



Report to the Joint Legislative Council

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Study Committee on Public Disclosure and Oversight of Child Abuse and Neglect Incidents

STUDY COMMITTEE ON PUBLIC DISCLOSURE AND OVERSIGHT OF CHILD ABUSE AND NEGLECT INCIDENTS

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CONTENTS

PART I EXECUTIVE SUMMARY	3
2009 Wisconsin Act 78	3
Creation of Study Committee	3
Study Committee’s Meetings and Recommendations.....	4
PART II COMMITTEE ACTIVITY	5
Assignment.....	5
Summary of Meetings.....	5
PART III RECOMMENDATIONS FOR INTRODUCTION BY THE JOINT LEGISLATIVE COUNCIL.....	9
LRB-1025/1 (Reports of Sexual Abuse of a Child Placed in OHC)	9
Background	9
Description	9
LRB-1026/1 (Citizen Review Panels).....	9
Background	9
Description	10
LRB-1027/1 (Annual Reports to and Hearings by the Legislature)	10
Background	10
Description	10
APPENDIX 1 Study Committee Votes.....	13
APPENDIX 2 Joint Legislative Council.....	15
APPENDIX 3 Committee List.....	17
APPENDIX 4 Committee Materials List	19

PART I

EXECUTIVE SUMMARY

2009 WISCONSIN ACT 78

While reports of child abuse and neglect to child protective services (CPS) are generally confidential, both federal and Wisconsin law require that the Department of Children and Families (DCF) publicly disclose reports of child abuse and neglect that have resulted in a child fatality or near fatality. Most recently, 2009 Wisconsin Act 78 (Act 78) clarified the requirements and procedure for public disclosure and created additional reporting requirements for legislative and gubernatorial oversight of these reports, as well as reports of sexual abuse of children placed in out-of-home care (OHC). Notably, the incidents publicly disclosed under Act 78 represent a narrow subset of all child abuse and neglect reports that are made to CPS and law enforcement in Wisconsin.

Under Act 78, DCF is required to make two separate types of public disclosures and reports related to child abuse and neglect. First, DCF must publicly disclose, and provide summary reports on, certain information related to child abuse and neglect incidents of death, serious injury, or egregious abuse or neglect – collectively referred to as “critical incidents.” Disclosure of one of these types of incidents involves three steps: (1) a local CPS agency must notify DCF within two working days of determining that the CPS agency has reason to suspect that an incident of death, serious injury, or egregious abuse or neglect has occurred; (2) DCF staff must, within two working days, determine whether Act 78 applies and, if it does, notify the public and disclose whether DCF will conduct a review and the scope of that review; and (3) DCF must prepare a 90-day summary report, based either on a summary or practice review of the case, and make the report publicly available and transmit the report to the Legislature.

Second, Act 78 requires DCF to prepare quarterly reports summarizing all reports it received involving various forms of sexual abuse of a child who is placed in OHC. Like the summary reports on critical incidents described above, these reports must be made publicly available and sent to the Legislature. In addition, the appropriate standing committees of the Legislature must review both types of reports, conduct public hearings on those reports no less often than annually, and submit recommendations to DCF regarding those reports.

CREATION OF STUDY COMMITTEE

The purpose of Act 78’s requirements was to inform the public and other branches of government of critical incidents of child abuse and neglect, though legislators and child welfare stakeholders have questioned both the utility of the information disclosed in the various reports and the manner in which legislative oversight is conducted. In response to questions raised regarding Act 78’s requirements, the Joint Legislative Council has directed the Study Committee on Public Disclosure and Oversight of Child Abuse and Neglect Incidents to examine the requirements

created by Act 78, and analyze whether those requirements provide an effective mechanism for the public disclosure and legislative oversight of certain reports related to critical incidents of child abuse and neglect, as well as certain reports of sexual abuse of children placed in OHC.

STUDY COMMITTEE'S MEETINGS AND RECOMMENDATIONS

The study committee met four times throughout the summer and fall of 2020, and heard testimony from DCF, county human services personnel, and experts in safety science and related data collection who are currently partnering with DCF to implement Act 78 and improve the child welfare system. The committee discussed numerous policy options, weighing the need for providing information to the public and the Legislature against confidentiality requirements and the privacy interests of the families involved in the child welfare system. The committee also analyzed whether individual incidents were an appropriate tool for analyzing the state's child welfare system, or whether trend data provides a more useful metric for such an analysis. **Part II** provides a summary of the testimony and committee discussion at each meeting.

In concluding its work, the committee recommends the following three bill drafts for introduction by the Joint Legislative Council, with **Part III** describing the bill drafts in more detail:

- **LRB-1025/1**, relating to reports of sexual abuse of children placed in OHC, which requires Act 78's quarterly reports to summarize only reported incidents of child sexual abuse that are alleged to have occurred while the child was placed in OHC.
- **LRB-1026/1**, relating to requiring the transmission of citizen review panel annual reports and the written responses of DCF to the appropriate legislative standing committees, which provides for legislative oversight of certain reports and responses that are currently prepared under a federal requirement.
- **LRB-1027/1**, relating to annual reports to and hearings by the legislative standing committees on child abuse and neglect, which requires DCF to include certain aggregated and trend information in an annual report that DCF prepares under current law, and further subjects that annual report to an annual hearing by legislative standing committees.

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Study Committee on Public Disclosure and Oversight of Child Abuse and Neglect Incidents and appointed the chairperson by a mail ballot dated June 16, 2020. **Appendix 2** identifies the membership of the Joint Legislative Council at the time of the mail ballot's approval. The committee was directed to examine the requirements created by 2009 Wisconsin Act 78, and analyze whether those requirements provide an effective mechanism for public disclosure and legislative oversight of certain egregious incidents of child abuse or neglect and certain reports of abuse of children placed in OHC.

Specifically, the Joint Legislative Council tasked the committee with considering whether to modify the types of incidents prompting disclosure and reports, as well as the nature and timing of any required disclosures or reports. In addition, the committee was to consider modifying the manner in which the Legislature reviews the required disclosures and reports and consider whether to subject alternative or additional information to regular review by the Legislature.

To assist in completing this charge, the Joint Legislative Council appointed the study committee's membership by mail ballot dated July 24, 2020. The final committee membership consisted of two representatives, three senators, and six public members. **Appendix 3** lists the committee members.

SUMMARY OF MEETINGS

The committee held four meetings on the following dates:

- August 27, 2020.
- September 23, 2020.
- November 18, 2020.
- December 10, 2020.

August 27, 2020

At its first meeting on August 27, 2020, the committee received an overview of background information by Legislative Council staff and invited testimony from several speakers.

Melissa Schmidt, Senior Staff Attorney, and **Amber Otis**, Staff Attorney, Legislative Council staff, provided an overview of state and federal law relevant to the committee's scope, as provided in the Legislative Council Staff Brief 2020-01, [*Study Committee on Public Disclosure and Oversight of Child Abuse and Neglect Incidents*](#) (August 20, 2020).

Wendy Henderson, Administrator of DCF's Division of Safety and Permanence, provided a brief overview of the CPS process for any reported incident of child abuse or neglect, as well as the two types of reports that DCF is required to prepare and transmit to the Governor and the Legislature under Act 78. **Lisa Hankes**, Section Manager of DCF's Bureau of Safety and Well-Being, explained DCF's procedures in performing a summary or practice review of a critical incident and completing of the summary reports for the public and the Legislature.

On behalf of WCHSA, a membership organization representing Wisconsin's 72 counties, **Vicki Tylka**, Tri-Chair, Children, Youth and Families Policy Advisory Committee, WCHSA; and Director, Department of Social Services, Marathon County, provided testimony from a county's perspective on Act 78's requirements, identified and discussed the three ways in which CPS agencies respond and address critical incidents, and provided recommendations for the committee's review.

Following the invited testimony, committee members generally discussed the policy goals of public disclosure of critical incidents, citing that the purpose is not only to comply with federal requirements, but also to satisfy the public's desire for information. Committee members noted the importance of providing accurate information and creating community trust in the child welfare system. With respect to Act 78, committee members stated that its reporting requirements were not intended to blame individuals but rather to provide CPS agencies and DCF the opportunity to communicate with the Legislature and provide feedback and recommendations on requested changes.

Some committee members noted that DCF rarely includes recommendations in the summary reports, and that the Legislature is unlikely to act in the absence of any recommendations from DCF. Committee members noted the potential value of recommendations written in clear, nontechnical language, which can be easily understood by the public. Committee members also expressed interest in making the legislative oversight hearings more meaningful.

September 23, 2020

At the meeting on September 23, 2020, Legislative Council staff provided an overview of Memo No. 1, [*Examples of Neighboring States' Laws relating to Public Disclosure and Legislative Oversight of Child Abuse and Neglect*](#) (September 16, 2020) and Memo No. 2, [*Background Information on the Systems Change Review Approach Adopted and Implemented by the Department of Children and Families for Conducting Practice Reviews*](#) (September 16, 2020). The committee then received testimony from invited speakers.

Noel Hengelbrok and **Dr. Scott Modell**, Co-Founders, Collaborative Safety, LLC, presented information on Collaborative Safety's "safety science" model that has been implemented by DCF when it reviews critical incidents in the child welfare system reported pursuant to Act 78. Collaborative Safety's model is used in other safety critical industries like aviation, health care, and nuclear power. In their presentation, they noted benefits of policymaking based upon aggregated data, rather than the review of individual cases.

Dr. Michael Cull, Associate Director, Workplace Health and Safety, University of Kentucky Center for Innovation in Population Health, presented information about the National Partnership for Child Safety (NPCS), supported by the Casey Family Programs to demonstrate the applicability of

the safety science used in healthcare and nuclear industries to the child welfare system. Wisconsin is one of the 19 participating state and local governmental jurisdictions. Dr. Cull also testified that review of the child welfare system should be based upon aggregated data, not upon one event.

Wendy Henderson, Administrator of DCF's Division of Safety and Permanence, provided testimony on DCF's proposed recommendations for the committee's review.

Committee members then discussed these recommendations, how to make the legislative hearing on critical incident reports prepared pursuant to Act 78 more meaningful, and how the Legislature could review aggregated data of critical incidents. Committee members also discussed child death review teams and citizen review panels, and the types of fatalities reviewed by these two different bodies.

November 18, 2020

At the committee's meeting on November 18, 2020, Legislative Council staff provided an overview of Memo No. 3, [*Committee Options for Possible Legislation*](#) (November 11, 2020), noting that it compiles legislative options that were presented to the committee through testimony, committee discussion, and other correspondence with committee staff. Following this overview, Chair Snyder led the committee through a discussion of the options memo, as organized by subject matter categories including: (1) public disclosures of and quarterly reports of sexual abuse; (2) public disclosure of reports of critical incidents; (3) annual hearing by legislative standing committees; (4) reports containing aggregated data of critical incidents; (5) county systems change reviews; (6) citizen review panels; and (7) child death review teams.

During the committee's discussion on legislative options related to child death review teams, committee members expressed a general desire to support the role that child death review teams play in protecting children and preventing future child deaths. However, members expressed concern that the committee's membership did not include the stakeholders necessary to craft a state law that comprehensively governed child death review teams. In this effort, committee members expressed support for future legislative efforts to codify child death review teams in state statute.

The committee also reviewed the following bill drafts:

- WLC: 0001/P1, relating to reports of sexual abuse of children placed in out-of-home care.
- WLC: 0002/P1, relating to limiting the public disclosure of incidents of death, serious injury, or egregious abuse or neglect of a child to incidents of substantiated child abuse or neglect.
- WLC: 0003/P1, relating to limiting the public disclosure of information to that pertinent to the child abuse or neglect.

December 10, 2020

At the committee's final meeting on December 10, 2020, the committee received invited testimony from **Wendy Henderson**, Administrator of DCF's Division of Safety and Permanence. Ms. Henderson testified to DCF's positions and general support for WLC: 0001/1, WLC: 0003/1, and

WLC: 0006/1. With respect to WLC: 0006/1, Ms. Henderson provided an example of how DCF could provide aggregated and trend data on critical incidents in the annual Child Abuse and Neglect (CAN) Report. Ms. Henderson also described various ways that DCF plans to provide specific policy recommendations to the Legislature and the public. As an example, she explained that DCF will be using the CAN Report as a partnership tool with the Legislature and will be making specific legislative recommendations in it. She stated that DCF is very interested in having a legislative venue to pursue child safety measures and believes that including information about critical incidents in the CAN Report will help foster DCF's legislative partnership.

The committee then reviewed various bill drafts. During committee discussion of the drafts, Legislative Council staff briefly explained Memo No. 4, [*Annual Reports from Citizen Review Panels in Wisconsin*](#) (December 3, 2020). Upon review of the drafts, the committee voted unanimously to recommend the following three bill drafts, with certain modifications, to the Joint Legislative Council for introduction:

- WLC: 0001/1, relating to reports of sexual abuse of children placed in out-of-home care. [This draft subsequently became LRB-0125/1.]
- WLC: 0004/1, relating to requiring citizen review panels to report annually to the appropriate legislative standing committees. [This draft, as amended by changes adopted by the committee, subsequently became LRB-0126/1.]
- WLC: 0006/1, relating to annual reports to and hearings by the legislature on child abuse and neglect. [This draft, as amended by changes adopted by the committee, subsequently became LRB-0127/1.]

PART III

RECOMMENDATIONS FOR INTRODUCTION BY THE JOINT LEGISLATIVE COUNCIL

LRB-1025/1 (Reports of Sexual Abuse of a Child Placed in OHC)

Background

Current law requires DCF to prepare quarterly reports summarizing certain types of sexual abuse of a child who is placed in 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. In its fourth quarterly report, DCF must provide information about all such reports of abuse received during the previous year, including whether the abuse resulted in any injury, disease, or pregnancy that is known to be directly caused by the abuse. DCF also must transmit the quarterly reports to the Governor and the appropriate standing committees of the Legislature.

Under current law, DCF includes in the quarterly reports all reports of the specified types of sexual abuse of a child placed in OHC that are received during the time in which the child is placed in OHC, regardless of when the alleged incident occurred. Thus, DCF's quarterly reports may include reported incidents of sexual abuse of a child that occurred while the child was placed in OHC, as well as reported incidents of sexual abuse that occurred when a child was not placed in OHC. The study committee questioned whether the reports' broad scope is consistent with the committee's general belief that these quarterly reports were intended to inform the public on the safety of OHC placements in Wisconsin.

Description

The bill draft specifies that the quarterly reports prepared and transmitted by DCF must include only reports of certain types of sexual abuse of a child who was placed in OHC at the time that the reported incident of abuse was alleged to have occurred. The bill draft also requires that DCF specify in the reports whether, in substantiated cases of certain types of sexual abuse, the abuse was caused by the child's OHC provider.

LRB-1026/1 (Citizen Review Panels)

Background

The federal Child Abuse Prevention and Treatment Act (CAPTA) generally requires states to establish at least three citizen review panels in order to receive CAPTA grant funds. Pursuant to this requirement, eight citizen review panels currently exist in Wisconsin. CAPTA requires that each citizen review panel report annually and provide a summary of the activities of the panel and recommendations to improve the CPS systems at the state and local levels. In addition, within six

months of the date on which the report is submitted, DCF must submit a written response to the citizen review panel that describes whether or how the state will incorporate the panel's recommendations, where appropriate, to make measureable progress in improving the state and local child protective systems. The study committee expressed interest in the Legislature receiving information on the activities of and recommendations by citizen review panels, as well as DCF's responses to that information.

Description

The bill draft requires DCF to transmit to the appropriate legislative standing committees the annual reports from citizen review panels and DCF's written responses to those reports.

LRB-1027/1 (Annual Reports to and Hearings by the Legislature)

Background

Current law requires DCF to prepare and submit to the Governor and the Legislature an annual report, currently titled the "Wisconsin Child Abuse and Neglect Report (CAN Report)," that includes the following information:

- The status of child abuse and neglect programs and unborn child abuse programs.
- 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 under the placement and care responsibility of a county department or DCF under the Children's Code or the Juvenile Justice Code after finalization of an adoption or guardianship.

Current law also requires that DCF prepare summary reports on certain information related to certain critical incidents of child abuse or neglect. Among other requirements, DCF must send the summary reports to the appropriate legislative standing committees. Those committees must review the summary reports, conduct public hearings on the reports no less often than annually, and submit recommendations to DCF regarding the reports.

The study committee found value in maintaining the individual summary reports, but strongly desired information based on aggregated data and trend analysis, noting that this type of information provides a more useful tool on which to base legislative policy. The committee also acknowledged the CAN Report's value, citing the recent custom to include that report in the annual Act 78 legislative hearings, despite the absence of any statutory requirement to do so.

Description

The bill draft requires DCF's CAN Report to include certain information about DCF's summary reports on critical incidents. Specifically, the bill draft requires that the CAN Report include all of the following information: (1) aggregated information from DCF's summary reports; (2) trend data identified by DCF; (3) trends identified by DCF based on its in-depth practice reviews of certain critical incidents; and (4) changes in policies or practices that have been made to address

any issues raised in DCF's review of critical incidents in the summary reports. In addition, the bill draft requires the appropriate legislative standing committees to conduct a hearing at least annually on the CAN Report.

STUDY COMMITTEE VOTES

On December 10, 2020, the study committee voted unanimously to recommend the following bill drafts to the Joint Legislative Council for introduction in the 2021-22 Legislative Session:

- WLC: 0001/1, relating to reports of sexual abuse of children placed in OHC. [WLC: 0001/1 subsequently became LRB: 0125/1.]
- WLC: 0004/1, relating to requiring citizen review panels to report annually to the appropriate legislative standing committees, as modified by the changes adopted by the committee. [WLC: 0004/1, as amended, subsequently became LRB-0126/1.]
- WLC: 0006/1, relating to annual reports to and hearings by the legislature on child abuse and neglect, as modified by the changes adopted by the committee. [WLC: 0006/1, as amended, subsequently became LRB-0127/1.]

JOINT LEGISLATIVE COUNCIL

<u>SENATE MEMBERS</u>	<u>ASSEMBLY MEMBERS</u>
Roger Roth, Co-Chair Senate President Appleton	Robert Brooks, Co-Chair Saukville
Janet Bewley Minority Leader Mesa	Tyler August Speaker Pro Tempore Lake Geneva
Alberta Darling JFC Co-Chair River Hills	Joan Ballweg Markesan
Jon Erpenbach JFC Ranking Minority Middleton	Jill Billings La Crosse
Scott Fitzgerald Majority Leader Juneau	Dianne Hesselbein Assistant Minority Leader Middleton
Andrè Jacque DePere	Gordon Hintz Minority Leader Oshkosh
Howard Marklein President Pro Tempore Spring Green	John Nygren JFC Co-Chair Marinette
Mark Miller Monona	John Spiros Marshfield
Luther Olsen Ripon	Jim Steineke Majority Leader Kaukauna
Jerry Petrowski Marathon	Chris Taylor JFC Ranking Minority Madison
Fred A. Risser Madison	Robin Vos Speaker Rochester

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

COMMITTEE LIST

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STUDY ASSIGNMENT: The Study Committee is directed to examine the requirements created by 2009 Wisconsin Act 78, and analyze whether those requirements provide an effective mechanism for public disclosure and legislative oversight of certain egregious incidents of child abuse or neglect and certain reports of abuse of children placed in OHC. The committee shall consider whether to modify the types of incidents prompting disclosure and reports, as well as the nature and timing of any required disclosures or reports. In addition, the committee shall consider modifying the manner in which the Legislature reviews the required disclosures and reports and consider whether to subject alternative or additional information to regular review by the Legislature.

11 MEMBERS: 2 Representatives; 3 Senators; and 6 Public Members.

LEGISLATIVE COUNCIL STAFF: Amber Otis, Staff Attorney, and Melissa Schmidt, Senior Staff Attorney, and Tracey Young, Administrative Staff.

COMMITTEE MATERIALS LIST

[Copies of documents are available at www.legis.wisconsin.gov/lc]

August 27, 2020 Meeting

- Presentation, by Melissa Schmidt, Senior Staff Attorney, and Amber Otis, Staff Attorney, Legislative Council Staff.
- Testimony, submitted by Vicki Tylka, Tri-Chair, Children, Youth and Families Policy Advisory Committee, WCHSA; and Director, Department of Social Services, Marathon County.
- Testimony, submitted by Wendy Henderson, Administrator, Division of Safety and Permanence, and Amanda Merkwae, Legislative Advisor, Department of Children and Families.
- Staff Brief 2020-01, "Study Committee on Public Disclosure and Oversight of Child Abuse and Neglect Incidents," (August 20, 2020).

September 23, 2020 Meeting

- State and Local Changes in Fatality Prevention Policy and Practice, submitted by Public Member Emily Coddington.
- Steps Forward Report on National Progress from 2019, submitted by Public Member Emily Coddington.
- Report, "Within Our Reach: A National Strategy to End Child Abuse and Neglect Fatalities," submitted by Public Member Emily Coddington.
- Handout, "Child Safety Forward: A National Initiative to Reduce Child Abuse and Neglect Fatalities and Injuries Through a Collaborative, Community-Based Approach," submitted by Public Member Emily Coddington.
- Handout, "Child Safety Forward: Cook County, Illinois," submitted by Public Member Emily Coddington.
- Report, "Keeping Kids Alive: A Report on the Status of Child Death Review in the United States," submitted by Public Member Emily Coddington.
- "Spotlight - Wisconsin, information submitted by Public Member Emily Coddington.
- Memo No 1, "Examples of Neighboring States' Laws Relating to Public Disclosure and Legislative Oversight of Critical Incidents of Child Abuse and Neglect," (September 16, 2020).

- Memo No. 2, "Background Information on the Systems Change Review Approach Adopted and Implemented by the Department of Children and Families for Conducting Practice Reviews," (September 16, 2020).
- PowerPoint presentation, "Safety Science in Wisconsin: Systems Change Review," Scott Modell, Ph.D and Noel Hengelbrok, M.Sc., Co-Founders, Collaborative Safety, LLC.
- Handout, "Transforming Culture | "Together, submitted by Collaborative Safety, LLC.
- Handout, "The National Partnership for Child Safety Charter," (March 2020), submitted by Dr. Michael Cull, Associate Director, Safe Systems, University of Kentucky Center for Innovation in Population Health.
- PowerPoint presentation, by Dr. Michael Cull, Associate Director, Safe Systems, University of Kentucky Center for Innovation in Population Health.
- PowerPoint, Proposed Revisions to Act 78, submitted by the Department of Children and Families.
- Department of Children and Families Proposed Revisions to Act 78.

November 18, 2020 Meeting

- WLC: 0001/P1, relating to reports of sexual abuse of children placed in OHC.
- WLC: 0002/P1, relating to limiting the public disclosure of incidents of death, serious injury, or egregious abuse or neglect of a child to incidents of substantiated child abuse or neglect.
- WLC: 0003/P1, relating to limiting the public disclosure of information to that pertinent to the child abuse or neglect.
- Memo No. 03, "Committee Options for Possible Legislation," (November 11, 2020).
- Memorandum, "Study Committee Options for Possible Legislation," submitted by Karen Ordinans, Executive Director, Children's Health Alliance of Wisconsin (November 17, 2020).
- Memo, "Comments on Department of Children and Family Recommendations to Committee," submitted by Jodi Bloch, Director, State and Local Government Relations, Children's Wisconsin (November 17, 2020).
- Handout, submitted by the Department of Children and Families, "Supplemental Information Related to Proposed Revisions to Act 78," (Received October 30, 2020).
- Handout, Draft of Public Disclosure of CPS Critical (Egregious) Incident Report, submitted by Public Member Susan Conwell.

December 10, 2020

- WLC: 0001/1, relating to reports of sexual abuse of children placed in OHC.
- WLC: 0003/1, relating to limiting the disclosure of certain information about critical incidents of child abuse or neglect to information that is pertinent to the child abuse and neglect and granting rule-making authority.

- WLC: 0004/1, relating to relating to requiring citizen review panels to report annually to the appropriate legislative standing committees.
- WLC: 0005/1, relating to reports of in-depth practice reviews of incidents of death, serious injury, or egregious abuse or neglect of a child submitted to legislative standing committees.
- WLC: 0006/1, relating to annual reports to and hearings by the legislature on child abuse and neglect.
- WLC: 0007/1, relating to annual three-year trend reports and a five-year retrospective report of incidents of death, serious injury, or egregious abuse or neglect of a child submitted to legislative standing committees.
- Memo No, 4, “Annual Reports from Citizen Review Panels in Wisconsin,” (December 3, 2020).
- Flowchart of Public Disclosure Example, submitted by Public Member Emily Coddington.
- Information to Support Reporting and Hearing Options, submitted by Public Member Emily Coddington.
- Illustration of Act 78 Oversight, submitted by Public Member Emily Coddington.
- Department of Children and Families Comments on Bill Drafts Related to Act 78.