

Assembly

Committee Report

The committee on **Children and Families**, reports and recommends:

Assembly Bill 778

Relating to: appeals of substantiated child abuse or neglect findings, public disclosure of certain child abuse and neglect information when there is a child fatality or near fatality and access to child abuse and neglect information by a citizen review panel established or designated by the department of health and family services or a county department of human services or social services.

By Representatives Hundertmark, Spillner, Stone, Ladwig, Kelso, Owens, Musser, Pettis, Miller and Albers; cosponsored by Senators Robson, Welch, Huelsman, Wirsch, Darling and Rosenzweig.

ADOPTION OF ASSEMBLY SUBSTITUTE AMENDMENT 1, Ayes
9, Noes 0, Absent 1

Ayes: (9) Representatives Ladwig, Jeskewitz, Kreibich,
Freese, Grothman, Kestell, Miller, Colon and
Sinicki.

Noes: (0) None.

Absent: (1) Representative Coggs.

PASSAGE AS AMENDED RECOMMENDED, Ayes 8, Noes 1,
Absent 1

Ayes: (8) Representatives Ladwig, Jeskewitz, Kreibich,
Freese, Kestell, Miller, Colon and Sinicki.

Noes: (1) Representative Grothman.

Absent: (1) Representative Coggs.

Representative Bonnie Ladwig
Chair

Assembly

Record of Committee Proceedings

Committee on Children and Families

Assembly Bill 778

Relating to: appeals of substantiated child abuse or neglect findings, public disclosure of certain child abuse and neglect information when there is a child fatality or near fatality and access to child abuse and neglect information by a citizen review panel established or designated by the department of health and family services or a county department of human services or social services.

By Representatives Hundertmark, Spillner, Stone, Ladwig, Kelso, Owens, Musser, Pettis, Miller and Albers; cosponsored by Senators Robson, Welch, Huelsman, Wirch, Darling and Rosenzweig.

February 22, 2000 Referred to committee on Children and Families.

March 2, 2000 **PUBLIC HEARING HELD**

Present: (9) Representatives Ladwig, Jeskewitz, Kreibich, Freese, Grothman, Kestell, Miller, Colon and Sinicki.

Absent: (1) Representative Coggs.

Appearances for

- State Representative Jean Hundertmark, 40th Assembly District
- Kevin Lewis, Legislative Liason; Department of Health and Family Services

Appearances against

- None.

Appearances for Information Only

- None.

Registrations for

- Kitty Kocol; Department of Justice, Office of Crime Victim Services and Administration of the Children's Justice Act

Registrations against

- None.

March 2, 2000 **EXECUTIVE SESSION**

Present: (9) Representatives Ladwig, Jeskewitz, Kreibich,
Freese, Grothman, Kestell, Miller, Colon and
Sinicki.

Absent: (1) Representative Coggs.

Moved by Representative Freese, seconded by Representative
Jeskewitz, that **Assembly Substitute Amendment 1** be
recommended for adoption.

Ayes: (9) Representatives Ladwig, Jeskewitz, Kreibich,
Freese, Grothman, Kestell, Miller, Colon and
Sinicki.

Noes: (0) None.

Absent: (1) Representative Coggs.

ADOPTION RECOMMENDED, Ayes 9, Noes 0, Absent 1

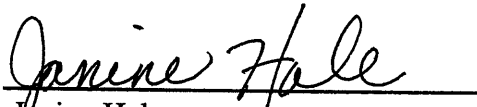
Moved by Representative Freese, seconded by Representative
Jeskewitz, that **Assembly Bill 778** be recommended for passage as
amended.

Ayes: (8) Representatives Ladwig, Jeskewitz, Kreibich,
Freese, Kestell, Miller, Colon and Sinicki.

Noes: (1) Representative Grothman.

Absent: (1) Representative Coggs.

PASSAGE AS AMENDED RECOMMENDED, Ayes 8, Noes 1,
Absent 1



Janine Hale
Committee Clerk



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: May 1, 2000
TO: INTERESTED LEGISLATORS
FROM: Laura Rose, Senior Staff Attorney
SUBJECT: Assembly Substitute Amendment 1 to 1999 Assembly Bill 778, and Senate Amendment 1 to the Bill

This memorandum describes Assembly Substitute Amendment 1 to 1999 Assembly Bill 778. The substitute amendment relates to appeals of substantiated child abuse or neglect findings, public disclosure of certain child abuse and neglect information when there is a child fatality or near fatality and access to child abuse and neglect information by a citizen review panel established or designated by the Department of Health and Family Services (DHFS) or a county department of human services or social services. This memorandum also describes Senate Amendment 1 to the bill.

The Assembly adopted Assembly Substitute Amendment 1 to the bill on March 21, 2000, and passed the bill, as amended, on that same day by a vote of Ayes, 99; Noes, 0. The Senate adopted Senate Amendment 1 to the bill, as passed by the Assembly, on March 30, 2000, and concurred in the bill, as amended, on a voice vote.

A. ASSEMBLY SUBSTITUTE AMENDMENT 1

1. *Appealing Determinations of Child Abuse or Neglect Determinations*

a. *Current Law*

Under current law, a county department of human services or social services (county department) or, in Milwaukee County, the DHFS or a child welfare agency under contract with DHFS must determine, within 60 days after receiving a report of suspected or threatened child abuse or neglect, whether the abuse or neglect occurred or is likely to occur. Current law provides procedures for an appeal of such a determination made by a county department or by DHFS. There is no procedure provided under current law for appealing a determination by a child welfare agency.

b. Assembly Substitute Amendment 1

Assembly Substitute Amendment 1 requires DHFS to establish procedures for conducting an appeal of a determination that a specific person has abused or neglected a child. The procedures must include a procedure which permits an appeal to be held in abeyance pending the outcome of any criminal or child in need of protection or services (CHIPS) proceeding based on the alleged abuse or neglect or any investigation that may lead to the filing of such a criminal complaint or a CHIPS petition. The substitute amendment provides that if a county department, DHFS or child welfare agency determines that a specific person has abused or neglected a child, that department or agency must notify the person of that determination, as well as the person's appeal right and the appeal procedure. The person may appeal the determination in accordance with procedures established by DHFS.

2. Disclosures of Information From Child Abuse or Neglect Investigations

a. Current Law

Under current law, a county department, DHFS or a child welfare agency that is responsible for investigating reports of suspected or threatened child abuse or neglect must keep its records confidential and may disclose those records only under certain exceptions.

b. Assembly Substitute Amendment 1

Assembly Substitute Amendment 1 permits an agency (i.e., a county department, DHFS or a child welfare agency) to disclose to any member of the general public, on request, a written summary of certain information relating to any child who has died or been placed in serious or critical condition as a result of suspected abuse or neglect that has been reported to the agency if certain circumstances apply and certain other circumstances do not apply.

(1) Information which may be disclosed

The information that may be disclosed under the circumstances outlined in Part A. 2. b. (2) in cases of a child fatality or near fatality is as follows:

- (a) A description of any investigation made by the agency in response to the report of the suspected abuse or neglect; a statement of the agency's determination with respect to the report and the basis for that determination; a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.
- (b) Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report; a statement of the agency's determination with respect to the report and the basis for that determination; a statement of whether any services were offered or

provided to the child, the child's family or the person suspected of the abuse or neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

- (c) Whether the child or the child's family has received any services under ch. 48, Stats., prior to the current report of suspected abuse or neglect that caused the child's death or serious or critical condition, or any previous report of suspected or threatened abuse or neglect.

Any person who requests the information specified in Part A. 2. b. (1), which is permitted to be disclosed by an agency under the circumstances specified in Part A. 2. b. (2) and whose request is denied may petition the court to order the disclosure of that information. On receiving the petition, the court must notify the agency, the district attorney, the child and the child's parent, guardian or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court must make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances prohibiting disclosure of the information, as specified in Part A. 2. b. (3) apply.

The substitute amendment provides that any person acting in good faith in disclosing or refusing to disclose the information permitted to be disclosed in Part A. 2. b. (1), under the circumstances specified in Part A. 2. b. (2), is immune from any liability, civil or criminal, that may result by reason of that disclosure or nondisclosure. For the purposes of any civil or criminal proceeding, the good faith of a person in disclosing or refusing to disclose the information is presumed.

(2) Circumstances in which information may be disclosed

Specifically, an agency is permitted to disclose all of the information specified in Part A. 2. b. (1), under the following circumstances:

- (a) If a person has been charged with a crime for causing the death or serious or critical condition of a child as a result of suspected abuse or neglect or if the district attorney indicates that a person who is deceased would have been so charged, but for the fact that the person is deceased.
- (b) If a judge, district attorney, law enforcement officer or agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public that the suspected abuse or neglect has been investigated or that child welfare services have been provided to the child or the child's family.

- (c) If a parent, guardian or legal custodian of the child or the child, if 14 years of age or older, has previously disclosed or authorized the disclosure of the information.

(3) Prohibitions on disclosure

An agency may not disclose the information specified in Part A. 2. b. (1), if any of the following circumstances apply:

- (a) The agency determines that the disclosure of the information would be contrary to the best interests of the child, the child's siblings or any other child residing with the child who is the subject of the report of suspected abuse or neglect, or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child, the child's siblings, any other child residing with the child who is the subject of the report or any other person.
- (b) The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.
- (c) The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding.
- (d) Disclosure of the information is not authorized by state or federal law or regulation.
- (e) The investigation of the child abuse or neglect report has not been completed, in which case the agency may only disclose that the report is under investigation.
- (f) Disclosure of the information would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing with the child, and information that would reveal the identity of those persons has not previously been disclosed to the public.
- (g) Disclosure of the information would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

3. Citizen Review Panels

a. Current Law

Under current federal law, each state that receives a grant under the Federal Child Abuse Prevention and Treatment Act must establish not less than three citizen review panels or must designate one or more existing entities as citizen review panels to evaluate the extent to which local agencies responsible for providing child protective services are effectively discharging their responsibilities. Further, the state must ensure that otherwise confidential child abuse and neglect reports and records are made available to these panels.

b. Assembly Substitute Amendment 1

Assembly Substitute Amendment 1 permits a citizen review panel established or designated by DHFS or a county department to have access to the otherwise confidential child abuse and neglect reports and records.

B. SENATE AMENDMENT 1

Senate Amendment 1 to the bill, as passed by the Assembly, requires the DHFS to establish the procedures for conducting an appeal of a child abuse or neglect determination as administrative rules.

Please feel free to contact me at the Legislative Council Staff offices if you have any questions regarding this bill.

LR:rv;jal



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Lekan, Secretary

February 16, 2000

The Honorable Jean Hundertmark
8 West, State Capitol
P.O. Box 8952
Madison, WI 53708-8952

SUBJECT: Revisions to CAPTA Legislation

Dear Representative Hundertmark:

After further review of the drafted CAPTA bill, DHFS endorses additional technical changes to our earlier draft, LRB 2801/2. While we realize the awkwardness of proposing them now, we wish to be particularly cautious in matters related to sensitive, confidential records. As you requested, we have advanced these concerns to the Legislative Reference Bureau to draft as a substitute amendment.

To facilitate your review of these suggested changes, I have attached a guide to the amendment as it relates to LRB 2801/2. I hope this information is helpful. Please let me know if you would like to discuss this further.

Sincerely,

John Kiesow
Executive Assistant

attachment

cc: Senator Peggy Rosenzweig
Senator Bob Wirth
Representative Bonnie Ladwig

Modifications to LRB-2801/2, the CAPTA Compliance Act

1. Information should be released to the “public”, rather than to “any member of the general public”, because otherwise county agencies and the state agency could be caught up in repeatedly releasing the same information any time they get a phone call from anyone. Also, we propose removing the language referencing how quickly the information must be disclosed, as the county agency has no timeframe for releasing information to any of the other entities under s.48.981(7). An AG opinion states that information must be released under s.48.981(7) upon request and as quickly as is practical. This opinion would pertain to public disclosure as referenced in this legislation.
2. The bill should also include reference to a “suspected maltreater” [or equivalent as deemed by LRB] in addition to a child and the child’s family with regard to any services offered or provided (child abuse and neglect records pertain to persons outside of a child’s family who abused the child, in addition to intra-family abuse).
3. The main concern being addressed in this revision is to limit the amount of information that is released about the family. Both parts were rewritten here to authorize only “*whether*” services were offered or provided.
4. The section that said the results of the reviews of various teams or agencies would be released should be removed since s.48.981(7) deals only with the release of the county DSS/HSD child abuse and neglect records (and parallel BMCW records), not records originated and controlled by other agencies.
5. The bill should recognize that in some cases information should not be released if an appeal hearing is pending or a CHIPS hearing or some other civil proceeding.
6. We want to assure that all records regulated under different statutes that were confidential continue to be confidential. Although attempts had been made to do that by referencing sensitive types of records that could not be released, we were not sure if those references covered all confidential records in all parts of the statutes. Therefore, we added the reference to “state” law and regulation, rather than just federal law. We also removed the language on Page 8, lines 14-16 of the LRB draft, because it was no longer needed.
7. The bill should recognize that cases under investigation, once completed, are to be handled the same way as cases where the investigation had already been completed.
8. We recommend removing some language that could be misinterpreted to say that no information from the county child abuse/neglect record could be released.



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Lecaen, Secretary

**DHFS SUPPORT OF 1999 AB 778,
THE CAPTA COMPLIANCE ACT**

The federal Child Abuse Prevention and Treatment Act (CAPTA) directs states to comply with certain requirements of their child abuse and neglect response systems and programs. Funds are awarded to states that are in compliance with CAPTA.

Wisconsin receives two allocations of funding that are contingent on CAPTA compliance. The Basic Grant program funds received annually average \$400,000. The Children's Justice Act (CJA) currently totals about \$175,000. Failure to comply with CAPTA both funding sources.

Wisconsin had been in compliance with CAPTA for the first 15 years of its existence. However, in a reauthorization of CAPTA, Congress recently added requirements for an explicit appeals process, the authorization of Citizen Review Panels, and public disclosure of agency activity in the case of a child fatality or near fatality. *These new requirements are designed to make state and local child protective services systems more accountable to the public.* Representative Hundertmark's AB 778 will bring Wisconsin into compliance with these provisions.

In brief, each of these elements can be described as follows:

- **Explicit Appeals Process.** The CAPTA reauthorization requires that persons who have been determined to have abused or neglected a child as a result of a child protective services investigation be awarded the opportunity to appeal that decision. Under current law, the decision is maintained in the case record and may be disclosed in certain limited situations as defined by statutes. This proposed legislation would assure that a person has the ability to refute this decision and have it reviewed and perhaps reversed through a structured process.
- **Authorization of Citizen Review Panels.** CAPTA also requires that every state authorize and establish citizen review panels to review state and local child protective services (CPS) policies and programs. In order to effectively conduct their business, the panels will at times need access to CPS files. The proposed legislation allows child abuse and neglect records to be disclosed to citizen review panels recognized by county departments or the Department of Health and Family Services. Panels receiving this information are governed by the confidentiality statutes and cannot re-disclose this information except as allowed by statute.
- **Public Disclosure of Agency Activity in Certain Instances.** Wisconsin CPS records are confidential. CAPTA overall reinforces the need to keep such records confidential. However, the CAPTA reauthorization states that some information from CPS records related to the public agency's actions (or failure to act) in particular cases of child fatalities or near fatalities as a result of abuse or neglect must be disclosed to the public. This will assure accountability when a child that has been or is being served by a public child welfare agency is seriously harmed or killed. The proposed legislation would allow for disclosure of agency decisions and actions but maintain confidentiality of personal family information to the greatest extent possible.

In short, AB 778 will satisfy the federal CAPTA requirements and thereby introduce greater accountability of our child welfare system while maintaining eligibility for federal funding.

Assembly Substitute Amendment 1
To 1999 AB 778

Modifications to Original Bill

Page	Lines	
5	14	Information should be released to the "public", rather than to "any member of the general public." (Otherwise county agencies and the state agency could be caught up in repeatedly releasing the same information any time they get a phone call from anyone.) Also, ASA 1 removes the language referencing how quickly the information must be disclosed, as the county agency has no timeframe for releasing information to any of the other entities under s.48.981(7). An AG opinion states that information must be released under s.48.981(7) upon request and as quickly as is practical. This opinion would pertain to public disclosure as referenced in this legislation.
6	12-24	<ul style="list-style-type: none"> • ASA 1 changes the emphasis to "<i>whether</i>" services were offered or provided. The concern addressed here is to limit the amount of information that is released about the family. In addition, disclosure of the child's name and age is struck as superfluous because it would have already had to have been disclosed. • ASA 1 properly includes reference to "the person suspected of the abuse or neglect" in addition to a child and the child's family with regard to any services offered or provided (child abuse and neglect records pertain to persons outside of a child's family who abused the child, in addition to intra-family abuse).
7	5-8	The section dealing with the results of the reviews of various teams or agencies and their release is removed since s.48.981(7) deals only with the release of the county DSS/HSD child abuse and neglect records (and parallel BMCW records), not records originated and controlled by other agencies.
7	21-25	ASA 1 recognizes that in some cases information should not be released if an appeal hearing, a CHIPS hearing or some other civil proceeding is pending.
7		ASA 1 assures that all records regulated under different statutes that were confidential continue to be confidential. The reference to state law and regulation, rather than just federal law is now present. ASA 1 also removes the language on Page 8, lines 14-16 of AB 778, because it is no longer needed in deference to other changes made earlier.
7-8	24-25 1-3	ASA 1 recognizes that cases under investigation, once completed, are to be handled the same way as cases where the investigation had already been completed.
8	4-16	ASA 1 removes some language that could be misinterpreted to say that no information from the county child abuse/neglect record could be released.