. Thank you for this opportunity to testify on these four important bills: AB 428, AB 429, AB 430, and AB 431.

I would first like to thank Senator Cowles; Representatives Tranel, Macco, Murtha, and Heaton; and legislative leaders for sponsoring the "Justice for Children" legislation and addressing a need to change the way we protect children who are victims of abuse and neglect.

In my former lives as an Assistant District Attorney and District Attorney, I spent the largest part of my 25 year career prosecuting Sensitive Crimes cases. That experience included countless child abuse and neglect cases.

In that work, I saw firsthand how child abuse and neglect often do irreparable harm to children and families. Worse, the fallout from that abuse and neglect often is passed from generation to generation. Children usually learn their sense of "normal" from what they see in their own home. Unfortunately, when they grow up in an environment of physical abuse, sexual abuse, neglect, domestic abuse or drug abuse, they very often grow up to perpetuate that same conduct in their own adult relationships.

We have no higher responsibility in government than to protect our children. It is time for us to provide stronger tools to address physical abuse and neglect of children to break this cycle. These four bills will help Wisconsin better protect our children.

**Assembly Bill 428**

provides the ability to charge repeated acts of physical abuse and neglect when multiple abusive or neglectful acts are committed against the same child. For many years, Wisconsin law has given prosecutors the ability to charge repeated acts of sexual assault of a child as a single continuing offense. That tool has been critical to

our finding the truth in cases involving ongoing, repetitive sexual abuse.

Children often are not able to identify the specific date on which acts of sexual abuse were committed against them. This is just as true with acts of physical abuse and neglect as it is with sexual abuse.

Physical abuse and neglect can, also, be every bit as damaging to a child as sexual abuse. It is long overdue for Wisconsin to give prosecutors the ability to charge long-term physical abuse and neglect as an ongoing course of conduct so that we can achieve justice for these child victims and prevent offenders from committing future crimes against children.

It can be very difficult for a child to identify specific dates of violation sufficiently to support charges when there are multiple acts of physical abuse or neglect committed against them. Assembly Bill 428 provides an important tool to prosecutors that will enable them to address this challenge.

**Assembly Bill 429** requires notification to law enforcement of allegations of physical abuse and neglect of a child.

The criminal justice system works best for victims when there is a collaborative approach that brings together a multi-disciplinary team made up of prosecutors, law enforcement, victim advocates, and social services. We learned this years ago when we first mandated that law enforcement be notified of allegations of sexual assault of a child. At about that same time, some jurisdictions started utilizing Child Advocacy Centers and Multi-Disciplinary Teams to address offenses committed against children. There was resistance to those kinds of collaborative approaches at that time, but they are now accepted as the gold standard and we serve survivors of child sexual assault much better than we did just 15 years ago.

Under current law, mandatory reporters must report sexual abuse, physical abuse and neglect of a child to the county social service agency. Only as to sexual abuse of child, however, are social service agencies required to share the report with law enforcement. Wisconsin law does not require that law enforcement be notified when physical abuse or neglect of a child is suspected.

Social services and law enforcement have complementary, but not always identical interests relative to child abuse and neglect. Law enforcement also has tools available to it, such as subpoenas and search warrants, that are not typically available to social services agencies working alone.

I have been around long enough to remember when collaborative investigations were not the norm. We ran into many situations in which children were interviewed multiple times about the abuse, forcing them to relive the circumstances over and

over again.

AB 429 makes sure that the two systems both work together to investigate child abuse and neglect. AB 429 will be a force multiplier in our effort to keep our children safe. In Waukesha County where I was a prosecutor, we began conducting collaborative investigations between law enforcement and social services years ago, and I saw firsthand the benefits of this multi-disciplinary approach.

Law enforcement and prosecutors do not lose any of their discretion to make determinations as to when a child protection service response is adequate and when there should also be a criminal justice response.

**Assembly Bill 430** provides the right to assistance of a victim advocate to crime victims. During a police investigation, a suspect has the right to be represented by an attorney. In fact, if the suspect is in custody, police must inform them that they have the right to legal representation before law enforcement can interview them about the crime. Further, if the suspect cannot afford an attorney, they are told they will get one for free. No reasonable person can dispute that these rights are appropriate and in the best interests of justice.

Current law gives victims the right to accompaniment by an advocate once charges are filed, but current law does not address the investigative stages. The investigation phase can be the most stressful part of the entire process for a child victim, since that will often be the first time they talk with a stranger about what happened.

Assembly Bill 430 makes sure that victims have rights to support similar to the ones already granted to an accused suspect. Why would we not afford a crime victim, especially a child, who is being interviewed the right to have an advocate present to help them?

Further, unlike the attorney representing a suspect as part of an adversarial process, the presence of a trained victim advocate can actually assist law enforcement in doing their job. Advocates do not have a responsibility to be adversarial to the efforts of child protection workers, medical professionals or law enforcement officers. In fact, the presence of a victim advocate will make the system work better and more compassionately.

**Assembly Bill 431** proposes several changes to the neglect of a child statute.

Current Wisconsin law requires that the State prove that a person who neglected a child did so intentionally. This is an oxymoron. By its nature, neglect is not intentional. Assembly Bill 431 would remedy this confusion in our law by setting a criminal negligence standard.

Assembly Bill 431 also creates graduated penalties for varying degrees of child neglect. Under current law, a prosecutor has only two options when addressing allegations of child neglect: 1. Charge a misdemeanor if the child does not die from the neglect; and 2. Charge a felony if the child does die as a result of the neglect. This bill provides graduated penalties for neglect based upon the severity of the injury to the child. Thus, more severe neglect can be punished more severely than less severe neglect. Right now, in almost every case, neglect is only a misdemeanor offense, no matter the consequences, as long as they are short of death.

### **Conclusion**

AB 428, AB 429, AB 430, and AB 431 will enable us to give children the resources they need to navigate the criminal justice system and begin the long process of healing. These tools will enable us to do the very best we can to keep our children safe.

It is important to note, once again, that these bills propose the same things we have already utilized with great success in child sexual assault investigations and prosecutions. They simply provide to investigations and prosecutions for physical abuse and neglect the same tools and methods that have long been in place for child sexual assault cases.

The Wisconsin Department of Justice, state prosecutors who specialize in child abuse and neglect prosecutions, as well as representatives from partner organizations like the WCASA and CHW have worked tirelessly with legislators to develop this comprehensive solution to some of society's worst problems. I am confident the "Justice for Children" package of laws will be a great asset to prosecutors statewide and hold offenders more accountable than current law allows.

Thank you for allowing me the time today to address this body. I am happy to take questions.



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# DAVE HEATON

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STATE REPRESENTATIVE • 85<sup>TH</sup> ASSEMBLY DISTRICT

**Testimony Representative Dave Heaton on AB 428**  
**Assembly Committee on Criminal Justice and Public Safety**  
*Thursday November 5, 2015*

Mr. Chairman, members of the Committee, thank you for holding this public hearing and giving me an opportunity to speak to you today in support of Assembly Bill 428 (AB 428). I want to thank Senator Cowles for taking the lead on this important legislation. I would also like to thank Attorney General Brad Schimel for his instrumental role in crafting this legislation.

One of the greatest honors and most important duties of legislators, is that we speak for those who cannot speak for themselves. The same can be said of prosecutors who speak for victims of crime that they may have justice. That is why I am honored to co-author this important legislation with Senator Cowles, legislation that helps prosecutors speak for and defend our most vulnerable citizens and our most valued treasures – our children.

Currently, Wisconsin law does not define repeated physical abuse of a child as an independent crime. AB 428 closes this loophole by defining the crime of repeated acts of physical abuse of the same child and provides prosecutors a new tool to combat child abuse. Prosecutors and police officers can tell you how challenging it is to interview children who are victims of abuse, and how difficult it can be for a child to testify in court. Children often have difficulty remembering exact dates and times.

The new crime created by AB 428 is modeled after Wisconsin's current crime of repeated acts of *sexual* abuse against a child. Under this bill, prosecutors will be able to charge an offender with repeated acts of physical abuse of the same child by proving that at least three (3) acts of physical abuse occurred over a set period of time.

Domestic abuse is a serious problem for too many families in our state. With this legislation, we are taking a hard stand to protect the children of Wisconsin from abuse. Mr. Chairman and committee members, thank you once again for the opportunity to testify before you today.

Greeting – Hi, my name is April Eckdahl and I am a special education teacher for the Milwaukee Public School system. I'm here today because not only do I have experience with the Bureau of Milwaukee Child Welfare for the past 8 years as a teacher, but because for the past two years I have seen monumental errors that have and could continue to affect a child's life.

**AB 431 - LRB-1942/6- This bill changes the current statutes to better define what the intent of neglect is and makes it easier for District Attorneys to explain to a jury. This bill also creates a crime of repeated acts of neglect of the same child. This change was modeled after repeated acts of sexual abuse to allow prosecutors the tools necessary to address those who have neglected the same child in numerous instances.**

- I know this bill is of great debate. Neglect is such a broad area it is really hard to know what is considered "neglect" under the law or not. In the proposed changes to better define neglect and to make the punishments on a level, not just a misdemeanor or felony, I am hopeful that it will create a much more explanatory way of informing mandated reporters of what constitutes neglect. I know it is a case of "critical" neglect, but isn't that very subjective?
- For example, as a teacher I have seen what I think are many cases of neglect, only to call 220-SAFE and they say it is not, or question why I think it would be neglect. I have seen students walk to school in below freezing temperatures with a light jacket or a sweatshirt but that is not neglect. Or students have lice for weeks or continuous bed bug bites still sent to school. I have worked with a student (8 yr. old) who wore the same underwear for weeks, switched clothes with a sibling without them being washed, smelling, etc. I think most of these things ARE neglect. Not ridding your child's head of lice or not having a different pair of underwear to the point of smelling, to me is neglect. It is not necessarily seen that way by the BMCW and that is a problem. Worse is that the situation seems to be based on what intake worker you get on the phone. One may think it is horrible, one may not.
- In the case of a girl having a seizure disorder and not being taken for required dr check ups, especially when adults begin to notice her walking differently, speaking slower, and having frequent bloody noses, but is STILL not taken in, even when offered by a school worker. It was screened out. That should be a clear case of neglect right there! Therefore, this statute, as the authors said, needs to BETTER DEFINE neglect is long past overdue (and repeated acts - there should be a record, and it should be MONITORED, of both substantiated or unsubstantiated – that should be considered numerous instances as well).
- This bill, all bills, should also address the needs of children with disabilities. The "typical" kind of neglect can look very different than what is neglect for children with disabilities. Children with disabilities being neglected can look very different than neglect for children without disabilities.

**AB 429 - LRB-2015/1-While child abuse and child neglect are both felonies in the State of Wisconsin, neither of these crimes are referred to law enforcement. This legislation requires that any suspected or threatened child abuse or neglect instances be referred to law enforcement. This bill aligns law enforcement and Child Protective Services to work as partners to substantiate allegations of abuse and neglect by using greater investigative power and experience to help Wisconsin's children.**

- While this bill is of extreme importance, I believe there should be a measure put in place to monitor that all suspected instances are actually being referred to law enforcement. As it stands now, all suspected sexual assault instances of children are to be referred to law enforcement within 12 hours and through anonymous law enforcement sources I have learned that this is not always followed. This NEEDS to be followed with documented guidelines for calling. Does the child have to be pregnant? Knowing that calls of SEXUAL abuse are being dismissed and not even sent to law enforcement should make us all question if the same thing will happen with physical abuse or neglect.
- I think this bill is extremely important but it needs to be followed and implemented with great fidelity. There also needs to be someone to overlook this to make sure it is always followed and that it can be verified that each allegation was worked in coordination with law enforcement.
- I made numerous calls alleging of sexual assault for one of my students over the course of two years, as did co-workers, and not once was this ever referred to Sensitive Crimes or any other sort of law enforcement as is REQUIRED, according to my source. To make this situation worse was that this student was a young girl with autism.
- A call of any kind of abuse for a child with disabilities is different than for disabled children. Children with disabilities are taken less seriously – why?

**AB 430 - LRB- 1327/2- Research has shown that sexual assault survivors who received services from sexual assault advocates had more positive outcomes and experienced less distress. This legislation works to partner with victim advocates by giving them closer access to survivors and make them a more important part of the treatment for sexual violence survivors to work towards better outcomes for survivors.**

- Since I have worked with children for nearly ten years with varying types of disability, I can attest that any and all of my students would have benefited from having an advocate with them. It increases their feelings of confidence, reduces their fear, and doesn't feel alone in what is or could be a very scary time.
- A child is allowed to have a trusted adult with them in the room when they speak to an initial assessment worker. This should be put in place so that an interview doesn't start without an advocate, maybe even of their own choice. Of course not every student or teacher knows that is an option, which makes having victim advocates known much more important. Once this bill is passed, giving victim advocates closer access to survivors and more a part of the treatment for victims needs to be made aware on a

massive level. It should be made known that these advocates are out there and are available and can be utilized if needed.

**AB 428 - LRB- 2516/1-This bill creates the crime of repeated acts of physical abuse of the same child. As children are often not the best with times and dates, this legislation gives District Attorneys the ability to set time periods for when instances of abuse have occurred and levy the crime of repeated acts of physical abuse of the same child.**

- I also agree with this bill as part of the Justice for Children Package. It is extremely hard for children to set time periods in their heads and adults in all capacities need to understand that most likely, the child will not be able to give an exact date, or give a time period for how long abuse occurred. It is one more thing that can and has caused a problem when attempting to prosecute child abuse cases.
- This gives the children more of a voice. Having someone understand that it's okay if they aren't sure of the day, the month, if it was raining or cold is okay because that is not what is important. What's important is what HAPPENED and a general time frame. Any person working with children that is worth anything, that cares about kids at all, knows how children's minds work and will work with them, not AGAINST them.
- Physical abuse is rarely a one-time thing and rarely will it stop simply because one was arrested. The abuser needs to know that it can happen again, they can be arrested again, and with further consequences. More importantly, the victim needs to know that they do not need to be subjected to continuous abuse because the law only allowed prosecution for one offense.

At this point, I want to strongly urge you as power-holders of the law to deeply think about children with special needs; I'll primarily focus on autism. Children with disabilities are experiencing an injustice because they cannot express abuse verbally. They are a much more vulnerable population and much more likely to keep the abuse to themselves for many different reasons. In my experience, they have been treated much differently in the child protective services system than their neurotypical peers.

I have experienced this past year and a half a heart-breaking situation that has opened my eyes wide to the injustice for those with disabilities who cannot express the abuse they're subjected to in the way that the Bureau considers "disclosing". The summary of this situation is that one of my students began to exhibit behavior changes after a family member said something may have happened to her by a parent. I began to notice many changes that I soon learned from research were classic signs of sexual abuse. I call the BMCW over a dozen, maybe 2 dozen, times with new and important information. Another teacher called in as well. This little girl was telling us in her own way, in her own time, and when case workers came out to talk with her, she used avoidance as her tactic. She did not open up to anyone, and that is not how she is. She requires a close relationship with them, building trust over a long period of time before she will start to disclose. But she was disclosing to me and the other teacher in drawings, writings, acting things out with dolls (including laying the boy doll next to the girl doll after the abuse and saying the boy then says "I'm sorry". Any "normal" 8-year-old girl would not know that that comment is a classic of what pedophiles say, followed by presents and trips to McDonald's.

She also tried to disclose with her own physical actions, comments, etc. In the end, she did disclose to both a school social worker and a Bureau social worker. Instead of even realizing that children with disabilities will express things differently, need patience, need different tactics, they closed the case because she didn't SAY what they wanted. With her mouth. And when she did, it was questioned. I was questioned. My motives were questioned.

A thorough check and understanding of the way her disability affects her thinking, her communication, her vulnerability, was not done. If any training or research has been done, or had been done, workers would see how communication is difficult even for a highly verbal student with autism. They need to stop to think of how that disability affected her judgment or reaction or regard toward her abuser. Autism is even more of a reason to investigate thoroughly. They should be thinking that her teachers perhaps DO know her very well and can see many behavior changes and can see and hear disturbing, sad things that are happening in her life.

Workers have always warned her guardians that they were coming for a "surprise" visit, in more than one case. Am I missing the definition of surprise? Do the guardians automatically get believed or is more research done? Is any relevance put at all on the fact that a child with disabilities may feel alone, closed off and only safe at the place they spend 6 hours a day at? BMCW "experts" need more training about how disabilities can affect a child – patience, commitment, and understanding are just a few very important skills to have.

I have story after story after and during this situation that made me see how differently children with disabilities are treated in the child welfare system. They are dismissed, screened out, tossed aside. They are the least cared for because they are the easiest to be pushed aside. They can't verbally state what happened? Case closed. They are the losers in this because it takes time, it takes commitment, to get to know a child and gain their trust not even just because of abuse but because of their disability in the first place! They need to be taken more seriously and with patience and with time because of their differing ways of communicating, etc. I can understand that caseloads are high but something needs to be done. Perhaps a new section of the BMCW should be created specifically for workers that work only with children with disabilities. Case workers that can recognize and accommodate children with disabilities, or at least supply a generous amount of training, continuously. Perhaps a case worker should have a disability "expert" or advocate accompany them on any visit involving a child with disabilities. They are losers because it is so much easier to close their cases and the workers will not get in any trouble or be thought less of because they followed each step and "no abuse" was found.