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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: MEMBERS OF THE RECODIFICATION SUBCOMMITTEE OF THE SPECIAL  
COMMITTEE ON REPORTING OF CHILD ABUSE AND CHILD NEGLECT

FROM: Anna Henning, Staff Attorney

RE: Introduction to the Process for Recodification of s. 48.981, Stats.

DATE: August 10, 2012

The Special Committee on Reporting Child Abuse and Child Neglect has established a subcommittee to develop recommendations for the recodification of s. 48.981, Stats., relating to the reporting of child abuse and child neglect. The purpose of the subcommittee is to develop recommendations for consideration by the Special Committee.

This memorandum discusses the recodification process and the general scope of questions for consideration in recodifying s. 48.981, Stats., and sets forth a preliminary list of options within the scope of the subcommittee's task.

The following materials are attached:

- A copy of s. 48.981, Stats.
- WLC: 0001/1, a preliminary bill draft for discussion.

### **RECODIFICATION PROCESS**

#### **Scope of Recodification**

Statutory recodifications generally focus on noncontroversial changes that are more technical than substantive. A statutory recodification may entail one or more of the following:

- Reorganizing a body of law in a logical fashion, for example by renumbering, adding titles, regrouping provisions, or consolidating provisions.
- Modernizing language to reflect current drafting style and word usage.

- Resolving ambiguities in the language of the current law.
- Filling gaps in specific substantive areas where the law is silent.
- Eliminating archaic, anachronistic, unnecessary, or unconstitutional provisions of the law.
- Codifying relevant appellate court decisions or Attorney General opinions.
- Making minor substantive changes to, for example, codify current practice or reconcile conflicts in current law.

### **Use of Explanatory Notes**

An important component of a recodification process is the preparation of explanatory notes, which are incorporated into the body of draft legislation produced by the recodification project. The notes provide the legislative history of the recodified law. Among other things, the explanatory notes do the following:

- Identify the source of the recodified law (e.g., previous law, court decision, decision by the Special Committee) and, if previous law, where the provisions were previously codified.
- Identify archaic, anachronistic, unnecessary, or unconstitutional provisions of previous law which have been deleted.
- Identify and articulate the basis for substantive changes.

The explanatory notes are prepared by committee staff as part of the redrafting process and will be reviewed by the subcommittee.

### **GENERAL QUESTIONS FOR CONSIDERATION IN RECODIFYING S. 48.981, STATS.**

In considering the possible scope of the recodification of s. 48.981, Stats., the subcommittee might wish to consider the following general questions:

- What provisions of s. 48.981, Stats., are in need of substantial rewriting and can be redrafted without controversy? For example, what provisions could be rewritten to be made more readable? Are there provisions that might benefit from modernized language?
- What provisions should not be rewritten, either because they are more controversial than is appropriate for recodification or because court decisions interpreting statutory language might be affected?
- What, if any, provisions might be considered for possible repeal?
- Are any minor substantive changes to the section desirable?

### **PRELIMINARY OPTIONS FOR CONSIDERATION**

The following options were suggested during the July 12, 2012 meeting of the Special Committee or have been raised by drafting attorneys or committee staff:

- To ensure compliance with the federal Child Abuse Prevention and Treatment Act, create a new provision requiring health care providers who are involved in the delivery or care of infants to notify county agencies when infants are born with and identified as being affected by a Fetal Alcohol Spectrum Disorder.
- Amend the definition of “agency” in s. 48.981 (1) (ag), Stats., to include a licensed child welfare agency under contract with a county department in certain circumstances. That change would enable the use of the single term “agency” throughout the section, in place of more cumbersome terminology in applicable subsections.
- Move the definitions for the terms “community placement,” “Indian unborn child,” and “member of the clergy” from the general definitions provision to the subsections in which they are used.
- In s. 48.981 (2) (bm), Stats., define the term “abuse” by cross-reference to s. 48.02 (1) (b) to (f), Stats., so that the repeated definitions of the term may be replaced with the single term throughout the paragraph.
- Divide the paragraphs in s. 48.981 (3) and (7), Stats., into separate subsections, as proposed in the attached bill draft.
- Add titles to subsections throughout the section, as proposed in the attached bill draft.
- Amend s. 48.981 (3) (c) 1. b., Stats., to account for the ruling of the U.S. Court of Appeals for the Seventh Circuit in *Doe v. Heck*, 327 f.3d 492 (2003). In that case, the court held that caseworkers’ interview of a child on private property without a warrant or permission violated the Fourth Amendment to the U.S. Constitution.
- Repeal or revise s. 48.981 (3m) (d), Stats., requiring the Department of Children and Families to conduct an evaluation of the Alternative Response Program by July 1, 2012.
- Revise s. 48.981 (3) (bm), Stats., to clarify that notification to the Ho Chunk tribe is appropriate when a report pertains to a child or unborn child who is a member (or eligible for membership) in the Ho Chunk tribe.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AH:jal

Attachments