
Wisconsin Legislative Council

INFORMATION MEMORANDUM



IM-2024-15

CHILD ABUSE AND NEGLECT REPORTS: CONFIDENTIALITY, PUBLIC DISCLOSURE, AND LEGISLATIVE OVERSIGHT

While reports of child abuse and neglect to child protective service (CPS) agencies¹ are generally confidential, both federal and Wisconsin law require that the Department of Children and Families (DCF) publicly disclose information about certain types of reports of child abuse and neglect. In addition, state law requires that DCF submit certain otherwise confidential information to the Legislature for review and an annual public hearing.

Because state law requires public disclosure of information on only certain, limited types of child abuse and neglect incidents, this information memorandum first provides background on the general requirements for all child abuse and neglect investigations, and then describes the legal requirements for confidentiality and public disclosure under both federal and state law, as well as the legislative oversight functions specifically required under state law relating to child abuse and neglect.

BACKGROUND: CPS REPORTING AND PROCEDURES

Report of Suspected Child Abuse or Neglect

With limited exceptions, state law requires certain individuals who interact with children in a professional capacity to report suspected or threatened child abuse or neglect to a CPS agency or a law enforcement agency.² In addition, any person, regardless of the person's profession, may report to a CPS or law enforcement agency if the person has reason to either suspect that a child has been abused or neglected or believe that a child has been threatened with abuse or neglect and that abuse or neglect will occur. [s. 48.981 (2) (a) and (c) and (3) (a) 1., Stats.]

If a report of suspected child abuse or neglect is made to a law enforcement agency, state law specifies certain types of reports that the law enforcement agency must refer to a CPS agency within 12 hours, such as cases in which a child's caregiver is the suspected "maltreater," a term commonly used to describe the individual suspected of abuse or neglect. Similarly, a CPS agency must refer to a law enforcement agency, within 12 hours, certain types of reports constituting an alleged violation of specified crimes. [s. 48.981 (3) (a), Stats.]

¹ For purposes of reporting child abuse or neglect, the appropriate CPS agency includes: a county department; the Department of Children and Families (DCF) for purposes of Milwaukee County, in that DCF administers child welfare services for that county; or a licensed child welfare agency under contract with DCF.

² Under state child welfare laws, "abuse" is defined to include a variety of conduct, such as physical injury and sexual acts. "Neglect" is also defined in the statutes, but expressly requires that the neglect be for reasons other than poverty. [See s. 48.02 (1) and (12g), Stats.]

Screening and Investigation

Immediately after receiving a report, whether received directly or referred by a law enforcement agency, the CPS agency must evaluate the report and determine, within 24 hours, whether to initiate an investigation, based on standards and policies issued by DCF. This decision is referred to as “screening,” in that a report may be “screened out” if the CPS agency does not believe the state-issued standards for initiating an investigation have been met, though the CPS agency may provide, or make arrangements for, appropriate services. Conversely, if a report is “screened in,” the CPS agency initiates an investigation, referred to as an “initial assessment,” and must determine within 60 days whether abuse or neglect has occurred or is likely to occur, based on a preponderance of the evidence produced by the investigation.

State law specifies when the CPS agency must “screen in” a report and initiate an “initial assessment” investigation, including when there is reason to suspect that a caregiver has abused or neglected the child, has threatened the child with abuse or neglect, or has facilitated or failed to take action to prevent the suspected or threatened abuse or neglect of the child. The “initial assessment” investigation may result in the CPS agency issuing a determination that abuse or neglect has occurred or is likely to occur, by making a finding that the allegation of abuse or neglect has either been “substantiated” or “unsubstantiated.”³ [s. 48.981 (3) (c), Stats.]

GENERAL RULE: CPS RECORDS ARE CONFIDENTIAL

Under both federal and state law, information relating to reports of child abuse and neglect is confidential, subject to certain exceptions.

Federal Law

Under the federal Child Abuse Protection and Treatment Act (CAPTA), states may apply for grant funds in support of prevention, assessment, investigation, prosecution, and treatment of child abuse and neglect. To receive funds, states must submit a state plan that meets the directives of CAPTA and demonstrates compliance with certain requirements, including those related to confidentiality and disclosure of information. [42 U.S.C. ss. 5106 and 5106a.]

As a condition of grant funding, CAPTA requires that child abuse and neglect records generally remain confidential. Among several other requirements, CAPTA requires states to provide an assurance that the state has in effect, and is enforcing, laws providing a method to preserve the confidentiality of all child abuse and neglect records, in order to protect the rights of the child and the child’s parents or guardians. A state’s method of preserving confidentiality of records must include requirements ensuring that reports and records made and maintained pursuant to CAPTA’s purposes may only be available to the following recipients:

- Individuals who are the subject of the report.
- Federal, state, or local government entities, or any agent of such entities, that have a need for such information in order to carry out the entity’s responsibilities under law to protect children from child abuse and neglect.⁴

³ The procedure for, nature of, and legal effect of any such determination are beyond the scope of this information memorandum. For more information on child abuse and neglect investigations, see DCF, *Wisconsin Child Protective Services (CPS) Process*, available at: <https://dcf.wisconsin.gov/cps/process>.

⁴ States must also enact laws with enforcement provisions requiring the state to disclose confidential information to any federal, state, or local government entity, or any agent of such entity, that has a need for

- Child abuse citizen review panels.
- Child fatality review panels.
- A grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury.
- Other entities or classes of individuals statutorily authorized by the state to receive such information pursuant to a legitimate state purpose.⁵

[42 U.S.C. s. 5106a (b) (2) (B) (viii).]

States are permitted, but not required, to disclose otherwise confidential information to the persons or entities list above. However, CAPTA's public disclosure requirements, as described below, are required by a separate provision in CAPTA and therefore also exist as an exception to confidentiality. [ACF, [Child Welfare Policy Manual](#), s. 2.1A.1.]

Wisconsin Law

As a condition of receiving CAPTA funds, Wisconsin law generally requires that child abuse and neglect records be confidential. Specifically, under state law, all reports of suspected child abuse and neglect and related records maintained by a CPS agency and other persons, officials, and institutions are confidential. However, as contemplated under federal law, several exceptions exist that allow reports and records to be disclosed to certain persons, such as the subject of a report, a child's parent, the person who reported the abuse or neglect, health care providers, law enforcement, attorneys, and courts, among several others. As an additional exception to the general rule of confidentiality, DCF must publicly disclose certain information when it receives reports of child abuse or neglect generally involving death, serious injury, or egregious incidents of abuse or neglect, described below in more detail. [s. 48.981 (7) (a) and (cr), Stats.]

EXCEPTION: PUBLIC DISCLOSURE REQUIREMENTS

Federal Law

While CAPTA generally requires that child abuse and neglect records remain confidential, CAPTA also requires the state to provide an assurance that it has in effect and enforces a state law that allows for public disclosure of the findings or information in the case of child abuse or neglect that has resulted in a child fatality or near fatality. For this purpose, "near fatality" means "an act that, as certified by a physician, places the child in serious or critical condition." [42 U.S.C. s. 5106a (b) (2) (B) (x) and (4).]

Federal agency guidance clarifies that the requirement to disclose case "findings or information" does not mandate the release all of the information in the entire case record. However, states must release, at a minimum, the following information:

- The cause of and circumstances regarding the fatality or near fatality.

such information in order to carry out its responsibilities under law to protect children from child abuse and neglect. [42 U.S.C. s. 5106a (b) (2) (B) (ix).]

⁵ For example, the Administration for Children and Families (ACF), a division of the U.S. Department of Health and Human Services, has explained that states may statutorily authorize release of such information to researchers as a "legitimate state purpose." because "research involving data in CPS records can provide important information that will help government officials plan programs for abused and neglected children and develop future policy directions." [ACF, [Child Welfare Policy Manual](#), s. 2.1A.1.]

- The child’s age and gender.
- Information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality, and the result of any such investigations.
- The services provided by and actions of the state on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

[ACF, [Child Welfare Policy Manual](#), s. 2.1A.1.]

Wisconsin Law

State law requires public disclosure consistent with CAPTA, and further requires other disclosures and oversight, beyond that which is minimally required by CAPTA. DCF is required to publicly disclose and submit the following to the Legislature: (1) a summary report for each incident of child death, serious injury, or egregious abuse or neglect, which may consist of either a “90-day” or “six-month” summary report; (2) quarterly reports summarizing all reports received during the previous calendar quarter of alleged sexual abuse of children placed in out-of-home care (OHC), meaning the home of a foster parent or relative other than a parent, a group home, a shelter care facility, or a residential care center for children and youth; and (3) an annual report on the status of both child abuse and neglect programs and unborn child abuse programs, currently titled the Wisconsin Child Abuse and Neglect Report (CAN Report).⁶

Summary Reports on Certain Critical Incidents

DCF is required to publicly disclose, and provide summary reports on, certain incidents of child death, serious injury, or egregious abuse or neglect. For the reports on these types of incidents, current law’s reporting requirements are triggered only when a CPS agency has reason to suspect that an incident of death, serious injury, or egregious abuse or neglect has occurred, which requires an analysis of the following statutory definitions:

- “Incident of death or serious injury” means an incident in which a child has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect, or in which a child who has been placed in OHC by court order is suspected to have committed suicide.
- “Incident of egregious abuse or neglect” means an incident of suspected abuse or neglect, other than an incident of death or serious injury, involving significant violence, torture, multiple victims, the use of inappropriate or cruel restraints, exposure of a child to a dangerous situation, or other similar, aggravated circumstances.

[s. 48.981 (7) (cr) 1. a. and b., Stats.]

Given their severity, these incidents of death, serious injury, or egregious abuse or neglect (collectively, “critical incidents”) comprise a narrow subset of all child abuse and neglect reports made to CPS and law enforcement in Wisconsin, according to DCF’s data. In other words, most reports of child abuse and neglect do not constitute a “critical incident” and therefore do not implicate state law’s public disclosure requirements.

⁶ All of the reports prepared by DCF and submitted to the Legislature are available on DCF’s website at: <https://dcf.wisconsin.gov/cwportal/reports>. See also DCF, *Critical Incidents Information – Wisconsin Act 78*, available at: <https://dcf.wisconsin.gov/cwportal/access-ia/act78>.

CPS Agency Reports Submitted to DCF

If CPS agency receives a report of child abuse or neglect and has reason to suspect that a “critical incident” has occurred, the CPS agency must provide specific information⁷ regarding the incident to DCF’s Division of Safety and Permanence within two working days after determining that such an incident is suspected to have occurred. [s. 48.981 (7) (cr) 2., Stats.]

DCF’s Public Notification

Within two working days after DCF receives a report of a critical incident from a CPS agency, DCF must publicly disclose certain information specified in statute, including the fact that DCF has received the report; whether DCF is conducting a review of the incident; and information about the child. If the critical incident was one of egregious abuse or neglect, DCF must also make this disclosure to a citizen review panel and, in Milwaukee County, to the Milwaukee Child Welfare Partnership Council. [s. 48.981 (7) (cr) 3. a., Stats.]

DCF’s Summary Reports Transmitted to the Legislature and Governor

Within 90 days after DCF receives a report of a critical incident from a CPS agency, DCF must prepare a summary report of its review of the incident, transmit it to the Governor and to the appropriate standing committees of the Legislature, and make it available to the public. Because of the 90-day deadline, this report is referred to as a “**90-day summary report.**” Since current law generally requires that all reports of suspected child abuse and neglect and related records be confidential, the statutes specify the types of information for which disclosure is authorized as an exception to confidentiality.⁸ [s. 48.981 (7) (cr) 3. b., Stats.]

As reflected in Table 1, the statutes specify the types of information that must either be included in, or excluded from, the reports. The nature of the required content differs depending on whether, at the time of the incident, the child was residing in the child’s home or placed in OHC. In addition to the required content, the 90-day summary report may also contain: (1) a summary of actions taken by the CPS agency in response to the incident; (2) a summary of changes in policies or practices made to address any issues raised in the review; and (3) recommendations for further changes in policies, practices, rules, or statutes that may be needed to address those issues. [s. 48.981 (7) (cr) 3. to 6., Stats.]

If a 90-day summary report does **not** include any actions, changes, and recommendations, then DCF must prepare a final summary report of those actions, changes, and recommendations, transmit it to the Governor and to the appropriate standing committees of the Legislature, and make it available to the public within six months after receiving the report of the critical incident. Because of this six-month timeline, this report is generally referred to as a “**six-month summary report.**” [s. 48.981 (7) (cr) 3. b., Stats.]

⁷ The CPS agency must provide DCF with: the agency name and contact person; information about the child, including age; incident date and the suspected cause of the child’s death, serious injury, or egregious abuse or neglect; a brief history of reports received in which the child, a member of the child’s family, or the person suspected of abuse or neglect was the subject and any services offered or provided; a statement of whether the child was residing in the child’s home or was placed in OHC when the incident occurred; and the law enforcement agency that referred the report or to which the report was referred. [s. 48.981 (7) (cr) 2., Stats.]

⁸ However, DCF is prohibited from transmitting, or making publicly available, a summary report if it determines that disclosing the information would jeopardize any ongoing or future criminal investigation or prosecution, a defendant’s right to a fair trial, or any ongoing or future civil investigation or proceeding or the fairness of such a proceeding. [s. 48.981 (7) (cr) 7., Stats.]

Required Information in Summary Reports: Child Residing in Home

Table 1

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| <ul style="list-style-type: none">● Information about the child, including age, gender, and race or ethnicity, and if relevant to the incident, the child's special needs, if any.● A description of the child's family.● A statement of whether, at the time of the incident, any child welfare services were being provided to the child, any member of the child's family, or suspected maltreater, or whether any of those persons was the subject of a CPS investigation or referral for services, and if so, the last date of contact. | <ul style="list-style-type: none">● A summary of all involvement of the child's parents and of the suspected maltreater in any incident reported or in receiving services in the five years preceding the incident.● A summary of any actions taken by the CPS agency with respect to the child, any member of the child's family, and the suspected maltreater.● The date of the incident and the suspected cause of the critical incident, as reported by the CPS agency to DCF. | <ul style="list-style-type: none">● The findings on which the CPS agency based its reasonable suspicion that a critical incident occurred, including any material circumstances leading to the critical incident.● A summary of any investigation that has been conducted of a report of child abuse or neglect in which the child, any member of the child's family, or the person suspected of the abuse or neglect was the subject, and of any services that have been provided to the child and the child's family since the date of the incident. |
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Required Information in Summary Reports: Child Placed in OHC

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| <ul style="list-style-type: none">● Information about the child, including the age, gender, and race or ethnicity, and if relevant to the incident, the child's special needs, if any.● A description of the OHC placement, including the basis for the decision to place the child in that placement.● A description of all other persons residing in the OHC placement. | <ul style="list-style-type: none">● The licensing history of the OHC placement, including (1) the type of license; (2) the period for which the placement has been licensed, and (3) a summary of all rule or license violations and of any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote a child's health, safety, and welfare. | <ul style="list-style-type: none">● The date of the incident and the suspected cause of the critical incident, as reported by the CPS agency to DCF.● The findings on which the CPS agency based its reasonable suspicion that a critical incident has occurred, including any material circumstances leading to the critical incident. |
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Information That Must Be Excluded From Summary Reports

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| <ul style="list-style-type: none">● Any information revealing the identity of the child who is the subject of the report, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child.● Any information revealing the identity of the suspected maltreater or of any agency employee that provided services to the child or participated in the critical incident's investigation. | <ul style="list-style-type: none">● Any information revealing the identity of a reporter or of any other person who provides information relating to the critical incident.● If disclosed, information that would violate a state law or rule, or a federal law or regulation. | <ul style="list-style-type: none">● If disclosed, information that would not be in the best interest of the child, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child, as determined by DCF, after: (1) consultation with the CPS agency, district attorney, or juvenile court; and (2) balancing the interest of the child, family or household member, or caregiver in avoiding the stigma that might result from the disclosure against the public's interest in obtaining that information. |
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Aggregated and Trend Data on 90-Day and Six-Month Summary Reports

In addition, DCF must also provide certain information to the Governor and the Legislature that summarizes various information contained in the 90-day and six-month summary reports, including all of the following:

- Aggregated information from DCF’s summary reports in the preceding calendar year.
- Trends identified by DCF in the summary reports in the preceding calendar year.
- Trends identified by DCF based on its in-depth practice reviews of incidents of child death, serious injury, or egregious abuse or neglect.
- Changes in policies or practices that have been made to address any issues raised in DCF’s review of such incidents in the summary reports.

[s. 48.47 (8) (d), Stats.]

Quarterly Reports of Sexual Abuse of Children Placed in OHC

In addition to the summary reports prompted by critical incidents, DCF must also publicly disclose information related to reports involving certain types of sexual abuse⁹ of a child placed in the home of a foster parent or relative other than a parent, or in a group home, shelter care facility, or residential care center for children and youth. Specifically, DCF is required to prepare, and transmit to the Governor and the appropriate legislative standing committees, a quarterly report summarizing all reports received during the previous calendar quarter of sexual abuse of a child who is placed in OHC, as described above, at the time the reported incident of abuse was alleged to have occurred. DCF must also make the reports relating to sexual abuse available to the public.¹⁰ [s. 48.981 (9) (a), Stats.]

Unlike the 90-day and six-month summary reports previously discussed, DCF must compile the OHC sexual abuse reports quarterly, rather than on a timeline tied to an incident’s reporting date. The quarterly reports must contain all of the information in Table 2 below.

Required Information in Quarterly Reports on Sexual Abuse of Children in OHC **Table 2**

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| • Number of sexual abuse incidents reported in prior quarter. | • The age or age group of the child who is the subject of each report. | • If substantiated, the nature of the relationship between the child and maltreater. |
| • The dates of the incidents. | • The type of OHC in which the child was placed at the time of the incident. | • If substantiated, whether the maltreater was a foster parent or relative with whom the child was placed, or any employee, contractor, or volunteer of an OHC facility. |
| • The counties in which those incidents occurred. | • Whether the abuse was “substantiated.” | |

⁹ Specifically, the reporting requirement is prompted by an incident of abuse under s. 48.02 (1) (b) to (f), Stats., which includes: sexual intercourse or contact with a child; sexual exploitation of a child; trafficking of a child; permitting, allowing, or encouraging a child to engage in prostitution; causing a child to view or listen to sexual activity; and exposing genitals, pubic area, or intimate parts.

¹⁰ The quarterly reports may not provide any information listed in Table 1 that must be excluded from a summary report, or any information that would jeopardize an investigation, prosecution, or proceeding as provided under current law. [s. 48.981 (9) (a), Stats.]

In every fourth quarterly report, DCF must also provide information about all reports of sexual abuse received during the previous year and indicate whether the abuse resulted in any injury, disease, or pregnancy directly caused by the abuse. [s. 48.981 (9) (b), Stats.]

REQUIRED LEGISLATIVE REVIEW AND PUBLIC HEARING

State law imposes specific legislative oversight requirements regarding the publicly disclosed information described above. Under state law, the appropriate legislative standing committees must review all 90-day summary reports, six-month summary reports, and quarterly reports regarding sexual abuse in OHC. Those same committees must conduct public hearings on those reports at least annually, and make recommendations to DCF regarding those reports. [s. 48.981 (7) (cr) 3. b., Stats.]

In addition, state law requires that DCF annually prepare and transmit to the Governor and the Legislature a report regarding various child welfare topics, and further requires that the appropriate legislative standing committees conduct a public hearing annually on that report. The annual report must include the following information:

- The status of child (and unborn) abuse and neglect programs, including a full statistical analysis of the child and unborn child abuse and neglect reports made through the last calendar year, an evaluation of services offered and their effectiveness, and recommendations for additional legislative and other action.
- The number of adoptions under the special needs adoption program granted in the preceding calendar year and the costs to the state for services relating to those adoptions.
- The number of children during the preceding calendar year who entered OHC after finalization of an adoption or guardianship.
- The aggregated and trend data on the 90-day and six-month summary reports, as described above, and any changes in policy or practice made to address issues raised in those reports.

[s. 48.47 (8), Stats.]

This information memorandum was prepared by Amber Otis, Senior Staff Attorney, on September 12, 2024.