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Justice for Children Package Testimony

November 5, 2015

Senator Rob Cowles

Over the past year, the Department of Justice, the Attorney General's office, advocacy groups, Senator Cowles, our office, and Assembly authors have collaborated to address some major crimes against children and victims of sexual assault to create a collaborative approach to protect them and provide them with an opportunity for better outcomes. We are very pleased today to have the "Justice for Children package" heard.

These bills are aimed to reform major crimes against children and victims of sexual assault, but ultimately keep kids safe. In researching these crimes and collaborating with the Department of Justice, it was clear that something needed to be done to address cases of abuse, neglect, and sexual assault and again, and most importantly, to keep kids safe.

In this package we have put together four bills to aid in the fight against these crimes.

Assembly Bill 430 allows victim advocates to play a larger role in cases of sexual assault and human trafficking, both against adults and children. Through research, we have found that survivors of sexual crimes who have received services from a victim advocate have experienced better outcomes and are in less distress through such a difficult and trying time. National statistics estimate nearly 23 million women in the United States have experienced sexual violence, while child sexual assault remains a grossly under reported crime. We needed to address the needs of our victims in this state.

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This bill, specifically, gives victims greater access to victim advocates during examinations and consultations performed at a hospital, as well as, during preliminary law enforcement interviews. This bill gives victims, free of charge to them, someone who is there, solely, for their needs. Additionally, we have introduced an amendment to address concerns raised by some of the interested parties on this legislation to try provide better and less traumatic experiences for children who have been victimized by such a horrible crime. I want to thank all of those involved to help strengthen this bill and provide better advocacy for Victims of sexual assault.

Assembly Bill 431 reforms the neglect statutes and adds substance and clarity. Under current law, you have to prove intent to neglect, in addition to, a felony schedule that is inflexible and leaves out many instances that certainly constitute neglect that are happening in our communities. This bill redefines neglect as the negligent failure to provide necessary care. The bill further defines necessary care, as amended, as now adequate food, clothing, medical and dental care, shelter, supervision, the opportunity for education, and protection from the exposure to the distribution, manufacture or use of controlled substances; modeled after the statutes governing jurisdiction over children alleged to be in need of protective services (§48.13(10m)). This bill also creates a new felony schedule, while the ceiling and floor remain that same, we have included instances where children are at unreasonable and substantial risk of harm, great bodily harm, or death, as well as accounting for emotional harm, and if the child neglected becomes the victim of a child sex offense. The new schedule clearly provides greater detail and flexibility to identify neglect while maintaining the discretion District Attorneys and jurors currently have.

Assembly Bill 431 also creates the crime of repeated acts of neglect of the same child. This is modeled after the crime of repeated acts of sexual assault of the same child (§948.025). This gives prosecutors a new tool to identify situations in which a very young or non-verbal child has been neglected. For very young or non-verbal children, dates and specific instances maybe challenging to identify. This new crime does not change any of the elements necessary to convict someone of neglect. Furthermore, we have introduced an amendment to provide even greater clarity and substance to address a number of concerns raised in the Senate hearing. I again want to thank all those involved to help strengthen this legislation.

Assembly Bill 428 is similar to Assembly Bill 431 in that it too creates a new crime. The bill creates repeated acts of physical abuse of the same child. Again, modeled after repeated acts of sexual assault of the same child (§948.025) this crime helps prosecutors convict the more grievous cases of physical abuse against children, many of whom are very young or possibly non-verbal. Through our research, the children who are victims of these crimes are very young. In the State of Wisconsin, from 2008-2012, 61% of physical abuse deaths of children were aged 3 or younger, with 35% of the deaths were children under the age of one. We hope that the two new crimes created in this package will save such young children who are victims to these horrible crimes.

Assembly Bill 429 expands referral of all reports of suspected or threatened child abuse or neglect to law enforcement. Under current law, suspected cases of child abuse and neglect are referred by mandated reporters to Child Protective Services and not law enforcement. Child abuse and Neglect are the only two felonies not referred to law enforcement. This bill requires that Child Protective Services refer all suspected or threatened cases to law enforcement and coordinate a response if necessary. This legislation lets law enforcement decide if law enforcement needs to be involved, and changes the model to allow early-intervention of law enforcement, if necessary. We feel that having law enforcement involved and aware from the beginning can, at an absolute minimum, reduce duplicate investigations and provide fewer interviews where the victim will have to relive their traumatic experience. Unfortunately, we have amassed several examples from all over the state where law enforcement was not involved in an investigation of neglect or abuse and the child/children suffered continued maltreatment and, in the saddest cases, death. Law enforcement has different tools available for investigating, such as the ability to obtain search warrants and subpoenas. Through collaboration with stakeholder groups, we have introduced an amendment to help provide greater flexibility for County Human Services to refer cases, along a sliding timeline schedule, for referral ranging from 12 to 48 hours to reach law enforcement. We feel that referring all cases to law enforcement will be a vastly improved approach to identifying cases of abuse and neglect and help to keep kids out of harm's way.

Additionally, The Wisconsin Police Chiefs Association, Sheriffs and Deputy Sheriffs Association, and Wisconsin Professional Police Association all are publicly supporting this legislation. Their position is that these calls are potential felonies and they want to be involved sooner rather than later, or at least aware of referrals that have happened in their communities, because the consequence could be that a children will continue to suffer. The State Prosecutors Association and Wisconsin District Attorneys Association are also supporting this legislation.

It is so important to ensure that victims of such terrible crimes are protected in Wisconsin and receive justice from those who have wronged them. By aligning our District Attorneys, Law Enforcement, Victim Advocates, Child Protective Services and our communities together we can create a proven environment to protect the victims of these crimes and aim towards achieving greater outcomes for these victims.

I want to thank all those involved with these bills especially Attorney General Schimel, and Representatives Heaton, Macco, Murtha and Tranel for their work on this package of bills.

With these bills, I hope we can strive to give kids a violence-free and safe childhood and deter acts of abuse neglect and sexual assault in our communities. I hope that these bills can bring criminals to justice and of course, keep kids safe.



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PREPARED TESTIMONY OF ATTORNEY GENERAL BRAD D. SCHIMEL

Support for Assembly Bill 428, Assembly Bill 429,

Assembly Bill 430, and Assembly Bill 431

Assembly Committee on Criminal Justice and Public Safety

Thursday, November 5, 2015

Good morning Mr. Chairman and members of the Assembly Committee on Criminal Justice and Public Safety. Thank you for this opportunity to testify on these four important bills: AB 428, AB 429, AB 430, and AB 431.

I would first like to thank Senator Cowles; Representatives Tranel, Macco, Murtha, and Heaton; and legislative leaders for sponsoring the "Justice for Children" legislation and addressing a need to change the way we protect children who are victims of abuse and neglect.

In my former lives as an Assistant District Attorney and District Attorney, I spent the largest part of my 25 year career prosecuting Sensitive Crimes cases. That experience included countless child abuse and neglect cases.

In that work, I saw firsthand how child abuse and neglect often do irreparable harm to children and families. Worse, the fallout from that abuse and neglect often is passed from generation to generation. Children usually learn their sense of "normal" from what they see in their own home. Unfortunately, when they grow up in an environment of physical abuse, sexual abuse, neglect, domestic abuse or drug abuse, they very often grow up to perpetuate that same conduct in their own adult relationships.

We have no higher responsibility in government than to protect our children. It is time for us to provide stronger tools to address physical abuse and neglect of children to break this cycle. These four bills will help Wisconsin better protect our children.

Assembly Bill 428

provides the ability to charge repeated acts of physical abuse and neglect when multiple abusive or neglectful acts are committed against the same child. For many years, Wisconsin law has given prosecutors the ability to charge repeated acts of sexual assault of a child as a single continuing offense. That tool has been critical to

our finding the truth in cases involving ongoing, repetitive sexual abuse.

Children often are not able to identify the specific date on which acts of sexual abuse were committed against them. This is just as true with acts of physical abuse and neglect as it is with sexual abuse.

Physical abuse and neglect can, also, be every bit as damaging to a child as sexual abuse. It is long overdue for Wisconsin to give prosecutors the ability to charge long-term physical abuse and neglect as an ongoing course of conduct so that we can achieve justice for these child victims and prevent offenders from committing future crimes against children.

It can be very difficult for a child to identify specific dates of violation sufficiently to support charges when there are multiple acts of physical abuse or neglect committed against them. Assembly Bill 428 provides an important tool to prosecutors that will enable them to address this challenge.

Assembly Bill 429 requires notification to law enforcement of allegations of physical abuse and neglect of a child.

The criminal justice system works best for victims when there is a collaborative approach that brings together a multi-disciplinary team made up of prosecutors, law enforcement, victim advocates, and social services. We learned this years ago when we first mandated that law enforcement be notified of allegations of sexual assault of a child. At about that same time, some jurisdictions started utilizing Child Advocacy Centers and Multi-Disciplinary Teams to address offenses committed against children. There was resistance to those kinds of collaborative approaches at that time, but they are now accepted as the gold standard and we serve survivors of child sexual assault much better than we did just 15 years ago.

Under current law, mandatory reporters must report sexual abuse, physical abuse and neglect of a child to the county social service agency. Only as to sexual abuse of child, however, are social service agencies required to share the report with law enforcement. Wisconsin law does not require that law enforcement be notified when physical abuse or neglect of a child is suspected.

Social services and law enforcement have complementary, but not always identical interests relative to child abuse and neglect. Law enforcement also has tools available to it, such as subpoenas and search warrants, that are not typically available to social services agencies working alone.

I have been around long enough to remember when collaborative investigations were not the norm. We ran into many situations in which children were interviewed multiple times about the abuse, forcing them to relive the circumstances over and

over again.

AB 429 makes sure that the two systems both work together to investigate child abuse and neglect. AB 429 will be a force multiplier in our effort to keep our children safe. In Waukesha County where I was a prosecutor, we began conducting collaborative investigations between law enforcement and social services years ago, and I saw firsthand the benefits of this multi-disciplinary approach.

Law enforcement and prosecutors do not lose any of their discretion to make determinations as to when a child protection service response is adequate and when there should also be a criminal justice response.

Assembly Bill 430 provides the right to assistance of a victim advocate to crime victims. During a police investigation, a suspect has the right to be represented by an attorney. In fact, if the suspect is in custody, police must inform them that they have the right to legal representation before law enforcement can interview them about the crime. Further, if the suspect cannot afford an attorney, they are told they will get one for free. No reasonable person can dispute that these rights are appropriate and in the best interests of justice.

Current law gives victims the right to accompaniment by an advocate once charges are filed, but current law does not address the investigative stages. The investigation phase can be the most stressful part of the entire process for a child victim, since that will often be the first time they talk with a stranger about what happened.

Assembly Bill 430 makes sure that victims have rights to support similar to the ones already granted to an accused suspect. Why would we not afford a crime victim, especially a child, who is being interviewed the right to have an advocate present to help them?

Further, unlike the attorney representing a suspect as part of an adversarial process, the presence of a trained victim advocate can actually assist law enforcement in doing their job. Advocates do not have a responsibility to be adversarial to the efforts of child protection workers, medical professionals or law enforcement officers. In fact, the presence of a victim advocate will make the system work better and more compassionately.

Assembly Bill 431 proposes several changes to the neglect of a child statute.

Current Wisconsin law requires that the State prove that a person who neglected a child did so intentionally. This is an oxymoron. By its nature, neglect is not intentional. Assembly Bill 431 would remedy this confusion in our law by setting a criminal negligence standard.

Assembly Bill 431 also creates graduated penalties for varying degrees of child neglect. Under current law, a prosecutor has only two options when addressing allegations of child neglect: 1. Charge a misdemeanor if the child does not die from the neglect; and 2. Charge a felony if the child does die as a result of the neglect. This bill provides graduated penalties for neglect based upon the severity of the injury to the child. Thus, more severe neglect can be punished more severely than less severe neglect. Right now, in almost every case, neglect is only a misdemeanor offense, no matter the consequences, as long as they are short of death.

Conclusion

AB 428, AB 429, AB 430, and AB 431 will enable us to give children the resources they need to navigate the criminal justice system and begin the long process of healing. These tools will enable us to do the very best we can to keep our children safe.

It is important to note, once again, that these bills propose the same things we have already utilized with great success in child sexual assault investigations and prosecutions. They simply provide to investigations and prosecutions for physical abuse and neglect the same tools and methods that have long been in place for child sexual assault cases.

The Wisconsin Department of Justice, state prosecutors who specialize in child abuse and neglect prosecutions, as well as representatives from partner organizations like the WCASA and CHW have worked tirelessly with legislators to develop this comprehensive solution to some of society's worst problems. I am confident the "Justice for Children" package of laws will be a great asset to prosecutors statewide and hold offenders more accountable than current law allows.

Thank you for allowing me the time today to address this body. I am happy to take questions.



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November 4, 2015

TO: Members of the Assembly Committee on Criminal Justice and Public Safety

FROM: Ken Taylor, Executive Director Wisconsin Council on Children and Families

RE: AB 429 and AB 431

My name is Ken Taylor and I am the Executive Director of the Wisconsin Council on Children and Families (WCCF). WCCF is a child and family research and advocacy organization that for 134 years has been advocating for a Wisconsin where every child has the opportunity to thrive. I have spent over 20 years working with child welfare systems here in Wisconsin, and across the country, to help improve outcomes for the children and families they serve. I have a great deal of respect for the professionals and foster parents who work in these systems. They are true heroes who are doing very difficult work on behalf of the most vulnerable in our society.

I appreciate having the opportunity to submit testimony on AB 429 and AB 431. I know the bill's sponsors and co-sponsors, as well as the Attorney General, all want to help keep Wisconsin's children safe and break the cycle of abuse and neglect. This is my goal too. However, I have concerns about aspects of AB 429 and AB 431 which I believe will create some unintended, negative consequences.

Regarding **AB 429**, my concern centers on the requirement that all reports of abuse and neglect must be referred to law enforcement. This has the potential to have a chilling effect on the number of reports being made regarding potential abuse or neglect, and consequently children could be placed at additional risk. I am concerned because approximately one-third of reports are made by people who are non-mandated reporters. These reporters (family members, neighbors, friends), who are concerned about a child but who may not want to involve the family with law enforcement, would be less likely report their concerns to Child Protective Services (CPS).

Another concern is the use of a blanket 12 hour requirement for every referral to law enforcement. This does not allow for any prioritization by CPS staff, and could result in high risk cases not being adequately addressed in order to meet the 12 hour reporting timeline for low risk cases. I have heard that an amendment is being discussed to address this concern, and I welcome this possibility.

In this period of budget challenges, I am also concerned about the effective use of our law enforcement resources. In 2013, there were nearly 69,000 referrals made to child protection services, with 62% of the referrals screened out. As I understand the implications of AB 429, this would result in law enforcement using valuable time and resources investigating nearly 43,000 cases that CPS would not further assess. The bill says that CPS and law enforcement "shall coordinate the planning and execution of the investigation of a report received." My understanding of this language is that all reports must be investigated. If that is not the intent of the authors, perhaps that could be clarified.

I understand that the intent of this bill is to use the greater investigative power of law enforcement to protect kids. Current law requires each county department and licensed child welfare agencies to "adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities." Based on my experience, these policies likely vary widely across the state. Rather than create a blanket requirement that all cases be referred to law enforcement, my suggestion is for the Department of Children and Families to work to create more consistency in these policies, or, in collaboration with AB 429's authors, clearly state what types of reports must be forwarded to law enforcement.

In many places around the state there is great progress being made on treatment alternatives that address and resolve underlying problems instead of driving individuals deeper into the criminal justice system. It seems inconsistent to me to be proud of our best-practice diversion programs, while simultaneously increasing the involvement of law enforcement in thousands of cases they have not been previously involved with. I believe there is middle ground that can be found on this issue.

There is no question that law enforcement should be involved in some cases. My concern is that a blanket policy to refer all reports will, in many cases, unnecessarily tax our law enforcement officials as well as CPS staff, decrease the ability of child protection and law enforcement to prioritize their responses, and create the risk that some concerns will go un-reported due to reporters not wanting to involve the family with law enforcement. This will result in some children being less safe.

I also believe that AB 429 will have disproportionate impacts on Wisconsinites who are from communities of color. Currently, in Wisconsin African American children are three times more likely than Whites to have maltreatment substantiated and 4.7 times more likely to enter out-of-home care as White children. Increasing law enforcement involvement with these families, who are already disproportionately from communities of color, is unlikely to have positive effects, and will also likely increase the disproportionality in our justice system, which is already among the most disproportionate in the nation.

Regarding **AB 431**, one of my main concerns, the use of the term “appropriate” in the definition, has been addressed in Amendment 1, so I thank the authors for that change. That said, I still have significant reservations about the bill. The main one is that a caregiver will be considered to have committed neglect “even if the child does not actually suffer from neglect . . .” While this might be a legitimate reason for referral and perhaps services to the family, this doesn’t make sense to me as a criminal matter that a caregiver could be charged with something that didn’t actually occur.

In addition, it is important to note that 60% of children in out-of-home care in Wisconsin are reunified with their parents. This is a critical bond and an important connection for a child’s well-being. Reunification will be much more difficult if those parents have a felony record due to the changes in AB 431.

I know that the goal of the authors is to improve lives and protect kids. I share that goal. Child welfare systems are very complex and the risk of unintended negative consequences is always present. In summary, I propose taking a pause in the process so that various stakeholders who are committed to improving the child welfare system can be effectively engaged in addressing the challenges identified by the authors.

Thank you for your time and consideration of my perspectives on AB 429 and AB 431. I look forward to the opportunity to partner with members of the legislature to improve the lives of vulnerable children and their families.

November 5, 2015

To: Representative Kleefisch (Chair)
Representative Kremer (Vice-Chair)
Members, Assembly Committee on Criminal Justice and Public Safety

From: Lisa Pugh, Public Policy Director
Kit Kerschensteiner, Managing Attorney

RE: Justice for Children Package: AB 429 and AB 431

Thank you for the opportunity to provide testimony on this important package of legislation. Protecting individuals with disabilities, including children, from abuse and neglect is the core of our work at Disability Rights Wisconsin. We are the state's protection and advocacy agency designated by the Governor to assure that the basic rights of people with disabilities are enforced.

We have testified previously on the Justice for Children package of bills in the Senate Committee on Judiciary and Public Safety, pointing out particular concerns for children with disabilities and parents with disabilities within the abuse investigation process. Since that hearing we have conducted additional research into how other states and communities are addressing this problem and we are hopeful you might consider some simple but critical solutions today. Specifically, we are hoping the committee will work with us to create additional legislation.

First we would like to summarize some facts we uncovered while reviewing Department of Children and Families data including 90-day Summary Reports for Child Death, Serious Injury or Egregious Incidents from 2011 - 2015. It is important to note this data does not include all reports, only the most serious. We noted the following trends:

- Since February 2010, 12 children with special needs of some kind have died due to abuse or neglect in Wisconsin. An additional 8 suffered an egregious injury.
- Many cases involving children with special needs indicate repeated calls to child protective services. In one fatal case there were more than 20 calls.
- Some cases document the inability of the child to provide information or a case involving a non-verbal child. Several children were identified as having Down syndrome or autism.
- Children experiencing abuse ranged from 3 months to 17 years old. Many children in these serious cases were over age 5 and several over age 10, indicating they should have been able to clearly communicate and substantiate what had occurred, but perhaps due to their disability, they were unable to do so. However this conclusion is only an inference.

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- There is little specificity on referrals to community supports of any kind, and none indicating specific supports for children with disabilities.

Background on Abuse and Neglect of Children with Disabilities:

Studies and available data indicate that children with disabilities are three times more likely to be a victim of some type of abuse compared to children without disabilities.¹ We bring this data to light to demonstrate that children with disabilities need special considerations and protections in this process.

Currently the Justice for Children package does not increase protections for children with disabilities to the degree necessary.

An overarching and disturbing trend in the DCF reports is that most cases do not result in any charges and there are often many contacts before something really bad occurred. In a 2015 Waukesha case involving a 13-year-old child with autism, 40 calls were made to child welfare with repeated allegations of physical, emotional and sexual abuse and only when the police were called was the parent finally arrested and charged. This was a child who had been kept in the basement without access to a bathroom or running water, and no place to sleep.

Our agency has taken calls from people concerned about the response of Child Protective Services (CPS) when a child with a disability is involved. In one recent case a CPS worker indicated to us they did not think it was worth conducting a forensic interview of a child with communication difficulties because they did not believe they could get enough information.

Unfortunately national studies verify significant differences in the responses of CPS case workers when the alleged victim of abuse has a disability. Children with disabilities are sometimes seen as contributing to their abuse; CPS workers were found to demonstrate more empathy with abusive parents of children with disabilities, particularly when the child had emotional or behavioral disabilities. Even when severe injuries, such as a concussion or broken bones were involved, the CPS workers in one study responded differently when the child victim had a disability.²

Examples from Other States

Some states have attempted to address this issue and others, like Wisconsin, are becoming aware of the problem that puts vulnerable children with disabilities at increased risk. Here are some examples:

- Pennsylvania has adopted model standards for multi-disciplinary teams that include specialists that can address the unique needs of a child with a disability during an investigation.
- Idaho statute outlines that multi-disciplinary investigative teams should include someone knowledgeable about adaptive equipment supportive services for persons with disabilities.
- Connecticut standards indicate that “every effort should be made to consult with appropriate specialists regarding children with disabilities and include appropriate specialists in the interview.”
- California requires that law enforcement regularly complete standards training to include working with people with disabilities and providing necessary accommodations.

¹ Davis, L.A.; Abuse of Children with Intellectual Disabilities; The Arc; 2011. <http://www.thearc.org/document.doc?id=3666>

² Manders, J. E. & Stoneman, Z.; Children with disabilities in the child protective services system: an analog study of investigation and case management. *Child Abuse & Neglect*, 33(4), 229-237. 2007. <http://www.nationalcac.org/professionals/images/stories/pdfs/disabilities%20bibliography4.pdf>

- Illinois protocol requires that law enforcement determine needed accommodations or resources for victims with disabilities to ensure the victim has equal access to the investigative process.

AB 429: Referring cases of child abuse and neglect to law enforcement

This bill has the potential to address concerns about egregious cases that frequently slip through the cracks or when multiple contacts should have led to criminal charges much sooner. However, while we support increased scrutiny of certain cases, particularly those involving children with disabilities, we are concerned that **the involvement of more people in an investigation will not necessarily improve the investigative process.** We suggest either recognition of this issue within the bill or the introduction of separate legislation to ensure abuse or neglect of vulnerable children with disabilities is adequately addressed.

Background on Parents with Disabilities in the Child Welfare System:

Historically, individuals with disabilities have faced severe societal biases regarding their fitness to serve as parents. For many years the chief governmental response to the challenges of parenting with a mental disability was compulsory sterilization. While societal attitudes have evolved, the stereotypes about the ability of persons with mental disabilities to parent persist. Although recent research has found that parents with disabilities are not more likely to maltreat their children than parents without disabilities, studies demonstrate high rates of termination of the rights of parents with disabilities.³

Parents with disabilities are much more likely to be adversely affected by the child welfare and legal systems. The National Council of Disability, an independent federal agency found that the removal rates for parents experiencing mental illness disproportionately high at 70 to 80%.⁴ Additionally, parents who are blind, deaf or have physical disabilities were also reported to have faced significant discrimination in the Child Protective services system.⁵ According to the Council, parents with disabilities are “the only distinct community of Americans who must struggle to retain custody of their children,” citing a study finding that parents with a disability label in their school records were more than three times as likely to have their parental rights terminated than parents without such a label.⁶ The structure of state laws and the failure of the state child welfare system and disability service system to offer these parents the help they need, all contribute to the high rate of loss. There is a pressing need for more preventative services and supports to keep a family intact, not send a disabled parent to jail and destroy the family. At least one study has found that children and youth experiencing similar levels of neglect or abuse who were raised in foster care did not do as well in life as those raised by their biological parents *with supports*.⁷ It only follows that children with disabilities could be even more adversely impacted than the population at large if removed from their families. Of course there will always be situations where involvement of the child welfare and criminal justice systems is necessary to keep a child safe. However, it is critical to examine

³ Lightfoot, LaLiberte, & Hill; Guide for Creating Legislative Change: Disability in the Termination of Parental Rights and Other Child Custody Statutes_ (2007) <http://cascw.umn.edu/wp-content/uploads/2013/12/LegislativeChange.pdf>

⁴ National Council on Disability, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and their Children* 14 (2012). <http://1.usa.gov/VQ1E5S>

⁵ *Id.*, at 92-93,, 114, 122-126

⁶ Kundra & Leslie B Alexander, *Termination of Parental Rights Proceedings: Legal Considerations and Practice Strategies for Parents with Psychiatric Disabilities and the Practitioners Who Serve them*, 33 *Psychiatric Rehabilitation Journal*, 142 143 (2009).

⁷ Doyle, J. *Child Protection and Child Outcome Measuring the Effects of Foster Care*. *American Economic Review* 97(5) December 2007 1583-1610.

each situation individually and consider whether the child can be safe at home *with appropriate services to the family*. This falls within the area of expertise of human services, not law enforcement.

Protecting the Rights of Both Children and Parents with Disabilities:

Several important improvements have been made to AB 431 in the substitute amendment and we thank you for making these changes. However, we continue to be concerned that AB 431 casts an overly broad net for child abuse and neglect investigations that will add criminalization to the stigma experienced by parents with disabilities. We are afraid that the enhanced criminal penalties associated with these bills may have a disproportionate and discriminatory impact on parents with disabilities *unless* the committee takes very specific precautions to ensure that the investigatory process treats parents with disabilities equally to those without.

Children caught up in the Child Protective Service system also have a right to be treated fairly and in a nondiscriminatory manner during the investigatory process. As we have just demonstrated, too often their voice can be muted or ignored due to failures of the system to properly recognize and accommodate their needs during an abuse or neglect investigation.

Children with disabilities may have hearing loss, mental health issues or have experienced trauma, social delays due to autism, delayed processing or expression of information; some may not speak, but instead use communication systems, symbols or technology like an iPad to communicate. In each of these cases a child would be entitled to an accommodation that may allow them to explain what happened to them.

Section 504 of the Rehabilitation Act of 1973 (Section 504)⁸ and Title II of the Americans with Disabilities Act of 1990 (ADA)⁹ protect both parents and children with disabilities from unlawful discrimination in the administration of child welfare programs, activities and services. This protection can be completely complementary to the fundamental goal of the child welfare system to keep children safe and in caring homes. Abuse and neglect investigation protocols that specifically call on the investigatory team to determine whether either the suspected abuser or child has a disability that would impact their ability to participate in the investigatory process can lead to better results, both in proving cases where abuse or neglect is occurring and differentiating those where providing services instead of criminalization to parents with disabilities can help keep the family together by providing that parent with supports.

Both Section 504 and Title II of the ADA simply require governmental agencies to develop policies, procedures and protocols that ensure that people with disabilities are able to equally participate in the services, programs or activities of a public entity. This includes the child protective investigatory process.

We believe that the current process does, in fact, discriminate against both the child and parent with disabilities by failing to recognize and accommodate the communication and other needs of people with disabilities. This proposed legislation does nothing to remedy this. We are asking this committee to consider adding a requirement that the state's child protective services agency develop model policies and procedure to deal with situations where either the child or parent has a disability that requires an accommodation. These model policies must be replicated and enforced at the county level to be effective.

⁸ 29 U.S.C. §794

⁹ 42 U.S.C. § 12131-12134.

This does not mean a lowering of the standards for people with disabilities, rather, in keeping with the requirement to treat all people fairly, the process must be able of being adapted to accommodate to meet the needs of the child or parent to ensure an equal opportunity to effectively tell their story, whatever that may be, to investigators. To achieve this, some states are adopting model legislation and policies that addresses these concerns and we can supply this committee with specific language and policies from which Wisconsin can shape a solution to this problem.

Concerns Related to Specific Disability Types in AB 431:

DRW continues to be concerned about the singling out of certain children with specific disabilities for this protection. Only children under six years old with physical, cognitive or developmental disabilities are covered by this added protection. Children with emotional behavioral disorders or mental illness are completely shut out, despite the fact that studies show they are particularly susceptible to abuse and neglect. This raises clear constitutional questions of equal protection when children are categorized into two classes of disabilities, one that gets protection and one does not. If the language of this section is amended to “knew or should have known” inclusion of all disabilities is much simpler. **We request that this reference be removed or clarified.**

Parents and Families Need Access to Appropriate Supports:

One final point. In our experience, overwhelmed parents of children with disabilities can languish on waiting lists and without access to or knowledge of appropriate supports, leaving their children at risk. Parents are often denied necessary supports and attempt to address issues in the best way they are able.

DRW recently supported a family who had been attempting for years to get the county to approve a backyard fence (an allowable Medicaid expense) for their child with a disability who was a “runner” and a danger to himself if left outside alone. Even if no harm had come to the child, such a case may have been deemed as not providing “appropriate supervision” on the part of the parent, even though they had asked repeatedly for support.

Our Recommendations:

For the above reasons we ask the Committee to consider the following:

- The Department of Children and Families be required to develop model policies regarding abuse and neglect investigation procedures that can effectively accommodate both adults and children with disabilities. These model policies should be shared with local investigatory agencies and they should be required to submit specific policies that comport with the model for state approval.
- When a child with a disability is referred to the child welfare system through an allegation of neglect, or when the suspected actor is a person with a disability; prior to assessment the initial referral should trigger an automatic review of applications and eligibility for community supports. The system should require that a family of a child with a disability be referred to available crisis supports or moved to the top of a waiting list for supports related to the child’s disability.
- DCF and local CPS and law enforcement agencies should be required to collect and publicly report specific data when child abuse or neglect investigations involve a child with a disability.

Thank you for the opportunity to provide input on these bills. We welcome the opportunity to work with committee members to seek improvements to ensure the protection of children with disabilities and the rights of parents where necessary.

TO: Assembly Committee on Criminal Justice and Public Safety
FROM: Michelle Mettner, VP of Government Relations & Advocacy, Children's Hospital of Wisconsin
DATE: 11/5/15
RE: AB 431 – Child Neglect

Good afternoon Chairman Kleefisch and members of the committee. Thank you for the opportunity to provide this testimony on AB 431. My name is Michelle Mettner and I am the VP of Government Relations & Advocacy for Children's Hospital of Wisconsin. It is because of our experience with child victims in our emergency room and child advocacy centers as well as our intervention with fragile families through our social services work, we offer the following observations and suggestions on this legislation.

Children's Hospital of Wisconsin serves children and families all across the state. We have inpatient hospitals in Milwaukee and the Fox Valley. We care for every part of a child's health, from critical care at one of our hospitals to routine checkups in our primary care clinics. Children's also provides specialty care, urgent care, emergency care, dental care, school health nurses, foster care and adoption services, family resource centers, child health advocacy, health education, child welfare services, family preservation and support, mental health services, pediatric medical research and the statewide poison hotline.

Children's Hospital of Wisconsin is the largest not-for-profit, community-based agency serving children and families in the state, providing family preservation, counseling and advocacy services to more than 15,000 children and families annually. Research has shown that kids who experience adversity are 25 percent more likely to face lifelong physical, emotional, cognitive and behavioral challenges. We are working to break that cycle through our Child Advocacy Centers and our well-being approach, Strong Families, Thriving Children, which is based on physiological and psychological research that is customized to build on each family's unique strengths and address areas of improvement. Children's operates seven of the 14 Child Advocacy Centers (CACs) across the state that bring together professionals from law enforcement, criminal justice, child protective services, victim advocacy agencies and the medical and mental health communities to provide comprehensive services for child victims and their families. The goal of Child Advocacy Centers is to minimize trauma, break the cycle of abuse and, importantly, increased prosecution rates for perpetrators. In 2014, more than 7,000 families and children were served through our child advocacy and child protection centers.

Current law provides that any person responsible for a child's welfare who intentionally contributes to the child neglect is guilty of a misdemeanor, and if the child is physically harmed they are guilty of a felony. This bill would change the standard of care from intentionally to negligently and provides definition for necessary care that includes appropriate food, clothing, medical and dental care, shelter and supervision, opportunity for education, or protection from exposure to controlled substances. This bill would also create the crime of repeated acts of neglect of the same child. We support all of these changes and applaud the authors for this legislation.

As we review the bill, there is no clear definition of the "person responsible for a child's welfare". We recommend this be defined so it is clear to whom this statute applies. Our suggestion is "parent or legal guardian or those designated by the parent or legal guardian to provide oversight for the child's welfare".

In addition, since neglect is about *inaction*, we suggest that the bill be changed to replace the use of the term "action" with "*conduct*".

Chairman Kleefisch and committee members, I thank you again for the opportunity to submit testimony. If you have any questions, comments or concerns please feel free to contact me via email at mmettner@chw.org or via phone 414-266-5434.

testimony



Date: November 5, 2015
From: Tony Gibart, Public Policy Director
Re: AB 431

Wisconsin Coalition Against Domestic Violence
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Madison, Wisconsin 53703
Phone: (608) 255-0539 Fax: (608) 255-3560
tonyg@endabusewi.org

Chairperson Kleefisch and Members of the Committee, thank you for the opportunity to provide testimony in opposition to Assembly 49. My name is Tony Gibart, and I represent End Domestic Abuse Wisconsin. End Abuse is the statewide membership organization that is the voice for survivors of domestic violence and local domestic violence victim service providers. End Domestic Abuse Wisconsin (End Abuse) is the statewide organization that represents domestic violence survivors and local domestic violence victim shelters and service providers. First, we appreciate the intent behind the legislation, which clearly is to create more tools to protect children. As an organization dedicated to ending violence within homes, we support and applaud this goal. We also appreciate amendment that the authors have brought forward, which we believe improves the bill.

However, we are concerned that the specific statutory changes in AB 431 create definitions of child neglect that are over inclusive, encompassing many situations that most would agree should not be treated as criminal. We are also concerned that potentially diluting the criminal definition of neglect and creating a definition that is inconsistent with the definition found in the children's code will create confusion and impede early intervention efforts in possible neglect situations. Because exposure to domestic violence and trauma can affect victims' parenting, we seek to promote effective interventions that support the parent-child relationship whenever possible. We also seek to minimize the negative consequences that usually attend a parent's involvement in the criminal justice system. Records of criminal cases can make it more difficult for the parent to maintain employment or stable housing. These factors have adverse impacts on the wellbeing of the children in the family.

Most importantly, under the bill as amended, a parent can be charged criminally with neglect for not providing "adequate" food, supervision, clothing, medical care or shelter, among other things. There is no requirement that the lack of "adequate" food, for example, create any degree of harm or risk of harm to the child. Differing and subjective views of what is "adequate" would, then, be the main element in determining whether parents and other caregivers are charged with criminal neglect. In addition, as the definition of neglect in chapter 48 does include an element of risk of harm, parents and caregivers are likely to receive inconsistent messages between the child welfare system and criminal justice system. The very subjective and inconsistent standards may complicate early intervention efforts.

Secondly, the bill would include within the definition of criminal neglect exposing a child to the "use" of any controlled substance. We do not believe that the use of all illegal controlled substances, without a showing of risk or impact on the child, should constitute criminal neglect.

Thank you for considering our views. Please feel free to contact me at 608.237.3452 or tonyg@endabusewi.org.

Greeting – Hi, my name is April Eckdahl and I am a special education teacher for the Milwaukee Public School system. I'm here today because not only do I have experience with the Bureau of Milwaukee Child Welfare for the past 8 years as a teacher, but because for the past two years I have seen monumental errors that have and could continue to affect a child's life.

AB 431 - LRB-1942/6- This bill changes the current statutes to better define what the intent of neglect is and makes it easier for District Attorneys to explain to a jury. This bill also creates a crime of repeated acts of neglect of the same child. This change was modeled after repeated acts of sexual abuse to allow prosecutors the tools necessary to address those who have neglected the same child in numerous instances.

- I know this bill is of great debate. Neglect is such a broad area it is really hard to know what is considered "neglect" under the law or not. In the proposed changes to better define neglect and to make the punishments on a level, not just a misdemeanor or felony, I am hopeful that it will create a much more explanatory way of informing mandated reporters of what constitutes neglect. I know it is a case of "critical" neglect, but isn't that very subjective?
- For example, as a teacher I have seen what I think are many cases of neglect, only to call 220-SAFE and they say it is not, or question why I think it would be neglect. I have seen students walk to school in below freezing temperatures with a light jacket or a sweatshirt but that is not neglect. Or students have lice for weeks or continuous bed bug bites still sent to school. I have worked with a student (8 yr. old) who wore the same underwear for weeks, switched clothes with a sibling without them being washed, smelling, etc. I think most of these things ARE neglect. Not ridding your child's head of lice or not having a different pair of underwear to the point of smelling, to me is neglect. It is not necessarily seen that way by the BMCW and that is a problem. Worse is that the situation seems to be based on what intake worker you get on the phone. One may think it is horrible, one may not.
- In the case of a girl having a seizure disorder and not being taken for required dr check ups, especially when adults begin to notice her walking differently, speaking slower, and having frequent bloody noses, but is STILL not taken in, even when offered by a school worker. It was screened out. That should be a clear case of neglect right there! Therefore, this statute, as the authors said, needs to BETTER DEFINE neglect is long past overdue (and repeated acts - there should be a record, and it should be MONITORED, of both substantiated or unsubstantiated – that should be considered numerous instances as well).
- This bill, all bills, should also address the needs of children with disabilities. The "typical" kind of neglect can look very different than what is neglect for children with disabilities. Children with disabilities being neglected can look very different than neglect for children without disabilities.

AB 429 - LRB-2015/1-While child abuse and child neglect are both felonies in the State of Wisconsin, neither of these crimes are referred to law enforcement. This legislation requires that any suspected or threatened child abuse or neglect instances be referred to law enforcement. This bill aligns law enforcement and Child Protective Services to work as partners to substantiate allegations of abuse and neglect by using greater investigative power and experience to help Wisconsin's children.

- While this bill is of extreme importance, I believe there should be a measure put in place to monitor that all suspected instances are actually being referred to law enforcement. As it stands now, all suspected sexual assault instances of children are to be referred to law enforcement within 12 hours and through anonymous law enforcement sources I have learned that this is not always followed. This NEEDS to be followed with documented guidelines for calling. Does the child have to be pregnant? Knowing that calls of SEXUAL abuse are being dismissed and not even sent to law enforcement should make us all question if the same thing will happen with physical abuse or neglect.
- I think this bill is extremely important but it needs to be followed and implemented with great fidelity. There also needs to be someone to overlook this to make sure it is always followed and that it can be verified that each allegation was worked in coordination with law enforcement.
- I made numerous calls alleging of sexual assault for one of my students over the course of two years, as did co-workers, and not once was this ever referred to Sensitive Crimes or any other sort of law enforcement as is REQUIRED, according to my source. To make this situation worse was that this student was a young girl with autism.
- A call of any kind of abuse for a child with disabilities is different than for disabled children. Children with disabilities are taken less seriously – why?

AB 430 - LRB- 1327/2- Research has shown that sexual assault survivors who received services from sexual assault advocates had more positive outcomes and experienced less distress. This legislation works to partner with victim advocates by giving them closer access to survivors and make them a more important part of the treatment for sexual violence survivors to work towards better outcomes for survivors.

- Since I have worked with children for nearly ten years with varying types of disability, I can attest that any and all of my students would have benefited from having an advocate with them. It increases their feelings of confidence, reduces their fear, and doesn't feel alone in what is or could be a very scary time.
- A child is allowed to have a trusted adult with them in the room when they speak to an initial assessment worker. This should be put in place so that an interview doesn't start without an advocate, maybe even of their own choice. Of course not every student or teacher knows that is an option, which makes having victim advocates known much more important. Once this bill is passed, giving victim advocates closer access to survivors and more a part of the treatment for victims needs to be made aware on a

massive level. It should be made known that these advocates are out there and are available and can be utilized if needed.

AB 428 - LRB- 2516/1-This bill creates the crime of repeated acts of physical abuse of the same child. As children are often not the best with times and dates, this legislation gives District Attorneys the ability to set time periods for when instances of abuse have occurred and levy the crime of repeated acts of physical abuse of the same child.

- I also agree with this bill as part of the Justice for Children Package. It is extremely hard for children to set time periods in their heads and adults in all capacities need to understand that most likely, the child will not be able to give an exact date, or give a time period for how long abuse occurred. It is one more thing that can and has caused a problem when attempting to prosecute child abuse cases.
- This gives the children more of a voice. Having someone understand that it's okay if they aren't sure of the day, the month, if it was raining or cold is okay because that is not what is important. What's important is what HAPPENED and a general time frame. Any person working with children that is worth anything, that cares about kids at all, knows how children's minds work and will work with them, not AGAINST them.
- Physical abuse is rarely a one-time thing and rarely will it stop simply because one was arrested. The abuser needs to know that it can happen again, they can be arrested again, and with further consequences. More importantly, the victim needs to know that they do not need to be subjected to continuous abuse because the law only allowed prosecution for one offense.

At this point, I want to strongly urge you as power-holders of the law to deeply think about children with special needs; I'll primarily focus on autism. Children with disabilities are experiencing an injustice because they cannot express abuse verbally. They are a much more vulnerable population and much more likely to keep the abuse to themselves for many different reasons. In my experience, they have been treated much differently in the child protective services system than their neurotypical peers.

I have experienced this past year and a half a heart-breaking situation that has opened my eyes wide to the injustice for those with disabilities who cannot express the abuse they're subjected to in the way that the Bureau considers "disclosing". The summary of this situation is that one of my students began to exhibit behavior changes after a family member said something may have happened to her by a parent. I began to notice many changes that I soon learned from research were classic signs of sexual abuse. I call the BMCW over a dozen, maybe 2 dozen, times with new and important information. Another teacher called in as well. This little girl was telling us in her own way, in her own time, and when case workers came out to talk with her, she used avoidance as her tactic. She did not open up to anyone, and that is not how she is. She requires a close relationship with them, building trust over a long period of time before she will start to disclose. But she was disclosing to me and the other teacher in drawings, writings, acting things out with dolls (including laying the boy doll next to the girl doll after the abuse and saying the boy then says "I'm sorry". Any "normal" 8-year-old girl would not know that that comment is a classic of what pedophiles say, followed by presents and trips to McDonald's.

She also tried to disclose with her own physical actions, comments, etc. In the end, she did disclose to both a school social worker and a Bureau social worker. Instead of even realizing that children with disabilities will express things differently, need patience, need different tactics, they closed the case because she didn't SAY what they wanted. With her mouth. And when she did, it was questioned. I was questioned. My motives were questioned.

A thorough check and understanding of the way her disability affects her thinking, her communication, her vulnerability, was not done. If any training or research has been done, or had been done, workers would see how communication is difficult even for a highly verbal student with autism. They need to stop to think of how that disability affected her judgment or reaction or regard toward her abuser. Autism is even more of a reason to investigate thoroughly. They should be thinking that her teachers perhaps DO know her very well and can see many behavior changes and can see and hear disturbing, sad things that are happening in her life.

Workers have always warned her guardians that they were coming for a "surprise" visit, in more than one case. Am I missing the definition of surprise? Do the guardians automatically get believed or is more research done? Is any relevance put at all on the fact that a child with disabilities may feel alone, closed off and only safe at the place they spend 6 hours a day at? BMCW "experts" need more training about how disabilities can affect a child – patience, commitment, and understanding are just a few very important skills to have.

I have story after story after and during this situation that made me see how differently children with disabilities are treated in the child welfare system. They are dismissed, screened out, tossed aside. They are the least cared for because they are the easiest to be pushed aside. They can't verbally state what happened? Case closed. They are the losers in this because it takes time, it takes commitment, to get to know a child and gain their trust not even just because of abuse but because of their disability in the first place! They need to be taken more seriously and with patience and with time because of their differing ways of communicating, etc. I can understand that caseloads are high but something needs to be done. Perhaps a new section of the BMCW should be created specifically for workers that work only with children with disabilities. Case workers that can recognize and accommodate children with disabilities, or at least supply a generous amount of training, continuously. Perhaps a case worker should have a disability "expert" or advocate accompany them on any visit involving a child with disabilities. They are losers because it is so much easier to close their cases and the workers will not get in any trouble or be thought less of because they followed each step and "no abuse" was found.