

Staff Brief

Reporting Child Abuse and Child Neglect



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INTRODUCTION

This Staff Brief describes Wisconsin’s child abuse reporting law.¹ It also provides background information regarding relevant federal requirements and approaches other states have taken with respect to reporting child abuse and neglect.

Under Wisconsin law, specified categories of professionals are required to report suspected child abuse and neglect encountered during the course of their professional responsibilities. A report of suspected abuse or neglect requires child welfare services, also known as child protective services, to respond, investigate, and, in some instances, notify law enforcement.

In Wisconsin, child welfare services are primarily administered by county human or social service departments, with one exception. The state Department of Children and Families (DCF) administers child welfare services in Milwaukee County through the department’s Bureau of Milwaukee Child Welfare (BMCW).

Over time, the Legislature has amended the child abuse reporting law to expand the list of professionals who are mandatory reporters. Adding any new category of mandatory reporter arguably increases the likelihood that child abuse and neglect will be reported but also extends legal liabilities and training requirements to a new category of people.

In recent months, the high-profile investigation and trial of Jerry Sandusky, a former assistant football coach at Penn State University, prompted changes to child abuse reporting laws in many states. Some new laws designate staff at higher education institutions as mandatory reporters or make such institutions uniquely liable for failures to report child abuse occurring on their campuses.

In addition to issues brought to light by current events, potential topics for legislative consideration include modifying Wisconsin’s reporting requirements to comply with changes in federal law; clarifying tribal notification requirements; and making organizational changes to the child abuse reporting law.

- **Part I** summarizes relevant federal law and approaches other states have taken with respect to reporting child abuse and neglect.
- **Part II** describes Wisconsin’s child abuse reporting law.
- **Part III** provides an overview of trends in reporting suspected abuse and neglect in the state.
- **Part IV** summarizes recent legislative activity in Wisconsin and other states.

This Staff Brief was prepared by Anna Henning and David Moore, Staff Attorneys.

¹ In Wisconsin, the reporting requirements generally apply to abuse or neglect of children or unborn children, and to the threat of such abuse or neglect. Throughout the report, the phrase “child abuse reporting law” encompasses that broader meaning.

PART I – FEDERAL AND STATE LAWS

The reporting of child abuse and neglect is generally a matter of state law; however, states must comply with minimum federal standards to qualify for federal funding in this area. Apart from the minimum federal standards, many state laws share common fundamental approaches to child abuse reporting. Among other differences, states take varying approaches to designating mandatory reporters, specifying how reports must be made, and imposing penalties for failing to report suspected abuse or neglect.

FEDERAL CHILD ABUSE PREVENTION AND TREATMENT ACT

The Child Abuse Prevention and Treatment Act (CAPTA), originally enacted in 1974, provides financial assistance to states for programs to prevent and treat child abuse and neglect. To qualify for CAPTA grants, a state must demonstrate it has in effect and is enforcing a state law, or has in effect and is operating a statewide program, relating to child abuse and neglect that “includes provisions or procedures for the reporting of known and suspected instances of child abuse and neglect.” CAPTA grants also depend on the state complying with certain conditions. Among other requirements, a state’s child abuse laws must include procedures for the immediate screening and prompt investigation of child abuse reports, provisions for immunity from prosecution for making good faith reports of suspected or known child abuse, and methods to preserve the confidentiality of all child abuse records.

Although reporting requirements may vary from state to state, each state must adhere to CAPTA’s minimum threshold for what constitutes child abuse and neglect. Under CAPTA, “‘child abuse and neglect’ means, at minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.” [42 U.S.C. 5106a. (b) (2) (A) (i).]

CAPTA has been amended and reauthorized several times, most recently in 2010. The 2010 legislation reauthorizes the law for fiscal years 2011 through 2015 and alters certain eligibility requirements for receiving CAPTA grants. For example, the law now requires each state receiving a CAPTA grant to certify that it has in effect and is enforcing a statewide law or program addressing the needs of infants born with and identified as being affected by a Fetal Alcohol Spectrum Disorder. To qualify, the law or program must include a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of the condition in infants. Wisconsin is not yet in compliance with this requirement.

STATE CHILD ABUSE REPORTING LAWS

Who Must Report

All 50 states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands have statutes that mandate the reporting of child abuse by certain persons.² Forty-eight states designate professions whose members are required to report. Mandatory reporters often include the following professionals:

- Social workers.
- Teachers and other school personnel.
- Physicians and other health care workers.
- Mental health professionals.
- Child care providers.
- Medical examiners or coroners.
- Law enforcement officers.

Other professionals often listed as mandatory reporters are commercial film or photograph processors, substance abuse counselors, probation or parole officers, domestic violence workers, and members of the clergy.

New Jersey and Wyoming do not list specific groups of professionals who are required to report. In those states, any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse must report.

Eighteen states and Puerto Rico list certain professionals who are required to report, but also require that anyone who knows of or suspects child abuse must report. All of the other states--including Wisconsin--designate professionals who are required to report and provide that any other person may report suspected child abuse.

When a Report Must be Made

Each state's requirements for reporting vary. However, generally a report must be made when the reporter, in his or her official capacity, suspects or has reason to believe that a child has been abused or neglected. Some states require a report to be made when the reporter has knowledge of, or observes a child being subjected to, conditions that would reasonably result in harm to the child.

Types of Abuse

Generally, abuse falls into four categories: (a) physical abuse; (b) neglect; (c) sexual abuse or exploitation; and (d) emotional abuse.

² Throughout this section, information was derived from the Child Welfare Information Gateway. See: www.childwelfare.gov/systemwide/laws_policies/statutes/manda.cfm and www.childwelfare.gov/systemwide/laws_policies/statutes/define.cfm.

Physical abuse is frequently defined as “any nonaccidental physical injury to the child.” The majority of states also define physical abuse to include acts or circumstances that threaten the child with harm or create a substantial risk of harm to the child’s health or welfare.

Neglect generally refers to the failure of a parent or other caretaker for the child to provide necessary food, clothing, shelter, medical care, or supervision, and this failure threatens the child’s health, safety, and well-being. Several states, including Wisconsin, specify that failing to provide a child with necessary food, clothing, shelter, medical care, or supervision is only neglect if the failure is due to reasons other than financial inability or poverty.

Sexual abuse is defined by some states in general terms; others specify various acts that constitute sexual abuse. Sexual exploitation is an element of the definition of sexual abuse in most jurisdictions, and includes allowing the child to engage in prostitution or in the production of child pornography.

Emotional abuse is generally defined as harm to a child’s psychological or emotional well-being, demonstrated by objective changes in behavior. Approximately 32 states define emotional abuse; almost all define abuse to include emotional maltreatment.

In addition to these categories of abuse, many states also specify various other types of conduct as abuse. For example, several states, including Wisconsin, have provisions addressing parental substance abuse within the context of defining child abuse. These laws typically address issues such as exposing a child to the mother’s use of a drug or other substance prenatally, or manufacturing a controlled substance in the presence of a child.

Penalties for Failing to Report

Approximately 47 states and the District of Columbia impose penalties on mandatory reporters who knowingly or willfully fail to make a report when they suspect a child is being abused or neglected. The failure to report is a misdemeanor in 39 states. Arizona, Florida, and Minnesota upgrade the failure to report from a misdemeanor to a felony for failure to report certain more serious situations. In Illinois, failure to report is upgraded to a felony for a second or subsequent violation of reporting obligations.

Cross-Reporting

All 50 states provide a statutory procedure for handling reports of suspected child abuse or neglect. In most states, these procedures include requirements that reports or information be shared among various entities, such as social services agencies and law enforcement. As will be discussed below, Wisconsin’s reporting statute includes provisions for cross-reporting among law enforcement and county social services departments. However, Wisconsin is also unique in requiring that county social service departments cross-report to Indian tribal agents in certain circumstances.

PART II – WISCONSIN’S CHILD ABUSE REPORTING LAW

Wisconsin’s child abuse reporting law is set forth in s. 48.981, Stats. Under Wisconsin law, certain professionals must report suspected child abuse or neglect if they have reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or has been threatened with abuse or neglect that will occur. All people not specifically included as mandatory reporters are *permitted* to report suspected child abuse or neglect, including suspected abuse or neglect of unborn children. [s. 48.981 (2) (c) and (d), Stats.]

In the child abuse reporting law, and throughout this Part, “agency” means a county health or social services department, BMCW (for Milwaukee County), or a licensed child welfare agency under contract with a county department or BMCW.

DEFINITIONS OF “ABUSE” AND “NEGLECT”

Under Wisconsin’s child abuse reporting law, “abuse” means any of the following:

- Physical injury inflicted on a child by other than accidental means.
- When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree.
- Sexual intercourse or sexual contact in violation of specified criminal statutes.
- Sexual exploitation of a child.
- Permitting, allowing, or encouraging a child to engage in prostitution.
- Causing a child to view or listen to sexual activity in violation of state law.
- Exposing genitals or pubic area to a child or causing a child to expose genitals or pubic area in violation of state law.
- Manufacturing methamphetamine in violation of state law, under any of the following circumstances:
 - With a child physically present during the manufacture.
 - In a child’s home, on the premises of a child’s home, or in a motor vehicle located on the premises of a child’s home.
 - Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child.

- Emotional damage for which the child’s parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

[s. 48.02 (1), Stats.]

“Neglect” means the “failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.” [s. 48.02 (12g), Stats.]

Physical and sexual abuse may be caused by any person, regardless of the person’s relationship to the injured child. In contrast, both neglect and emotional damage are actions that are specific to certain caregivers, as specified by the child abuse reporting law.

MANDATORY REPORTING

Under Wisconsin’s child abuse reporting law, mandatory reporters are typically people who interact with children in their professional capacities. A mandatory reporter generally must report suspected child abuse or neglect immediately if he or she has reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or has been threatened with abuse or neglect that will occur.

List of Mandatory Reporters

The following professionals are mandatory reporters under Wisconsin law:

- Physicians.
- Coroners.
- Medical examiners.
- Nurses.
- Dentists.
- Chiropractors.
- Optometrists.
- Acupuncturists.
- Medical and mental health professionals not otherwise specified.
- Social workers.
- Marriage and family therapists.
- Professional counselors.
- Public assistance workers, including financial and employment planners under the Wisconsin Works (W2) program.
- School teachers.

- School administrators.
- School counselors.
- School employees not otherwise specified.
- Mediators provided through family court services offices.
- Child care workers in child care centers, group homes, or residential care centers for children and youth.
- Child care providers.
- Alcohol or other drug abuse counselors.
- Members of the treatment staff employed by or working under contract with a county agency or a residential care center for children and youth.
- Physical therapists.
- Physical therapists' assistants.
- Occupational therapists.
- Dietitians.
- Speech-language pathologists.
- Audiologists.
- Emergency medical technicians.
- First responders.
- Police and law enforcement officers.
- Court-appointed special advocates.
- Members of the clergy, except under the circumstances described below.

[s. 48.981 (2), Stats.]

Special Reporting Requirements Applicable to Clergy

The child abuse reporting law places special reporting requirements on members of the clergy. Specifically, in addition to reporting suspected abuse or neglect of a child seen directly by a clergy member in the course of his or her professional duties, a clergy member generally must report suspected abuse or neglect if the clergy member has reasonable cause, based on observations made or information received, to suspect that a member of the clergy has sexually abused a child or threatened a child with sexual abuse in violation of specified state laws. [s. 48.981 (2) (bm) 2., Stats.] In this context, "member of the clergy" means the spiritual adviser of any religion, whether the adviser is termed priest, rabbi, minister of the gospel, pastor, reverend, or any other official designation, or a member of a religious order, including brothers, ministers, monks, nuns, priests, rabbis, and sisters. [s. 48.981 (1) (cx), Stats.]

Exceptions to Mandatory Reporting Requirements

Exceptions to mandatory reporting requirements apply in certain circumstances involving clergy, health care providers, and persons delegated care and custody of a child.

Clergy in Confessional Settings

A member of the clergy is not required to report suspected child abuse (or threatened abuse) learned about through confidential communications made to him or her privately or in a confessional setting. This exception only applies if the clergy member is authorized to hear or is accustomed to hearing such communications and is required to keep those communications secret under the tenets of his or her religion. [s. 48.981 (2) (bm), Stats.]

Health Care Providers

Physicians, nurses, and physician assistants who provide certain health care services to children or who obtain information about a child who is receiving such care are exempt from reporting, as suspected or threatened abuse, sexual intercourse or sexual contact involving a child. For purposes of this exemption, “health care services” means certain types of family planning services; pregnancy testing; obstetrical health care or screening; and diagnosis or treatment for a sexually transmitted disease. [s. 48.981 (2m) (b) and (c), Stats.]

However, several exceptions narrow the application of that general exemption with regard to instances involving sexual abuse. Specifically, a physician, nurse, or physician assistant must report if he or she has reason to suspect any of the following:

- That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.
- That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
- That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.
- That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.
- That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

[s. 48.981 (2m) (d), Stats.]

In addition, a physician, nurse, or physician assistant must report suspected abuse if he or she has any reasonable doubt as to the voluntariness of the child’s participation in sexual contact or sexual intercourse. [s. 48.981 (2m) (e), Stats.]

Persons Delegated Temporary Care and Custody of a Child

2011 Wisconsin Act 87 authorizes parents to delegate legal custody of a child, through a power of attorney, for a period of no more than one year. [s. 48.979, Stats.] A person to whom custody of a child has been delegated is not required to report suspected child abuse or neglect of children in his or her care, although he or she is permitted to do so. [s. 48.981 (2r), Stats.]

Content and Manner of Reporting

A mandatory reporter who suspects child abuse and neglect or who believes child abuse will occur must immediately report the facts and circumstances contributing to that suspicion. The report must be made by telephone or in person to the relevant agency or the sheriff or police department in the jurisdiction in which the abuse or neglect is suspected. In certain circumstances, a sheriff or police department must report cases of suspected child abuse or neglect to the relevant agency within 12 hours of receiving a report. These circumstances are:

- Cases in which a caregiver (defined below) is suspected of abuse.
- Cases in which a caregiver is suspected of facilitating or failing to take action to prevent the suspected or threatened abuse or neglect of a child.
- Cases in which it cannot be determined who abused or neglected or threatened to abuse or neglect the child.
- Cases in which there is reason to suspect that an unborn child has been abused or is at substantial risk of abuse.

[s. 48.981 (3) (a), Stats.]

Likewise, an agency must refer any cases involving suspected or threatened child abuse that may constitute a violation of criminal laws in the state to the appropriate sheriff or police department. An agency must establish a policy specifying when additional types of reports might be referred to law enforcement. [s. 48.981 (3) (a) 3., Stats.]

If a mandatory reporter has reasonable cause to suspect that a child died as a result of child abuse or neglect, he or she must report that fact to the appropriate medical examiner or coroner. The medical examiner or coroner must then investigate and report his or her findings to specified entities, including the relevant district attorney and agency, DCF, and, if the report was initially made by a hospital, to the hospital that submitted the initial report. [s. 48.981 (5), Stats.]

Penalty for Failure to Report

A person who is required to report but intentionally fails to report, is subject to penalties of no more than \$1,000 or not more than six months in prison, or both. [s. 48.981 (6), Stats.]

Protection and Immunity for Reporters

Wisconsin law protects every person who reports suspected child abuse or neglect in good faith from retaliatory actions taken by employers. Specifically, an employer is prohibited from doing any of the following as a result of an employee's report of child abuse or neglect:

- Discharging the employee from employment.

- Disciplining or otherwise discriminating against the employee in regard to employment.
- Threatening the employee with discipline, discrimination, or discharge from employment for making the report.

[s. 48.981 (2) (e), Stats.]

Additionally, any person or institution who, in good faith, participates in reporting suspected child abuse or takes specified actions relating to investigating child abuse is immune from any criminal or civil liability that might otherwise result from the action. This immunity does not apply to the person accused of committing the reported child abuse. [s. 49.981 (4), Stats.]

Confidentiality of Reports

With exceptions, all reports and records relating to child abuse and neglect reporting and investigation must be kept confidential. Reports and records may be disclosed to a person who is the subject of reported child abuse or neglect. Under the child abuse reporting law, “subject” refers to both the alleged victim and the alleged perpetrator of abuse or neglect. [s. 48.981 (1) (h) and (7) (a) 1., Stats.] The information may also be disclosed to specified entities, including representatives of various state, federal, local, and tribal agencies; courts conducting relevant proceedings; and certain reporters and researchers.

DCF or an agency may also disclose information for use in proceedings to obtain certain types of restraining orders. In addition, in cases where an agency or DCF has reason to suspect that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, the agency or DCF must disclose relevant information to the DCF subunit that is responsible for statewide oversight of child abuse and neglect programs. In turn, that subunit must make specified information available to the public. [s. 48.981 (7), Stats.]

In addition to authorized disclosures by DCF and agencies, Wisconsin law authorizes disclosure of otherwise confidential information by some persons directly affected by a given report or record. For example, a parent of a child who is the victim of abuse or neglect may authorize the disclosure of a record for use in a child custody or adoption proceeding. Likewise, a person who is an alleged perpetrator of abuse or neglect may disclose information to the person’s attorney. However, with regard to such disclosures, the identity of the person who reported the abuse or neglect must remain confidential. [s. 48.981 (7) (b) and (c), Stats.]

A person to whom a report or record is disclosed may not further disclose the report or record unless an exception to disclosure exists. Any person who violates the confidentiality requirements, or who permits or encourages the unauthorized dissemination or use of information contained in confidential reports and records may be fined not more than \$1,000 or imprisoned not more than six months, or both. [s. 48.981 (7) (f), Stats.]

INVESTIGATION

Wisconsin law requires an agency to respond to a report from a mandatory reporter immediately.³ If the agency determines that a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of the child or is suspected of facilitating or failing to take action to prevent such abuse or neglect or threatened abuse or neglect, the agency must “initiate a diligent investigation” within 24 hours of receiving the report to determine whether the child who is the subject of the report is in need of protection or services. An agency must likewise initiate a diligent investigation to determine whether an unborn child who is the subject of a report is in need of protection or services. [s. 48.981 (3) (c), Stats.]

Nature of Investigation May Depend on Type of Caregiver

The child abuse reporting law separates caregivers into two major categories for purposes of investigating reports. The first category includes all of the following:

- The child's parent, grandparent, great-grandparent, stepparent, brother, sister, stepbrother, stepsister, half-brother, or half-sister.
- The child's guardian.
- The child's legal custodian.
- A person who resides or has resided regularly or intermittently in the same dwelling as the child.

The second category includes all of the following:

- An employee of a residential facility or residential care center for children and youth in which the child was or is placed.
- A person who provides or has provided care for the child in or outside of the child's home (e.g., a child care provider).
- Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.
- Any relative of the child other than a relative specified above.

[s. 48.981 (1) (am), Stats.]

If a caregiver falls within the first category, an agency's investigation must include observation of or an interview with the child, and, if possible, an interview with the child's parents, guardian, or legal custodian. If the caregiver falls within the second category, the same requirement applies, but only if the caregiver continues to have access to the child. An

³ Wisconsin's child abuse reporting law does not require county agencies to respond to reports that come from persons other than mandatory reporters. As a matter of practice, however, county agencies typically respond to all reports.

investigation must also include face-to-face contact with a child if a report does not disclose the identity of the suspected abuser. [s. 48.981 (3) (c) b., Stats.]

According to DCF, after an agency receives a report of suspected child abuse or neglect, county staff determine whether the report should be “screened in” or “screened out.” A report is screened in if it alleges conduct that constitutes child abuse or neglect under Wisconsin law. If a report is screened in, the agency will assign a time period (ranging from immediately to five days) by which the staff will make face-to-face contact with the child. After the initial contact, agency staff interview other relevant people. The agency then determines whether one or more types of abuse have occurred and makes decisions regarding child safety.

Access to Children Without Permission From Parent or Guardian

Wisconsin’s child abuse reporting law authorizes agencies, under some circumstances, to contact, observe, or interview a child who is the subject of a report of suspected abuse or neglect at any location, except the child’s home, without permission from the child’s parent, guardian, or legal custodian, and without a court order. Specifically, the law authorizes such contact if it is necessary to determine if the child is in need of protection or services. [s. 48.981 (3) (c) 1. b., Stats.]

However, a 2003 opinion by the U.S. Court of Appeals for the Seventh Circuit, *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003), calls the constitutionality of that provision into question. In that case, an agency received a letter indicating that a student in a private elementary school was bruised as a result of a spanking administered at the school. When interviewed by a caseworker, the student relayed the name of another student who had been spanked at the school. During the subsequent investigation, caseworkers interviewed one student, and attempted to interview other students, at the school, without a court order or parental permission, despite resistance from school officials.

The court held that the caseworkers’ interview of the student at a private location (in this case, a private school), without a court warrant or permission from either the students’ parents or school officials, violated the Fourth Amendment to the U.S. Constitution.⁴ The court signaled that its holding would likely have differed if the caseworkers had approached the student in a public location.

Referral to Law Enforcement

Some cases of alleged child abuse may prompt a criminal investigation, while other cases may focus solely on child protection and issues relating to custody and parental rights. Law enforcement and agencies must coordinate the planning and execution of investigations of reports involving potential criminal activity. [s. 48.981 (3) (a) 4., Stats.]

Any person reporting suspected child abuse or neglect--whether a mandatory reporter or not--may request an immediate investigation by law enforcement if the person has reason to

⁴ The Fourth Amendment to the U.S. Constitution provides a right “of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” conducted by the government. [U.S. Const. amend. IV.]

believe that the health or safety of a child or of an unborn child is in immediate danger. Law enforcement must investigate such a request immediately. [s. 48.981 (3) (b) 1., Stats.] If a case warrants taking a child or mother of an unborn child into custody, law enforcement officials must deliver the child or mother to a juvenile court intake worker. [s. 48.981 (3) (b) 2. and 2m., Stats.] If a case warrants a criminal investigation, law enforcement must refer the case to the district attorney for possible prosecution. [s. 48.981 (3) (b) 3., Stats.]

APPLICATION TO INDIAN TRIBES

Wisconsin's child abuse and neglect reporting law applies to children living on tribal land or affiliated with federally recognized Indian tribes. Suspected abuse or neglect of a tribal child generally must be reported in the same manner as are reports of abuse and neglect of other children (i.e., reports must be made to the relevant agency or to law enforcement). However, if an agency receives a report of suspected child abuse or neglect that the agency knows or has reason to know involves an "Indian child" (born or unborn), the agency must notify the relevant tribal agent. [s. 48.981 (3) (bm), Stats.] For purposes of the child abuse reporting law, a "tribal agent" is a person designated under federal law to receive notice of involuntary child custody proceedings under the federal Indian Child Welfare Act.

In addition, DCF must provide an annual list of all tribal agents in the state to agencies in certain counties. [s. 48.981 (10), Stats.]

ALTERNATIVE RESPONSE PILOT PROGRAM

2009 Wisconsin Act 28 (the 2009-11 Biennial Budget Act) directed DCF to establish a pilot program authorizing DCF (for Milwaukee County) and four counties to employ alternative responses to reports of child abuse or neglect and threatened abuse or neglect. The program's goal is to enable agency staff to develop the most appropriate and effective, and least intrusive, possible responses to reports of abuse and neglect.

2011 Wisconsin Act 32 (the 2011-13 Biennial Budget Act) authorized additional counties to participate in the alternative response program. Thirteen counties throughout the state now participate in this program.

By July 1, 2012, DCF must evaluate the pilot program and submit a report of its evaluation to the Governor and appropriate standing committees of the Legislature. The evaluation must assess issues implementing the pilot program and the overall operations of the program. It must also include specific measurements of a number of issues, such as the turnover rate for caseworkers and the number of families referred. The evaluation report must also include DCF's recommendations to improve the program's effectiveness. [s. 48.981 (3m) (d), Stats.]

EDUCATION AND TRAINING REQUIREMENTS

To the extent feasible, DCF and agencies must conduct continuing education and training programs for state, county, and tribal staff at various levels, including staff of child welfare

agencies that are under contract with DCF or an agency. DCF must design the continuing education programs to encourage reporting of child abuse and neglect and reporting of the abuse of unborn children. The training must be designed to encourage self-reporting and voluntary acceptance of services; improve communication, cooperation, and coordination in the identification, prevention, and treatment of child abuse and neglect and of unborn child abuse; and provide information on the means of recognizing and appropriately responding to domestic abuse. DCF and agencies may contract with other organizations to provide training. [s. 48.981 (8), Stats.]

In addition, the Department of Public Instruction (DPI) must develop and conduct protective behaviors training programs for the professional staff of public, private, and tribal schools and counties. Among other requirements, the training programs must include information on the detection of conditions that indicate that a minor is being or has been subjected to abusive situations, and the proper action to take when there is reason to believe that a minor is being or has been subjected to such situations; and the coordination of school protective behaviors programs and activities with programs and activities of other state and local agencies. [s. 115.368 (2) (a), Stats.] A video presentation is available on DPI's website.⁵

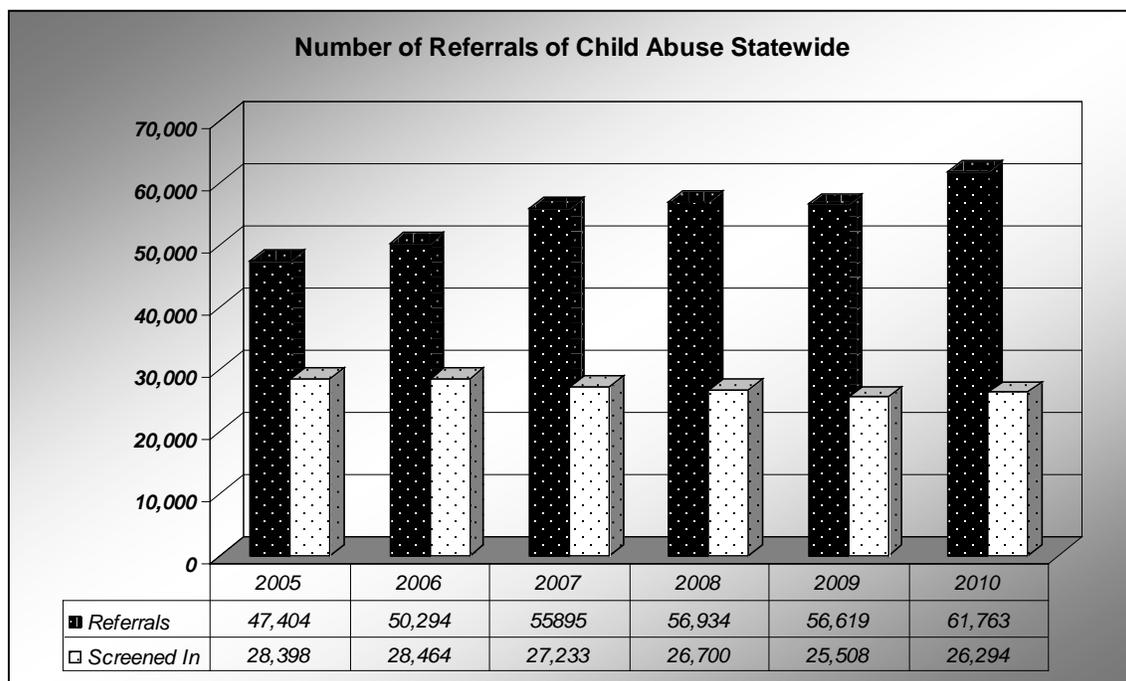
⁵ The video is available at: <http://dpimedia.wi.gov/main/Viewer/?peid=00e58a905fdc4eb09a1dccc7c7c7176>

PART III – REPORTING TRENDS

DCF must submit both annual and quarterly reports to the Governor and Legislature on the reporting of child abuse and neglect. The annual report must address the status of child abuse and neglect programs and unborn child abuse programs. It must also include a statistical analysis of all reports of child abuse and neglect from the previous year.

On a quarterly basis, DCF must prepare and transmit a summary of a report of child abuse and of child placements outside a custodial parent’s home. The summary report must include specified information regarding the incidents included in the reports. The Legislature is required to hold public hearings on these reports annually. [s. 48.981 (9), Stats.]

The total number of reports of suspected child abuse and neglect has increased incrementally over the past several years. In contrast, the number of reports of suspected abuse that are “screened in” -- i.e., that child protective services staff determine allege maltreatment in violation of state law -- has remained relatively steady.



*Data in the above chart is derived from annual reports submitted to the Legislature by DCF.

Similarly, of the reports that are screened in, only a minority are ultimately substantiated following assessment. DCF creates a “report” for each child who is the subject of suspected abuse

in a screened-in referral.⁶ Approximately 40,000 reports are created annually. DCF statistics show that the percentage of reports that are substantiated through DCF investigation has decreased over time, from 40% in 1992, to 27% in 2000, to 13% in 2010. Monthly statistics on DCF's website provide more detailed statistics by month and by region and county.⁷

⁶ The term "report" is used in two distinct contexts. Here, it refers to a report of suspected child abuse by a mandatory reporter or another person. DCF typically refers to such reports as "referrals." DCF typically uses the term "reports" in the manner described in this paragraph.

⁷ These statistics are available at <http://dcf.wi.gov/cwreview/dashboards/safety/access/access.htm>.

PART IV – RECENT LEGISLATIVE ACTIVITY

Although child abuse reporting laws are frequently updated, states enacted an unusually high volume of legislation in this area in 2012. Approximately 105 bills relating to reporting suspected child abuse and neglect were introduced during the past year in 30 states and the District of Columbia.

2011 WISCONSIN ACT 81

Wisconsin is among the states that recently enacted legislation relating to child abuse and neglect reporting requirements. 2011 Wisconsin Act 81 broadened the scope of individuals who are required to report suspected child abuse or neglect to include any school employee not otherwise specified as a mandatory reporter. The Act also provided that a person who is a mandatory reporter of suspected child abuse or neglect who makes a report, in good faith, as required under current law may not be: (a) discharged from employment; (b) disciplined or otherwise discriminated against in regard to employment; or (c) threatened with discipline, discrimination, or discharge from employment for making the report.⁸

In addition, Act 81 modified school boards' obligations to train district employees. Under the Act, every employee of a school district must receive training, from DPI, in identifying children who have been abused or neglected and in the laws and procedures governing the reporting of suspected or threatened child abuse or neglect. A school district employee must receive the training within the first six months after commencing employment with the school district and at least once every five years after the initial training.

NEW LAWS IN OTHER STATES

States have taken varying approaches to update or strengthen child abuse and neglect reporting laws. Common themes of recent legislation include the following:⁹

- Specifying entities or organizations to which reporters must report (six states plus Washington D.C.).
- Adding certain professionals to those who are mandatory reporters (18 states).
- Establishing reporting requirements for employees of higher education institutions, athletic coaches, and staff (14 states).

⁸ Prior to 2011 Act 81, s. 48.981 (2) prohibited an employer from being discharged from employment for reporting child abuse or neglect.

⁹ Because of the dynamic nature of legislation, the numbers in parentheses indicating the number of states that have introduced the following types of requirements are approximate. The numbers are based on data compiled by the National Conference of State Legislatures and are available here: <http://www.ncsl.org/issues-research/human-services/2012-child-abuse-mandatory-reporting-bills.aspx>. Some legislative changes made in other states would be redundant or inapplicable in Wisconsin.

- Requiring every adult to be a mandated reporter of child abuse and neglect (three states).
- Requiring every adult to be a mandated reporter of child sexual abuse (while specified mandated reporters are responsible for reporting physical abuse and neglect) (seven states).
- Imposing reporting requirements on volunteers of certain organizations whose duties require direct contact with children (three states).
- Imposing or modifying penalties for failure to report (seven states).
- Criminalizing the failure to report (nine states).
- Establishing or modifying a timeframe for making a report (seven states).
- Prohibiting retaliatory action by an employer against an employee who makes a report in good faith (five states).
- Requiring certain organizations to develop and implement policies for complying with reporting requirements (two states).
- Establishing or modifying obligations for training mandated reporters of child abuse and neglect (seven states).

In addition to changes regarding individual mandatory reporters, in the wake of the Penn State scandal, described below, some states have considered or enacted legislation that imposes legal liabilities on institutions of higher education that fail to respond to known instances of suspected child abuse. For example, Florida recently enacted a law that imposes a \$1 million fine on specified higher education institutions whose administrators knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report suspected child abuse, abandonment, or neglect committed on the institution's property. [Fla. Stat. s. 39.205 (3).]

PENN STATE SCANDAL

The rush of recent legislative activity is due in part to the widely publicized scandal at Penn State University, involving Jerry Sandusky, an assistant football coach, who sexually abused several children at the University's athletic facilities.

Details of the grand jury investigation made national headlines following Sandusky's indictment and arrest. Testimony suggested that a number of individuals, including high-level administrators at the University, had known Sandusky was engaging in improper conduct with young boys on University property, but had repeatedly failed to report the situation to law enforcement officials.