



wisconsin department of
children & families

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Governor Scott Walker
Secretary Eloise Anderson

Secretary's Office

MEMORANDUM

Date: December 4, 2012

To: Special Committee on Reporting of Child Abuse and Child Neglect

From: Eloise Anderson

Re: Department Positions on Bill Drafts under Consideration

Attached for the Special Committee's consideration is the position of the Department of Children and Families on the bill drafts that will be considered at the December 4 meeting of the Committee. My staff and I would be pleased to answer questions on any of the attached information.

Thank you for your consideration of this material.

DEPARTMENT OF CHILDREN AND FAMILIES

Re: Special Committee on Reporting of Child Abuse and Child Neglect
December 4, 2012

WLC 0001/2: Recodification of 48.981: DCF opposes, unless the bill is modified to address the concerns below.

- *Permissible methods of reporting:* The bill draft (P. 9, S. 26, lines 14-20) removes the requirement that a Child Protective Service (CPS) report be made by phone or in person, and allows a report to be made by email, letter, or fax. As DCF communicated previously to the Committee, this would impair the ability of CPS agencies to carry out their functions. A CPS agency must gather a range of needed information from the reporter through questioning and having an interactive discussion with the reporter, which can only be done if the report is made in person or by phone.
- *Doe v. Heck-related change:* The bill (P. 14, S. 38, lines 1-6) adds language to existing CPS investigation authority under s. 48.981 to state that a CPS investigation must be done in accordance with the 4th Amendment of the U.S. Constitution.

DCF does not believe that this change is needed because in a subsequent case, *U.S. v. Hollingsworth*, 495 F.3d 795, the 7th Circuit said that in *Doe v. Heck* it held that child abuse investigators violated the rights of a child and his parent when they conducted a custodial interview of the child and the investigators had no evidence that the child was being abused.

If the statute is modified, DCF recommends that the bill draft be changed to language agreed upon previously by Henry Plum and Kathy Kucharski of the Recodification Committee and DCF, so that it reads “as allowed by law” or “to the extent permitted by law” rather than “to the extent permitted under the 4th Amendment to the U.S. Constitution...” “As allowed by law” includes the 4th Amendment, but also covers other Constitutional Amendments and other law that are applicable.

- *CPS Appeals:* The bill draft would require a procedure to permit discretion to hold a CPS appeal in abeyance for a criminal or CHIPS investigation instead of holding it in abeyance

for just criminal or CHIPS proceedings. Criminal investigations can persist for a long period of time so this may cause significant delays to CPS appeals.

- *Confidentiality*: The bill (P. 24, S. 71, line 14:) significantly changes confidentiality protections by deleting “other officials and institutions” from the list of entities which maintain confidential CPS records. As an example under current law, CPS interview records and photos done jointly by BMCW and Children’s Hospital may currently fall under this provision as CPS records and are therefore afforded the confidentiality and disclosure protections under s. 48.981. Based on Committee discussions, it does not appear that the Committee intended to make this substantive change in the statutes.
- *Updated to reflect Alternative Response*: The bill draft (P. 27, S. 86, line 23) provides that DOC, DHS or a county department providing services to a person who is subject to community placement and who is the subject of a report will cooperate with an agency making a CPS investigation under (3g) and an independent investigation under (3d). The provision should add that these entities should also cooperate with an agency making an alternative assessment under (3m) to reflect the fact that alternative response is utilized in some counties.
- *Technical Drafting Error*. It appears that P. 30, S. 95, line 9 should be sub., not subch., (3f)(a)1.

WLC 0036/P1: Making probation and parole agents mandated reporters: DCF is neutral

WLC 0037/P1: Training for mandated reporters: DCF is neutral

The Committee may wish to consider the following changes to address current inconsistencies in the bill draft:

- Currently in statute, staff of certified child care centers and licensed child care providers are all listed as mandated reporters in statute. It appears that staff of certified child care centers were unintentionally left out of the bill draft as being required to complete mandatory reporting training. To achieve consistency, those child care workers would need to be added to the list of those specified under 48.67(2m)(a) in the bill draft.

- Currently, family court mediators are mandated reporters. The current bill draft includes mediators under 767.405(6); to achieve consistency private mediators under 767.405(7) would need to be added.

WLC 0043/P1: Definitions of “Physical Injury” and “Neglect” for Purposes of Reporting:

DCF opposes this bill for the following reasons:

- The bill draft creates different definitions for, and therefore creates a misalignment between, the threshold for substantiation of abuse or neglect and the threshold for reporting abuse and neglect.
- The misalignment between the definitions for mandatory reporting versus the legal definitions of abuse and neglect will lead to confusion and frustration amongst mandatory reporters because a significant number of the cases they report will be screened out because they fail to meet the higher threshold for substantiation.
- Under the bill draft, the number of reports to CPS will increase. This will result in diverting limited child welfare resources from handling higher priority abuse and neglect cases that meet the legal substantiation definition to responding to lower priority reports that meet the modified definitions of abuse and neglect for reporting, but do not meet the legal definition of actual abuse or neglect.

WLC 0044/P1: Making certain school volunteers and school contractors mandated reporters:

DCF is neutral

WLC 0045/P1: Making certain employees, volunteers, and contractors of higher education institutions mandated reporters: DCF is neutral

WLC 0050/P1: Notifying tribal agencies: DCF supports the bill draft with the following modifications that are supported by the DCF/Tribal Policy and Law (PALS) Workgroup:

- P. 2, S1, line 10: Add “or has reason to know” before “with which Indian tribe the Indian child is affiliated...” This will require a county or BMCW to notify a tribe of a CPS report if it knows or has reason to know the child’s tribal affiliation.

- P. 2, S1, line 13: Add “at a minimum” after “Notice shall consist” and before “of the name of the Indian child...” so that it is clear that this provision does not limit the information provided to the tribe.
- There should be a reference to specify that additional information can be provided as allowed by law, i.e., 48.981(7d)(b) (current s. 48.981(7)(a)2.).
- P. 3, line 2: Add “of the report or of identification of the Indian child’s tribe” after notice “shall be made within 24 hours” to clarify the starting point for the 24-hour period.