



— Alberta Darling —

Wisconsin State Senator · District 8

Senate Committee on Human Services, Children, and Families

Senate Bill 162

Tuesday, April 27, 2021

Thank you Chair Jacque and committee members for taking the time to hear Senate Bill 162. In order to comply with a 2018 amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA), Senate Bill 162 expands immunity to individuals who provide information in connection with a report of child abuse or neglect.

CAPTA provides federal funding for prevention, assessment, investigation, prosecution, and treatment activities. Under current law, certain individuals are mandatory reporters of child abuse and neglect. These individuals, like school teachers and health care professionals, are granted civil or criminal liability from their report of child abuse, so long as the person is acting in good faith while making the report. Senate Bill 162 extends this immunity to individuals who assist in medical examinations of a child as well as to individuals who provide information, assistance, or consultation in connection with a report, investigation or legal intervention.

Wisconsin is required to come into compliance with this provision by September 30, 2021 in order to continue receiving funding through the federal CAPTA program. In fiscal year 2019, Wisconsin received \$1.5 million through CAPTA. Senate Bill 162 will ensure Wisconsin is in compliance with federal law and maintains our eligibility for federal funds.

I hope to count on your support for Senate Bill 162.

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# Wisconsin Legislative Council



Anne Sappenfield  
Director

TO: SENATOR ALBERTA DARLING

FROM: Amber Otis, Staff Attorney

RE: Description of 2021 Senate Bill 162 and Related Federal and State Laws Concerning Immunity to Certain Individuals Involved With Reports of Child Abuse and Neglect

DATE: March 12, 2021

This memorandum describes a new federal requirement concerning immunity for certain individuals involved with reports of child abuse and neglect, and compares the new requirement to current state law and to 2021 Senate Bill 162, relating to immunity from liability resulting from good faith actions under the child abuse and neglect reporting law.

## FEDERAL LAW

Under the federal Child Abuse Protection and Treatment Act (CAPTA), each state is required to prepare and submit a state plan that meets the directives of CAPTA in order to receive federal grant funds in support of the prevention, assessment, investigation, prosecution, and treatment of child abuse and neglect. Each state's plan must contain a description of the activities for which the grant funds will be used and various assurances, in the form of a certification by the state's governor, that the state has adopted and is enforcing certain state law provisions. Specifically, CAPTA requires that states include an assurance that the state has enacted and is enforcing a state law allowing for immunity to individuals involved in a report of child abuse and neglect. [42 U.S.C. s. 5106.]

## Recent Federal Enactment

Until a recent change in 2019, federal law required that states receiving CAPTA grant funds adopt and enforce "provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect." [2017 42 U.S.C. s. 5106a (b) (2) (B) (vii).]

However, the Victims of Child Abuse Act Reauthorization Act of 2018, enacted on January 7, 2019, broadened the scope of the immunity requirement to protect from both civil and criminal liability and to apply to individuals beyond persons reporting incidents in good faith. Specifically, as a condition to receive grant funds, federal law now requires that a state adopt and enforce:

Provisions for immunity from civil or criminal liability under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect.

[42 U.S.C. s. 5106a (b) (2) (B) (vii).]

## State Compliance

The federal Administration on Children, Youth, and Families (ACYF) has issued program instructions regarding state compliance with the scope of immunity required under CAPTA, as follows:

The amendment to CAPTA became effective upon enactment. Therefore, to comply with eligibility requirements of the CAPTA State Grant, all states must submit an assurance signed by the Governor that the state has in place laws and regulations reflecting the expanded requirement. It is important to note that this provision of CAPTA is one of several CAPTA assurances that must be embodied in state law, rather than just policy. Therefore, if state law is not currently consistent with this CAPTA requirement, as amended, the state must pass legislation to come into compliance.

[U.S. Department of Health and Human Services, ACF, *Program Instructions*, ACYF-CB-PI-19-02, dated February 26, 2019.]

ACYF's program instructions further require that if a state is unable to submit a signed governor's assurance statement that the state is in compliance, the state must develop a CAPTA program improvement plan addressing the specific steps the state will take to come into compliance with the provision by no later than June 30, 2020. Wisconsin developed such a plan by the deadline of June 30, 2020, but subsequently sought an extension based on the unanticipated adjournment of the 2019-20 Legislative Session due to the COVID-19 pandemic. ACF has provided written approval of the extension until September 30, 2021, but noted that, after that date, ACF may withhold approval of Wisconsin's fiscal year 2022 CAPTA state grant funding until the state comes into compliance.

## WISCONSIN LAW

### Current Law

Wisconsin participates in the CAPTA grant program and is therefore required to submit a state plan describing the activities for which the grant funds will be used, and also provide assurances that the state has enacted laws complying with the federal requirements. According to the Department of Children and Families (DCF),<sup>1</sup> Wisconsin received approximately \$1.5 million in CAPTA funding in fiscal year 2019.

Under current Wisconsin law, any person may report to a child protective services agency or a law enforcement agency if the person has reason to suspect that a child has been abused or neglected, or reason to believe that a child has been threatened with abuse or neglect and that such abuse or neglect will occur.<sup>2</sup> [s. 48.981 (2), Stats.]

Current state law grants immunity from civil or criminal liability to any person or institution participating in good faith<sup>3</sup> in the making of a report, conducting an investigation, ordering or taking of

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<sup>1</sup> DCF provided this information in written testimony on 2019 Assembly Bill 749, which is identical to Senate Bill 162.

<sup>2</sup> While the act of reporting is generally optional, state law requires certain types of professionals, referred to generally as "mandated reporters," to make such reports for children seen in the course of professional duties.

<sup>3</sup> In the absence of a statutory definition, courts have relied on the following definition of "good faith" in cases involving the applicability of immunity: "an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage." Because good faith is defined partly as the absence of malice, courts have held that a showing of "intentional" or "conscious" wrongdoing is required in order to overcome the statutory

photographs, or ordering or performing medical examinations of a child or of an expectant mother. In any civil or criminal proceeding, the good faith of any person reporting must be presumed. Current law specifies that immunity does not apply to liability for abusing or neglecting a child or for abusing an unborn child. [s. 48.981 (4), Stats.]

## **Comparison of Current State Law to the New Federal Requirement**

Current state law grants broader protection than was required under prior federal law, but the new federal immunity provision under CAPTA now requires a broader scope of immunity than that which state law currently provides. Specifically, the new federal requirement requires state-law immunity be afforded to any individual providing information or assistance in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect, which extends beyond the specific types of acts to which immunity may apply under current state law.

In other words, while current state law would afford immunity to some individuals encompassed by the federal requirement, current state law may not apply to all individuals that could arguably fall within the scope of immunity under the federal requirement. Thus, Wisconsin's current immunity statute provides narrower protection than that required by the new CAPTA immunity provision, though the Secretary of the U.S. Department of Health and Human Services ultimately determines whether a state is in compliance with the CAPTA requirements.

## **2021 SENATE BILL 162**

Senate Bill 162 would generally align Wisconsin law with the new federal immunity requirement by broadening the scope of immunity afforded to persons or institutions involved in reports of child abuse and neglect. The bill maintains the types of acts for which a person or institution may receive immunity under current law, and also extends immunity to persons or institutions that, in good faith, assist with medical examinations or otherwise provide information, assistance, or consultation in connection with a report, investigation, or legal intervention.

Specifically, under the bill, any person or institution doing any of the following in good faith in connection with a report of child abuse or neglect has immunity from any liability, civil or criminal, that results by reason of the action:

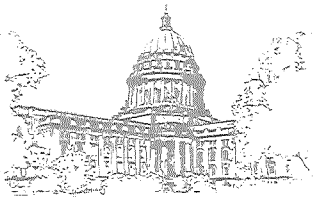
- Participating in the making of a report.
- Conducting an investigation.
- Ordering or taking photographs.
- Ordering, performing, or assisting with medical examinations of a child or of an expectant mother.
- Otherwise providing information, assistance, or consultation in connection with a report, investigation, or legal intervention.

Please let me know if I can provide any further assistance.

AO:ty:jal

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presumption of good faith. [*Phillips v. Behnke*, 192 Wis. 2d 552, 564 (Ct. App. 1995); *Drake v. Huber*, 218 Wis. 2d 672, 678 (Ct. App. 1998); *D.B. v. Cnty. of Green Lake*, 2016 WI App 33, ¶ 25.]



STATE SENATOR  
**LaTonya Johnson**

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WISCONSIN STATE SENATE

6<sup>TH</sup> DISTRICT

Senate Committee on Human Services, Children and Families  
Testimony on Senate Bill 162  
April 27, 2021

Good morning members of the committee,

Thank you for holding this hearing on Senate Bill 162 (SB 162), which extends immunity to certain persons who provide information under the child abuse and neglect reporting law.

Under current law, certain professionals such as teachers and health care professionals are mandatory reporters of child abuse and neglect. Additionally, any person or institution participating in good faith in the making of such a report, conducting an investigation, ordering or taking of photographs, or ordering or performing medical examinations of a child or of an expectant mother has immunity from any liability, civil or criminal, that results by reason of the action.

A 2018 amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to extend this immunity from civil and criminal liability to those who provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect.

SB 162 accomplishes this minor expansion of immunity for those involved in child abuse and neglect investigations and brings Wisconsin into compliance with federal CAPTA law and the \$1.5 million in child abuse prevention funding it provides to the state. Wisconsin only has until September 30, 2021 to make this change, so we appreciate the committee hearing this proposal, and hope that this bill can be passed without delay.

I would like to thank my co-authors, Senator Darling, Representative Rozar, and Representative Snyder for their work on this bill and thank you, committee members, for your consideration of this proposal.



**TO:** Chair Jacque, Vice-Chair Ballweg, and Honorable Members of the Senate  
Committee on Human Services, Children, and Families

**FROM:** Wendy Henderson, Administrator, Division of Safety and Permanence

**DATE:** April 27, 2021

**SUBJECT:** 2021 Senate Bill 162

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The Department of Children and Families (DCF) appreciates the opportunity to testify in support of Senate Bill 162. The purpose of our testimony today is to explain why this bill is necessary in order to maintain an important federal funding source for the child welfare system and why the bill will be beneficial for child protective services in Wisconsin. Thank you to the authors of this legislation which will allow DCF to comply with the Child Abuse Prevention and Treatment Act (CAPTA).

Under the federal Child Abuse Prevention and Treatment Act (CAPTA), federal funding is provided to Wisconsin as well as 49 other states, the District of Columbia, Puerto Rico and four territories, all of whom are required to comply with the provisions of the CAPTA statute. In Wisconsin, CAPTA funds are used for a number of different purposes, including for training of local child protective services workers, hearings for individuals who are substantiated for child abuse or neglect, citizen review panels (which review and make recommendations for improving the CPS system at the local and state level), and a review process for critical incidents that uses safety science to review cases in which children are seriously injured or killed as a result of child abuse or neglect. In FFY 2020, Wisconsin received approximately \$1.5 million dollars in CAPTA funding.

In order to receive CAPTA funding, Wisconsin is required to comply with the provisions of the federal CAPTA statute—that statute was reauthorized by the Victims of Child Abuse Reauthorization Act of 2018, which included an amendment to CAPTA. The amendment expanded the scope of a provision related to legal immunity for good faith reports of child abuse and neglect. All states that were not already in compliance with the CAPTA amendment were required to be in compliance with the amended federal provision by June 30, 2020; the federal

Administration for Children and Families recently granted DCF an extension until September 30, 2021. The letter noted that “failure to come into compliance by September 30, 2021 may result in our withholding of state’s fiscal year 2022 CAPTA State Grant Funding until such time as the state comes into compliance.”

The Wisconsin Children’s Code, chapter 48, already includes a good faith immunity provision relating to CPS reports, s. 48.981(4). Under that provision, if a person or institution makes a report to CPS in good faith, that person will have immunity from any liability, civil or criminal, that results by reason of the action. Our current statute also extends immunity to anyone, who in good faith conducts a CPS investigation, orders or takes photographs or orders or performs a medical examination of a child or expectant mother.

Although s. 48.981(4) already provides good faith immunity that covers much of the scope of the amended immunity provision of CAPTA, there are two areas that need be added to Wisconsin’s good faith immunity statute in order to bring us into compliance with federal CAPTA, which is what SB 162 does. Specifically, the bill:

- (1) adds that immunity extends to persons who, in good faith, **assist in medical examinations of a child or expectant mother**, and
- (2) adds that immunity extends to persons who, in good faith, **otherwise provide information, assistance, or consultation in connection with a report, investigation, or legal intervention**.

Examples of situations that would fall within the amended provisions of the statute could include:

- a nurse who, in good faith, assists in a medical examination of a child in relation to a CPS case,
- a teacher who, in good faith, provides information to a CPS worker in connection with a CPS case,
- a police officer who, in good faith, provides information and assistance to a CPS worker who is conducting an investigation of suspected child maltreatment, and
- a school principal who, in good faith, consults with a teacher who is trying to determine whether to report suspected abuse or neglect but is not the individual who makes the report.

In addition to meeting federal requirements, the expansion of good faith immunity in the CPS context through SB162 will allow individuals to provide information and assistance in CPS cases without the threat of legal liability. Obtaining information and assistance with CPS investigations and other parts of CPS cases is vital in order to ensure that CPS workers can do their job and effectively protect children from abuse and neglect.

In conclusion, SB 162 will allow Wisconsin to come into compliance with federal CAPTA, maintain its CAPTA funding, and expand protections for people who help CPS to keep children safe. Thank you for your support of SB 162. We are pleased to respond to any questions.