



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON REPORTING OF CHILD ABUSE AND CHILD NEGLECT

FROM: Anna Henning, Staff Attorney

RE: Options for Committee Discussion

DATE: August 29, 2012

This Memo summarizes options for committee discussion mentioned during the July 12, 2012 meeting of the Special Committee on Reporting of Child Abuse and Child Neglect. It reflects a preliminary list of options for substantive changes within the Special Committee's charge.¹

REVISE THE CATEGORIES OF MANDATORY REPORTERS

Background

Wisconsin law requires certain professionals to report suspected abuse and neglect of children and unborn children.² Currently, the list of mandatory reporters includes the following:

- Physicians.
- Coroners.

¹ The Special Committee is directed to conduct a recodification of s. 48.981, Stats.; to recommend changes to current law regarding who is required to report suspected abuse or neglect of children and the circumstances under which such a report is mandated; and to study the reporting of suspected abuse of students at institutions of higher education. At the July 12, 2012 meeting of the Special Committee, there was general consensus that options relating to county agencies' response to reports of abuse and neglect are outside the scope of the Special Committee's charge; thus, suggestions on that topic are not included in this Memo. In addition, the Memo does not include suggestions within the scope of the recodification of s. 48.981, Stats. The Special Committee's Subcommittee on Recodification will consider those suggestions and make a recommendation to the Special Committee at a future meeting.

² Any person *may* report suspected abuse or neglect of a child or unborn child. [s. 48.981 (2) (c) and (d), Stats.]

- 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 with respect to information learned in confidential communications made in a confessional setting.

[s. 48.981 (2), Stats.]

A mandatory reporter must report if he or she has reasonable cause to suspect that a child seen in the course of his or her professional duties has been abused or neglected or has been threatened with abuse or neglect that will occur. A mandatory reporter who fails to report in such circumstances may be subject to criminal penalties.

Wisconsin's list of mandatory reporters has expanded over time. Most recently, 2011 Wisconsin Act 81 expanded the list to include all school employees who were not already included on the list of mandatory reporters.

As an alternative to, or in addition to, mandating reporting by specific categories of professionals, some states require all persons or all adults to report suspected child abuse or child neglect.

During the July 12 meeting, it was noted that the expansion of mandatory reporting requirements, without additional statutory changes, would extend certain legal liabilities and penalties to additional categories of reporters. In addition, Special Committee members noted that new reporters may require training regarding the indicators of abuse and neglect.

Options

- Revise the list of professionals designated as mandatory reporters, for example, to include employees of higher education institutions who interact with children, or to remove employees who might not interact with children. (See also the discussion below relating to higher education institutions.)
- Repeal the list of professionals designated as mandatory reporters. Instead, make all people (or a subcategory of all people, such as all adults) mandatory reporters.

- Retain the list of specific professions but add an additional category of mandatory reporters (e.g., all adults, or any person who knows of abuse or neglect), for which different training requirements, legal liabilities, and penalties might apply.

CREATE SEPARATE DEFINITIONS FOR “ABUSE”

Background

For purposes of the child abuse reporting law, “abuse” means any of the following:

- Physical injury inflicted on a child by other than accidental means.
- In reference 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 in certain circumstances.
- Emotional damage³ 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.]

The definition forms a key threshold for mandatory reporting, because a mandatory reporter must report if he or she has reasonable cause to suspect that a child seen in the course of professional duties has been abused or threatened with abuse, as defined above. The definition also affects whether a county agency will take action in response to a report of suspected abuse. In general, county agencies “screen in” cases in which the conduct alleged would constitute abuse under the definition above.

³ In this context, “emotional damage” is defined to mean harm to a child’s psychological or intellectual functioning. The term is evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development. [s. 48.02 (5j), Stats.]

Option

- Create an alternative definition of “abuse” that provides a lower threshold for purposes of providing jurisdiction to county agencies. The alternative definition could be made to apply in cases in which alleged conduct does not trigger the mandatory reporting requirement but a county agency may nevertheless choose to provide services or take alternative steps to ensure a child’s safety.

OPTIONS RELATING TO EMPLOYEES OF HIGHER EDUCATION INSTITUTIONS

Background

Following the news of a scandal at Penn State University in 2011, some states established child abuse reporting requirements for employees of higher education institutions who interact with children. In Wisconsin, Governor Walker signed an executive order requiring all University of Wisconsin (UW) System professors, administrators, coaches, and other employees to report child abuse or neglect immediately if the employee, in the course of employment, observes an incident or threat of child abuse or neglect, or learns of an incident or threat of child abuse or neglect, and the employee has reasonable cause to believe that child abuse or neglect has occurred or will occur. [Exec. Ord. 54, <http://165.189.60.210/Documents/22550.pdf>.] At the July 12 meeting, UW System representatives testified regarding steps the UW System has taken to implement the changes required under the executive order and other changes.

Options

- Propose legislation to codify requirements in the executive order and make such requirements applicable to all higher education institutions, for example by adding specified employees of higher education institutions to the list of designated professionals requirement to report suspected child abuse and neglect. With respect to this option, the Special Committee might consider whether it is appropriate to make all employees of higher education institutions mandatory reporters, or only a subset of such employees. For example, it might choose to make only those employees who routinely interact with children mandatory reporters.
- Require training or education for employees of higher education institutions who are made mandatory reporters.

REVISE PENALTIES FOR FAILING TO REPORT

Background

Under current law, a mandatory reporter of child abuse and neglect who intentionally fails to report is subject to penalties of up to \$1,000 or not more than six months in prison, or both. [s. 48.981 (6), Stats.]

Options

- Revise the criminal penalty applicable to mandatory reporters who fail to report suspected child abuse and child neglect, for example, by raising or lowering the fine or period of imprisonment.
- Create alternative penalties for different categories of persons who are required to report suspected abuse and neglect. For example, retain the existing penalty for designated categories of professionals required to report suspected abuse and neglect but create a lower penalty for other persons who are required to report such conduct.

PROVIDE STANDARDIZED GUIDELINES OR TRAINING FOR MANDATORY REPORTERS

Background

Wisconsin law requires the Department of Public Instruction (DPI) to develop and conduct protective behaviors training programs for the professional staff of public, private, and tribal schools and counties. [s. 115.368 (2) (a), Stats.] In addition, the Department of Children and Families (DCF) and county agencies must provide continuing education and training programs for state, county, and tribal staff at various levels, and to develop public information programs about child abuse and neglect. [s. 48.981 (8), Stats.]

At the July 12 meeting of the Special Committee, members mentioned that mandatory reporters are often confused about their reporting obligations. The continuing education programs provided by DCF and county agencies must be designed to encourage reporting of child abuse and neglect and reporting of the abuse of unborn children. However, the Wisconsin statutes do not explicitly require DCF or county agencies to provide training directly to mandatory reporters.

Options

- Require DCF, county agencies, or another entity to provide training for mandatory reporters, either directly or through the development of guidelines or other resources.
- Require the development of a standardized screening tool for use by county agencies, which might be disseminated to mandatory reporters.

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