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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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Memo No. 4

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

FROM: Anna Henning and David Moore, Staff Attorneys

RE: Options for Legislation

DATE: October 4, 2012

This Memo sets forth options for legislation for which Special Committee members expressed support at the September 6, 2012 meeting of the Special Committee on Reporting of Child Abuse and Child Neglect. The list of options is not exhaustive and is presented for purposes of committee discussion.

### **REVISE THE CATEGORIES OF MANDATED REPORTERS**

#### **Background**

Wisconsin law requires certain professionals to report suspected abuse and neglect of children and unborn children.<sup>1</sup> [s. 48.981 (2), Stats.] A mandated reporter must report if he or she has reasonable cause to suspect that a child seen in the course of his or her professional duties has been abused or neglected or has been threatened with abuse or neglect and that abuse or neglect will occur. A mandated reporter who fails to report in such circumstances may be subject to criminal penalties.

Wisconsin's list of mandated reporters has expanded over time. Most recently, 2011 Wisconsin Act 81 expanded the list to include all school employees who were not already included on the list of mandated reporters.

At its September 6, 2012 meeting, the Special Committee heard testimony from the Department of Public Instruction (DPI) and other presenters regarding the implementation of 2011 Wisconsin Act

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<sup>1</sup> Any person *may* report suspected abuse or neglect of a child or unborn child. [s. 48.981 (2) (c) and (d), Stats.]

81. DPI explained that it has interpreted Act 81 to mean that anyone who receives an annual wage statement from a school district is now a mandated reporter. However, DPI observed that this imposes reporting requirements on individuals, such as minors, that the Legislature might not have intended to make mandated reporters, such as minors, and excludes certain people who work directly with children at school but are not school district employees.

The Special Committee discussed modifying the list of mandated reporters to address these issues. It also discussed adding higher education institution employees and probation agents to the list of mandated reporters.

### **Options**

The Special Committee could revise the list of mandated reporters to make changes in some or all of the categories discussed below.

#### ***School Employees***

In place of the inclusion of all “school employees” as mandated reporters under current law, the Special Committee could provide more specific parameters regarding which school district employees, employees of contracting entities, and volunteers are mandated reporters of child abuse and child neglect. Specific options may include adding the following to the list of mandated reporters:

- Employees of entities under contract with school districts who have regular contact with children.
- School volunteers who have regular contract with children.

With respect to these options, the Special Committee might consider defining “regular contact” to mean contact that occurs or is likely to occur for a certain number of hours per week, hours per semester, or hours per year.

Options also include specifically exempting from reporting requirements:

- Minors.
- School district employees, such as school board members, who do not have regular contact with children.

#### ***Higher Education Institution Employees***

The Special Committee could add employees and volunteers of higher education institutions to the list of mandated reporters. The Special Committee may wish to consider the following questions with regard to this option:

- Should the requirement apply to all institutions of higher education in the state?

- Should the requirement be limited to only those employees of higher education institutions who have ongoing, regular contact with children?
- Should the requirement apply to volunteers and contract employees of higher education institutions?

### ***Probation Agents***

The Special Committee could add probation agents to the list of mandated reporters.

## **REQUIRE TRAINING FOR MANDATED REPORTERS**

### **Background**

Wisconsin law requires DPI to develop and conduct protective behaviors training programs for the professional staff of public, private, and tribal schools and counties. [s. 115.368 (2) (a), Stats.] In addition, the Department of Children and Families (DCF) and county agencies must provide continuing education and training programs for state, county, and tribal staff at various levels, and develop public information programs about child abuse and neglect. [s. 48.981 (8), Stats.]

At the September 6, 2012 meeting, DCF, DPI, and county agency staff testified regarding their efforts to provide training opportunities to mandated reporters. County agency staff mentioned that they had utilized training videos created by DCF and DPI to provide training to mandated reporters. However, they said that Wisconsin law does not explicitly require DCF or county agencies to provide training directly to mandated reporters, and resources for doing so may be limited.

### **Options**

The Special Committee could require mandated reporters to obtain training on reporting child abuse and child neglect. At the September 6, 2012 meeting, Public Member Susan Dreyfus suggested that such training could be required as part of professional certification requirements for those mandated reporters who are required to maintain a professional license or certification from the state.

Questions the Special Committee may wish to consider with respect to this option include:

- For those mandated reporters who are required to maintain a professional license or certification from the state, should training be required as part of professional certification requirements?
- If so, how much training should a given professional be required to obtain, and within what time period?
- What, if any, role should DCF play in any statutory training requirement? For example, should DCF be required to approve private training courses? Should it be required to develop training materials to supplement other training opportunities?

- What, if any, training requirements should be applied to mandated reporters who are not required to obtain professional certifications or licenses from the state?

**AMEND THE DEFINITION OF “ABUSE” FOR PURPOSES OF S. 48.981, STATS.**

**Background**

For purposes of the child abuse reporting law, “abuse” means any of the following:

- Physical injury inflicted on a child by other than accidental means.
- In reference to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree.
- Sexual intercourse or sexual contact in violation of specified criminal statutes.
- Sexual exploitation of a child.
- Permitting, allowing, or encouraging a child to engage in prostitution.
- Causing a child to view or listen to sexual activity in violation of state law.
- Exposing genitals or pubic area to a child or causing a child to expose genitals or pubic area in violation of state law.
- Manufacturing methamphetamine in violation of state law in certain circumstances.
- Emotional damage for which the child’s parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

[s. 48.02 (1), Stats.]

The term “physical injuries” is further defined to include lacerations, fractured bones, burns, internal injuries, severe or frequent bruising, or “great bodily harm,” as defined in the Criminal Code.

Special Committee members noted that the threshold for what constitutes physical injuries under the child abuse reporting law is higher than the threshold for establishing criminal physical abuse of a child. Under s. 948.03 (2), Stats., a person is guilty of the crime of physical abuse of a child if he or she intentionally causes bodily harm to a child. “Bodily harm” is defined as “physical pain or injury, illness, or any impairment of physical condition.” In other words, under current law, physical abuse for which criminal liability attaches may nevertheless be insufficient to trigger either the reporting requirement or a county agency’s jurisdiction under s. 48.981, Stats.

At the September 6, 2012 meeting, several Special Committee members recommended that the Special Committee consider broadening the definition of physical abuse for certain purposes of investigating child abuse.

### **Option**

The Special Committee could amend the definition of physical abuse, for the purposes of the child abuse reporting law, to include “bodily harm” as defined by the Criminal Code.

Questions the Special Committee may want to consider with respect to this option include the following:

- Should a definition providing a lower threshold for physical abuse contain an exception for “reasonable and moderate” physical discipline administered by a parent or guardian? If so, should reasonable and moderate physical discipline be defined?
- For what purposes should the definition be applied?

### **ELIMINATE THE SPIRITUAL TREATMENT EXCEPTION TO A COUNTY’S AUTHORITY TO MAKE AN ABUSE DETERMINATION**

#### **Background**

Under current law, a county department of human services or social services that receives a report of suspected abuse or neglect by a caregiver of the child must investigate to determine whether abuse or neglect has occurred or is likely to occur and whether the child, a member of the child’s family, or the child’s guardian or legal custodian is in need of services. Current law, however, provides that a determination that abuse or neglect has occurred may not be based solely on the fact that the child’s parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child.

At the September 6 meeting, Representative Berceau proposed that the Special Committee repeal this exception.

### **Option**

The Special Committee could repeal the statutory language prohibiting a county from making an abuse determination based solely on a parent’s, guardian’s, or legal custodian’s use of spiritual or religious means for treatment of disease or for remedial care of a child.

**DISCLOSURES IN INVESTIGATIONS INVOLVING DEATH, SERIOUS INJURY, OR EGREGIOUS INCIDENTS**

**Background**

Under current law, if a county agency has reason to suspect that a report of suspected child abuse or child neglect involves the death or serious injury of a child or an “egregious incident,”<sup>2</sup> certain disclosures are required. Specifically, the county agency must report specified information about the case to DCF within two working days. In turn, DCF must report the receipt of such information to the public. At the September 6, 2012 meeting, it was suggested that the timing of these disclosure requirements inhibits a county agency’s ability to develop a child in need of protection or services (CHIPS) case.

**Option**

The Special Committee could delay the disclosure of information regarding cases of death or egregious incidents until such time as a CHIPS petition has been filed.

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<sup>2</sup> “Egregious incident” means a reported incident of suspected abuse or neglect, other than an incident in which a child has died or been seriously injured, that involves 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. b., Stats.]