



## **STUDY COMMITTEE ON PUBLIC DISCLOSURE AND OVERSIGHT OF CHILD ABUSE AND NEGLECT INCIDENTS**

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# INTRODUCTION

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While reports of child abuse and neglect to child protective services are generally confidential, both federal and Wisconsin law require that the Department of Children and Families (DCF) publicly disclose certain types of reports of child abuse and neglect. Most recently, 2009 Wisconsin Act 78 (Act 78) clarified the requirements and procedure for public disclosure and created additional reporting requirements for legislative and gubernatorial oversight. While the purpose of Act 78's requirements was to inform the public and other branches of government of certain types of incidents, legislators and child welfare stakeholders have questioned both the utility of the information disclosed in the various reports and the manner in which legislative oversight is conducted.

In response to questions raised regarding Act 78's requirements, the Joint Legislative Council has directed the Study Committee on Public Disclosure and Oversight of Child Abuse and Neglect Incidents to examine the requirements created by Act 78, and analyze whether those requirements provide an effective mechanism for public disclosure and legislative oversight of incidents of death, serious injury, or egregious child abuse or neglect and certain reports of sexual abuse of children placed in out-of-home care.

Specifically, the committee is directed to consider whether to modify the types of incidents prompting disclosure and reports, as well as the nature and timing of any required disclosures or reports. In addition, the committee must consider modifying the manner in which the Legislature reviews the required disclosures and reports and consider whether to subject alternative or additional information to regular review by the Legislature.

To support committee members in accomplishing this charge, this Staff Brief describes current law that is relevant to analyzing policy options for the disclosure and reporting of certain incidents of child abuse and neglect. Specifically, the Staff Brief includes the following parts:

- **Part I** provides general background information on Wisconsin's child protective services (CPS) reporting process.
- **Part II** describes current federal and state law regarding public disclosure of certain reports of child abuse and neglect, including the federal Child Abuse Protection and Treatment Act and Wisconsin's public disclosure requirements under Act 78.
- **Part III** describes current federal and state law regarding confidentiality of child abuse and neglect reports and related records.
- **Part IV** highlights other child welfare information that DCF makes publicly available, as well as information that DCF currently reports to the Legislature, such as its annual *Child Abuse and Neglect Report*.



# PART I –BACKGROUND ON CHILD ABUSE AND NEGLECT REPORTING IN WISCONSIN

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Wisconsin law, as created by Act 78, requires public disclosure and reporting for a small percentage of child abuse and neglect incidents that meet certain criteria. The incidents that are publicly disclosed pursuant to Act 78, commonly referred to as “Act 78 reports,” represent a narrow subset of all child abuse and neglect reports that are made to CPS and law enforcement in Wisconsin.

To provide context for the types of cases prompting disclosure and reporting under Act 78, this Part provides background information on the general procedures governing the reporting and intake of all child abuse and neglect reports in Wisconsin. This Part focuses on the laws governing reporting and intake of child abuse and neglect reports and, therefore, does not provide an explanation of the entire procedure governing investigations and findings of child abuse and neglect. However, this Part closes with a flowchart prepared by DCF that provides an overview of the entire CPS process in Wisconsin.

## REPORTING CHILD ABUSE OR NEGLECT

With limited exceptions, state law requires certain individuals who interact with children in their professional capacities to report suspected cases of child abuse or neglect.<sup>1</sup> Specifically, individuals in certain professions<sup>2</sup> are “mandated” to report suspected child abuse or neglect if the individual either: (1) has reasonable cause to suspect that a child seen in the course of the individual’s professional duties has been abused or neglected; or (2) has reason to believe that the child has been threatened with abuse or neglect and that abuse or neglect will occur. [s. 48.981 (2) (a), Stats.]

Mandated reporters are required under state law to immediately inform, personally or by telephone, the appropriate CPS agency<sup>3</sup> or law enforcement of the facts and circumstances contributing either to the reporter’s suspicion of child abuse or neglect or unborn child abuse, or to the reporter’s belief that abuse or neglect will occur. In addition, any person, regardless of the person’s profession, may report to a CPS agency or law enforcement if the person has reason to either suspect that a child has been abused or neglected or believe that a child has been

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<sup>1</sup> **Appendix A** provides the statutory definitions of “abuse” and “neglect.”

<sup>2</sup> Over 30 different types of professionals are required to report suspected child abuse or neglect, as set forth in [s. 48.981 \(2\) \(a\), Stats.](#) Other professionals, such as child-appointed special advocates and clergy members, are also required to report, subject to certain exceptions. [See, s. 48.981 (2) (b) and (bm), Stats.]

<sup>3</sup> Wisconsin’s child welfare system is generally administered by counties and supervised by DCF, with the exception of Milwaukee County, where child welfare services are administered by DCF’s Division of Milwaukee Child Protective Services. For purposes of reporting child abuse or neglect, the appropriate CPS agency includes: a county department; DCF, for purposes of Milwaukee County; or a licensed child welfare agency under contract with DCF.

threatened with abuse or neglect and that abuse or neglect will occur. [s. 48.981 (2) (c) and (3) (a) 1., Stats.]

A report of suspected child abuse or neglect made to law enforcement must be referred to the CPS agency within 12 hours in the following circumstances:

- Cases in which a caregiver is suspected of abuse or neglect, or of threatened abuse or neglect of a child. The term “caregiver” is defined to include a parent, guardian, legal custodian, relative, person who resides or has resided regularly or intermittently in the same dwelling as the child, or person who provides or has provided care for the child in or outside of the child’s home.<sup>4</sup>
- Cases in which a caregiver is suspected of facilitating or failing to take action to prevent the suspected abuse or neglect, or threatened abuse or neglect, of a child.
- Cases in which a person who is not a caregiver is suspected of abusing a child by committing a violation of child sex trafficking or permitting, allowing, or encouraging a child to violate the crime of child prostitution.
- 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) 2., Stats.]<sup>5</sup>

Even if a referral to a CPS agency is not required, law enforcement may refer to the CPS agency reports in which a person who is not a caregiver is suspected of abuse or of threatened abuse of a child. [s. 48.981 (3) (a) 2d., Stats.]

## SCREENING AND INVESTIGATION

Immediately after receiving a report, whether the report was made directly to the CPS agency or referred to it by law enforcement, the CPS agency must evaluate the report and determine, within 24 hours, whether to initiate an investigation, based on standards and policies issued by DCF. This decision is referred to as “screening,” in that a report may be “screened out” if the CPS agency does not believe the state-issued standards for initiating an investigation have been met, though the CPS agency may provide appropriate services or make arrangements for providing services.

Conversely, if a report is “screened in,” the CPS agency initiates an investigation, referred to as an “initial assessment,” and must determine within 60 days whether abuse or neglect has occurred or is likely to occur, based on a preponderance of the evidence produced by the investigation.

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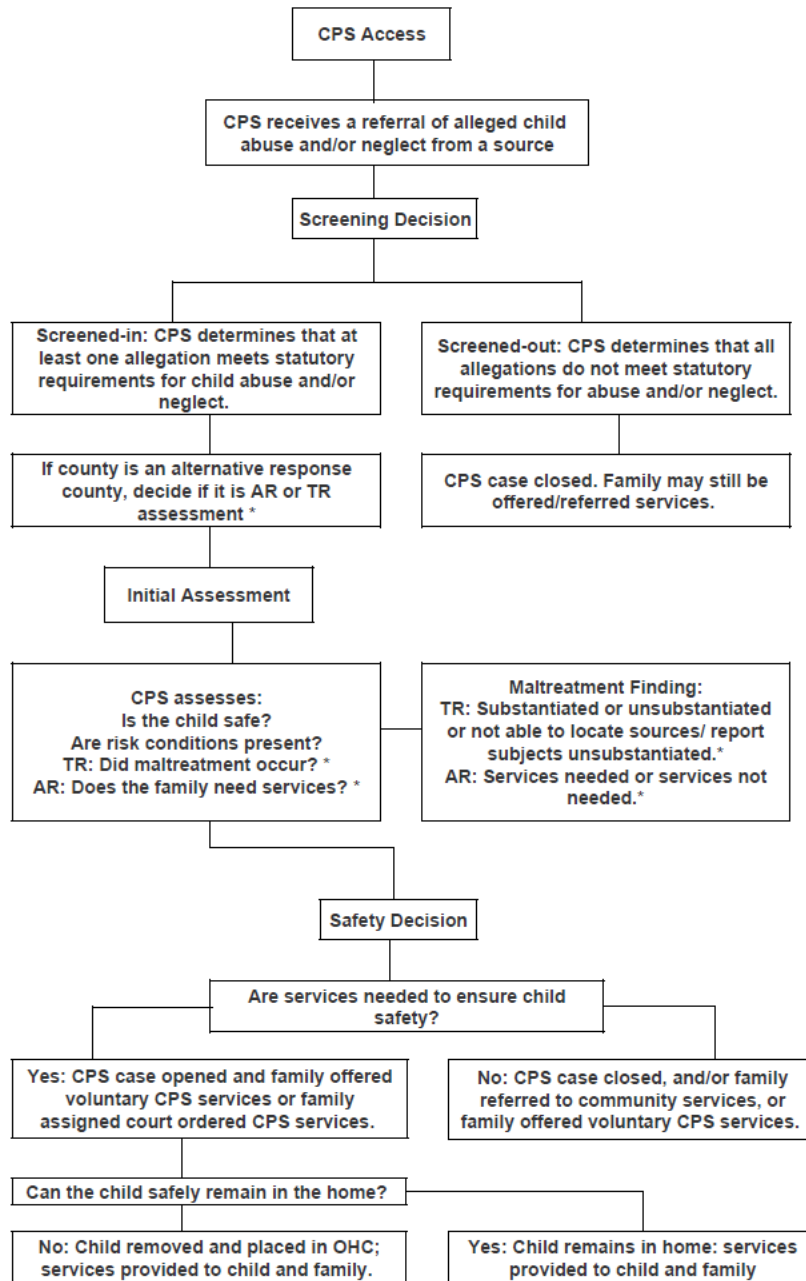
<sup>4</sup> For a list of all of the individuals included in the term “caregiver,” see [s. 48.981 \(1\) \(am\), Stats.](#)

<sup>5</sup> Likewise, a CPS agency must refer to law enforcement, within 12 hours, reports involving suspicion or threat of certain types of abuse constituting an alleged violation of specified crimes. For all other types of suspected or threatened child abuse or neglect, a CPS agency must adopt a written policy specifying when it will routinely report to law enforcement. For certain types of suspected or threatened abuse, the statutes require law enforcement and the CPS agency to coordinate the planning and execution of investigations. [s. 48.981 (3) (a) 3. and 4., Stats.]

The CPS agency must “screen in” a report, and therefore initiate an investigation, if there is reason to suspect that a caregiver has abused or neglected the child, has threatened the child with abuse or neglect, or has facilitated or failed to take action to prevent the suspected or threatened abuse or neglect of the child. The CPS agency must also “screen in” a report if there is reason to suspect that a person who is not a caregiver has committed or threatened to traffic the child for purposes of a commercial sex act or has committed or threatened to permit, allow, or encourage a child to violate the crime of prostitution. In all other cases of reports related to suspected or threatened abuse or neglect by a person who is not a caregiver, the CPS agency has the discretion to decide whether to initiate a diligent investigation. [s. 48.981 (3) (c) 1. a. and (4), Stats.]

The investigation may result in the CPS agency issuing a determination that abuse or neglect has occurred or is likely to occur, by making a finding that the allegation of abuse or neglect has either been “substantiated” or “unsubstantiated.” The procedure for, nature of, and legal effect of any such determination are beyond the scope of the background information relevant to the study committee’s charge and thus are not included in this Staff Brief. A flow chart providing an overview of the CPS process, prepared by DCF, is provided on the following page.

## An Overview of the CPS Process



\*Assessment Types:  
 TR stands for Traditional Response  
 AR stands for Alternative Response

**Source:** Department of Children and Families.



# PART II –PUBLIC DISCLOSURE AND REPORTING REQUIREMENTS UNDER CURRENT LAW

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Both federal and state law govern the public disclosure of information related to child abuse and neglect reports. Most relevant to the committee’s scope, the federal Child Abuse Protection and Treatment Act (CAPTA) conditions the receipt of federal grant funds to states based on compliance with various requirements, such as public disclosure of certain information. Wisconsin’s public disclosure requirements under Act 78 were enacted, in part, due to CAPTA, though Act 78 includes additional requirements, such as specific types of reports and legislative oversight, beyond that which is minimally required by CAPTA.

This Part describes the federal CAPTA requirements for public disclosure, as well as Wisconsin’s public disclosure requirements enacted under Act 78.

## FEDERAL LAW: CAPTA’S PUBLIC DISCLOSURE REQUIREMENTS

Under CAPTA, states may apply to receive grant funds in support of prevention, assessment, investigation, prosecution, and treatment of child abuse and neglect on specified requirements, including requirements related to confidentiality and disclosure of information. States must submit a state plan that meets the directives of CAPTA to receive funds. For example, each state’s plan must contain a description of the activities for which the grant funds will be used and various assurances, many in the form of a certification by the state’s governor, that the state has adopted and is enforcing certain state law provisions. [42 U.S.C. ss. 5106 and 5106a.]

CAPTA requires that child abuse and neglect records generally remain confidential, as discussed further in Part III. However, CAPTA also requires the state to provide an assurance that it has in effect and enforces a state law that allows for **public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality**. For this purpose, “near fatality” means “an act that, as certified by a physician, places the child in serious or critical condition.” [42 U.S.C. s. 5106a (b) (2) (B) (x) and (4).]

In its *Child Welfare Policy Manual*, the Administration for Children and Families (ACF), part of the U.S. Department of Health and Human Services, provides guidance on CAPTA’s public disclosure requirement. For example, ACF clarifies that the requirement to disclose case “findings or information” does not mandate the release all of the information in the entire case record. However, states must release, at a minimum, the following information:

- The cause of and circumstances regarding the fatality or near fatality.
- The child’s age and gender.
- Information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality, and the result of any such investigations.

- The services provided by and actions of the state on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

According to ACF, a state may determine its procedures in accordance with these minimum parameters and “can release the full investigation; a summary of the investigation; or a statement of findings and information about the incident among other options.” Release of information through an annual report is also deemed appropriate by ACF. However, ACF clarifies that states may allow exceptions to the release of information: (1) in order to ensure the safety and well-being of the child, the child’s parents, or the child’s family; (2) when releasing the information would jeopardize a criminal investigation; or (3) when releasing the information would interfere with the protection of those who report child abuse or neglect, or harm the child or the child’s family.

ACF explains that under CAPTA, states must have procedures that allow the public to access information, at the public’s discretion. In other words, states are not generally required to provide the information to the public, unless requested. In addition, states must ensure compliance with any relevant federal confidentiality laws, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the confidentiality requirements applicable to Titles IV-B (child welfare services and family preservation and family support programs) and IV-E (foster care programs and adoption assistance programs) of the Social Security Act.<sup>6</sup>

[ACF, [Child Welfare Policy Manual](#), s. 2.1A.4.]

## STATE LAW: WISCONSIN’S PUBLIC DISCLOSURE REQUIREMENTS UNDER ACT 78

State law, as created by Act 78, requires two types of public disclosures and reports. First, DCF must publicly disclose, and provide summary reports on, certain information related to child abuse and neglect **incidents of death, serious injury, or egregious abuse or neglect**. Disclosure of one of these types of incidents must occur within two days of the CPS agency determining that Act 78 applies, and the summary reports are generally issued within 90 days. In addition, DCF must prepare quarterly reports summarizing all reports received involving various forms of **sexual abuse** of a child who is placed in out-of-home care.

This Part describes the specific types of cases that prompt public disclosure and reporting, the process and mechanisms for such disclosures and reports, and the content that must be included or excluded from the disclosures and reports.

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<sup>6</sup> Records maintained under both Title IV-E and Title IV-B are subject to the confidentiality provisions in 45 C.F.R. s. 205.50. ACF acknowledges that instances may occur where information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under Title IV-E and 45 C.F.R. s. 205.50. According to ACF, if the CAPTA provisions require disclosure in the case of a child fatality or near fatality, the CAPTA disclosure provision would prevail in the event of a conflict, because the CAPTA confidentiality provisions were most recently enacted. [ACF, [Child Welfare Policy Manual](#), s. 2.1A.1.]

## **Act 78 Reports Publicly Disclosing Critical Incidents of Child Abuse or Neglect**

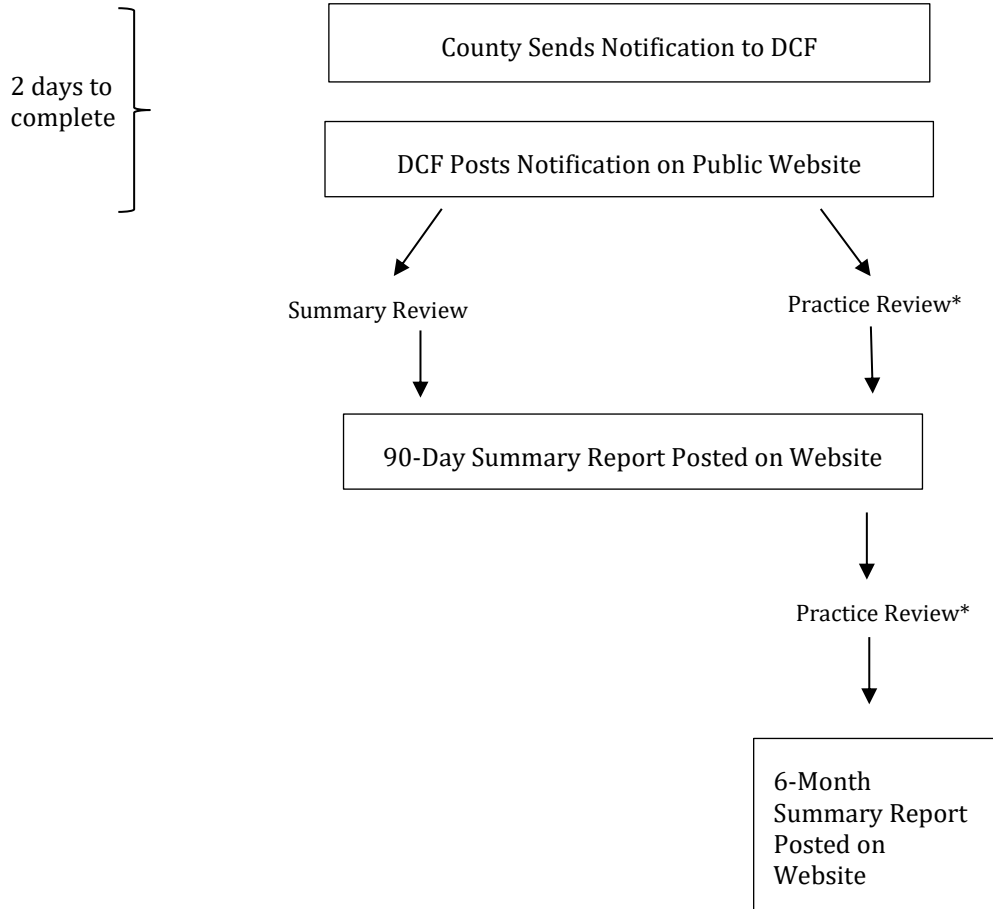
DCF is required to publicly disclose, and provide summary reports on, certain incidents of death, serious injury, or egregious abuse or neglect. As previously mentioned, these types of incidents represent a narrow subset of all child abuse and neglect reports made to CPS and law enforcement agencies in Wisconsin. For the reports on these types of incidents, Act 78's requirements are triggered when a CPS agency has reason to suspect that an incident of death, serious injury, or egregious abuse or neglect has occurred. The CPS agency's determination requires an analysis of the following statutory definitions:

- "Incident of death or serious injury" means an incident in which a child has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect, or in which a child who has been placed outside the home by a court order under the Children's Code or the Juvenile Justice Code is suspected to have committed suicide.
- "Incident of egregious abuse or neglect" means an incident of suspected abuse or neglect, other than an incident of death or serious injury, involving significant violence, torture, multiple victims, the use of inappropriate or cruel restraints, exposure of a child to a dangerous situation, or other similar, aggravated circumstances.

[s. 48.981 (7) (cr) 1. a. and b., Stats.]

Once the CPS agency has reason to suspect that an incident of death, serious injury, or egregious abuse or neglect has occurred, certain actions are required, including a notification to DCF, disclosure to the public, and preparation of a summary report. The following flow chart, based upon information provided by DCF, summarizes the Act 78 procedure for incidents of death, serious injury, or egregious abuse or neglect.

## Act 78 Process Timeline



\* If the entirety of the practice review is not completed within 90 days, a summary report is posted within 90 days and the final determinations of resulting actions taken by the CPS agency, or any changes in policy or practices is posted on the website within 6 months.

**Source:** Department of Children and Families.

### CPS Agency Reports Submitted to DCF

If a CPS agency that receives a report of child abuse or neglect has reason to suspect that an incident of death, serious injury, or egregious abuse or neglect has occurred, the CPS agency must provide specific information<sup>7</sup> regarding the incident to DCF's Division of Safety and Permanence

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<sup>7</sup> A CPS agency must provide DCF's Division of Safety and Permanence the following information: names of the agency and an agency contact person; information about the child, including age; the date of the incident and the suspected cause of the child's death, serious injury, or egregious abuse or neglect; a brief history of reports received in which the child, a member of the child's family, or the person suspected of abuse or neglect was the subject and any services offered or provided; a statement of whether the child was residing in the child's home or was placed outside the home when the incident occurred; and the identity of any law enforcement agency that referred the report or to which the report was referred.

within two working days after determining that such an incident is suspected to have occurred. [s. 48.981 (7) (cr) 2., Stats.]

#### DCF Two-Day Notification to the Public

Within two working days after DCF receives a report of an incident of death, serious injury, or egregious abuse or neglect from a CPS agency, DCF must publicly disclose<sup>8</sup> the following information:

- The fact that DCF has received the information.
- Whether DCF is conducting a review of the incident.
- If DCF is conducting a review, the scope of the review and the identities of any other agencies with which DCF is cooperating in conducting the review.
- Whether the child was residing in the child's home or was placed in out-of-home care at the time of the incident.
- Information about the child, including the child's age.

If the incident was an incident of egregious abuse or neglect, DCF must also make this disclosure to a citizen review panel and, in Milwaukee County, to the Milwaukee Child Welfare Partnership Council. [s. 48.981 (7) (cr) 3. a., Stats.]

#### 90-Day and Six-Month Summary Reports

Within 90 days after DCF receives a report of an incident of death, serious injury, or egregious abuse or neglect, DCF must prepare a summary report of its review of the incident, transmit it to the Governor and to the appropriate standing committees of the Legislature,<sup>9</sup> and make it available to the public. The *90-Day Summary Report for Child Death, Serious Injury, or Egregious Incident*, commonly referred to as a **90-day summary report**, its content is set by statute, in that certain types of information must either be included or excluded. The nature of the required content differs depending on whether, at the time of the incident, the child was residing in the child's home or placed in out-of-home care. Because current law generally requires that all reports of suspected child abuse and neglect and related records be confidential, the statutes specify the types of information that must be disclosed as an exception to this confidentiality requirement.

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<sup>8</sup> DCF's notification is publicly available for viewing on [DCF's webpage](#) titled, *Public Disclosure of CPS Critical (Egregious) Incident Reports*.

<sup>9</sup> The statutes require that DCF submit the reports to the Senate and Assembly Chief Clerks, who must then make these reports available by: (1) publishing notice of receipt of the report in the journals of the respective houses; and (2) periodically providing a list of the agency reports received to the members of the respective houses. Legislators may obtain copies of the reports by checking those reports on the list that they wish to receive and returning the list to the chief clerk. Also, the Speaker of the Assembly or the Senate President may direct the chief clerk to distribute copies of any of the reports to all members of the house, specified standing committees in that house, or other persons. [s. 13.172 (2), Stats.]

*Information Required in 90-Day Summary Report if Child Residing in Home*

If the **child was residing in the child's home** when the incident of death, serious injury, or egregious abuse or neglect occurred, DCF's 90-day summary report **must contain** all of the following information:

- Information about the child, including the age, gender, and race or ethnicity of the child; a description of the child's family; and, if relevant to the incident, a description of any special needs of the child.
- A statement of whether, at the time of the incident, any child welfare services under the Children's Code or the Juvenile Justice Code were being provided to the child, any member of the child's family, or the person suspected of the abuse or neglect, or whether any of those persons was the subject of either a child abuse or neglect report that was being investigated or a referral to the CPS agency for services and, if so, the date of the last contact between the CPS agency providing those services and the person receiving those services.
- A summary of all involvement of the child's parents and of the person suspected of the abuse or neglect in any incident reported or in receiving services under the Children's Code or the Juvenile Justice Code in the five years preceding the date of the incident.
- A summary of any actions taken by the CPS agency with respect to the child, any member of the child's family, and the person suspected of the abuse or neglect, including any investigation by the CPS agency of a child abuse or neglect report in which any of those persons was the subject and any referrals of any of those persons by the CPS agency for services.
- The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child, as reported by the CPS agency to DCF.
- The findings on which the CPS agency based its reasonable suspicion that an incident of death, serious injury, or egregious abuse or neglect has occurred, including any material circumstances leading to the death, serious injury, or egregious abuse or neglect of the child.
- A summary of any investigation that has been conducted of a report of child abuse or neglect in which the child, any member of the child's family, or the person suspected of the abuse or neglect was the subject, and of any services that have been provided to the child and the child's family since the date of the incident.

[s. 48.981 (7) (cr) 4., Stats.]

*Information Required in 90-Day Summary Report if Child Placed in Out-of-Home Care*

If the **child was placed in out-of-home care** at the time of the incident of death, serious injury, or egregious abuse or neglect, the 90-day summary report **must contain** all of the following information:

- Information about the child, including the age, gender, and race or ethnicity of the child and, if relevant to the incident, a description of any special needs of the child.

- A description of the out-of-home placement, including the basis for the decision to place the child in that placement.
- A description of all other persons residing in the out-of-home placement.
- The licensing history of the out-of-home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed, and a summary of all violations by the licensee of any provisions of licensure or rules promulgated by DCF, and of any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote the health, safety, and welfare of a child.
- The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child, as reported by the CPS agency to DCF.
- The findings on which the CPS agency based its reasonable suspicion that an incident of death, serious injury, or egregious abuse or neglect has occurred, including any material circumstances leading to the death, serious injury, or egregious abuse or neglect of the child.

[s. 48.981 (7) (cr) 5., Stats.]

*Information That Must be Excluded From a 90-Day Summary Report*

DCF's 90-day summary report **may not include** information that would do any of the following:

- Reveal the identity of the child who is the subject of the report, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child.
- Reveal the identity of the person suspected of the abuse or neglect or of any employee of any agency that provided services to the child or that participated in the investigation of the incident of death, serious injury, or egregious abuse or neglect.
- Reveal the identity of a reporter or of any other person who provides information relating to the incident of death, serious injury, or egregious abuse or neglect.
- If disclosed, not be in the best interests of the child who is the subject of the summary report, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child, as determined by DCF, after: (1) consultation with the CPS agency that reported the incident, the district attorney of the county in which the incident occurred, or the juvenile court of that county; and (2) balancing the interest of the child, family or household member, or caregiver in avoiding the stigma that might result from the disclosure against the interest of the public in obtaining that information.
- If disclosed, violate a state law or rule, or a federal law or regulation.

[s. 48.981 (7) (cr) 6., Stats.]

*Responsive Actions and Policy Recommendations: 90-Day or Six-Month Summary Report*

In addition, the 90-day summary report prepared by DCF may also contain: (1) a summary of any actions taken by the CPS agency in response to the incident; (2) any changes in policies or practices the CPS agency has made to address any issues raised in the review; and (3) any

recommendations for further changes in policies, practices, rules, or statutes that may be needed to address those issues. If a 90-day summary report does not include those actions, changes, or recommendations, then DCF must prepare a final summary report of those actions, changes, and recommendations, transmit it to the Governor and to the appropriate standing committees of the Legislature, and make it available to the public<sup>10</sup> within six months after receiving a report of an incident of death, serious injury, or egregious abuse or neglect. Because of this six-month timeline, these *6-Month Final Summary Report for Child Death, Serious Injury or Egregious Incident Reports* are generally referred to as “**six-month summary reports.**” [s. 48.981 (7) (cr) 3. b., Stats.]

#### *Exceptions to Disclosure of Summary Report*

DCF may not make a summary report available if its Division of Safety and Permanence determines that disclosing the information would jeopardize any ongoing or future criminal investigation or prosecution, a defendant’s right to a fair trial, or any ongoing or future civil investigation or proceeding or the fairness of such a proceeding. [s. 48.981 (7) (cr) 7., Stats.]

### **Act 78 Reports of Sexual Abuse of Children Placed in Out-of-Home Care**

In addition to the summary reports prompted by incidents of death, serious injury, or egregious child abuse or neglect, DCF must also publicly disclose information related to reports involving sexual abuse<sup>11</sup> of a child placed in out-of-home care. Specifically, DCF is required to prepare and transmit to the Governor and the appropriate standing committees of the Legislature a **quarterly report**, which summarizes all reports received during the previous calendar quarter of sexual abuse of a child who is placed in out-of-home care, that being the home of a foster parent or relative other than a parent, a group home, a shelter care facility, or a residential care center for children and youth. [s. 48.981 (9) (a), Stats.] Note that, unlike the 90-day and six-month summary reports previously discussed, DCF must compile the reports on sexual abuse quarterly, rather than based on a timeline triggered by the incident’s reporting date.

In every fourth quarterly report submitted to the Governor and the appropriate standing committees of the Legislature, DCF must also provide information about all reports of sexual abuse received during the previous year. This information must indicate whether the abuse resulted in any injury, disease, or pregnancy that is known to be directly caused by the abuse. DCF prepares this information in a separate, **annual report** of sexual abuse of children in out-of-home care placement. [s. 48.981 (9) (b), Stats.]

None of these reports may provide any information that is prohibited from being disclosed in a 90-day summary report, as described above. DCF must also make the reports relating to sexual abuse available to the public, as provided on [DCF’s webpage](#) titled, *Public Disclosure of Alleged Sexual Abuse of Children in an OHC Placement*.

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<sup>10</sup> DCF’s 90-day and six-month summary reports are publicly available for viewing on [DCF’s webpage](#) titled, *Public Disclosure of CPS Critical (Egregious) Incident Reports*.

<sup>11</sup> Specifically, the reporting requirement is prompted by an incident of abuse under s. 48.02 (1) (b) to (f), Stats., which includes: sexual intercourse or contact; sexual exploitation of a child; trafficking of a child; permitting, allowing, or encourage a child to engage in prostitution; causing a child to view or listen to sexual activity; and exposing genitals, pubic area, or intimate parts.



## Legislative Oversight of Act 78 Reports

Current law provides for legislative oversight of the 90-day and six-month summary reports on incidents of death, serious injury, and egregious child abuse and neglect, as well as the quarterly and annual reports on sexual abuse of children placed in out-of-home care.

The appropriate standing committees of the Legislature<sup>12</sup> must review all 90-day and six-month summary reports, and all quarterly and final reports regarding sexual abuse of children placed in out-of-home care. Specifically, the standing committees must conduct public hearings on those reports no less often than annually, and submit recommendations to DCF regarding those reports. [s. 48.981 (7) (cr) 3. b. and (9) (c), Stats.]

For the last several legislative sessions, the appropriate standing committees in the Legislature have generally held an Act 78 oversight hearing once per calendar year. At these hearings, DCF provides testimony as an invited speaker, followed by a discussion in which committee members are afforded the opportunity to pose questions to the department. Because the information included in Act 78 reports is disclosed under an exception to confidentiality laws, DCF is limited in the additional information it may provide specific to particular cases or reports. At these hearings, committee members typically also pose questions related to child abuse and neglect in Wisconsin, more generally.

While the statutes contemplate that the appropriate standing committees of the Legislature may, upon conducting such oversight hearings, submit recommendations to DCF regarding the reports, no formal committee recommendations have been submitted since Act 78's enactment.

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<sup>12</sup> In the 2019-20 Legislative Session, these standing committees are the Assembly Committee on Children and Families and the Senate Committee on Universities, Technical Colleges, and Children and Families.



# PART III – CONFIDENTIALITY REQUIREMENTS

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As discussed in Part II, certain state and federal laws govern the public disclosure of child abuse and neglect reports and related records. This Part focuses on the confidentiality requirements imposed by state and federal law, which affect the types of information that may be disclosed to the public and the Legislature.

## **FEDERAL LAW: CONFIDENTIALITY OF CHILD ABUSE AND NEGLECT UNDER CAPTA**

As a condition of receipt of federal funds under CAPTA, states must submit a state plan demonstrating that it meets the directives of CAPTA. Among several other assurances, CAPTA requires states to provide an assurance that the state has in effect, and is enforcing, state laws providing a method to preserve the confidentiality of all child abuse and neglect records, in order to protect the rights of the child and the child’s parents or guardians. A state’s method of preserving confidentiality of records must include requirements ensuring that reports and records made and maintained pursuant to CAPTA’s purposes may only be available to the following recipients:

- Individuals who are the subject of the report.
- Federal, state, or local government entities, or any agent of such entities, that have a need for such information in order to carry out the entity’s responsibilities under law to protect children from child abuse and neglect.<sup>13</sup>
- Child abuse citizen review panels.
- Child fatality review panels.
- A grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury.
- Other entities or classes of individuals statutorily authorized by the state to receive such information pursuant to a legitimate state purpose.<sup>14</sup>

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

States are permitted, but not required, to disclose otherwise confidential information to the persons or entities list above. However, CAPTA’s disclosure requirements, as described in Part II,

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<sup>13</sup> States must also enact laws with enforcement provisions requiring the state to disclose confidential information to any federal, state, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from child abuse and neglect. [42 U.S.C. s. 5106a (b) (2) (B) (ix).]

<sup>14</sup> For example, according to ACF, states may statutorily authorize release of such information to researchers as a “legitimate state purpose,” because “research involving data in CPS records can provide important information that will help government officials plan programs for abused and neglected children and develop future policy directions.” [ACF, [Child Welfare Policy Manual](#), s. 2.1A.1.]

are required by a separate provision in CAPTA and therefore also exist as an exception to confidentiality. [ACF, [Child Welfare Policy Manual](#), s. 2.1A.1.]

## **STATE LAW: CONFIDENTIALITY OF CHILD ABUSE AND NEGLECT UNDER STATE LAW**

### **General Rule and Exceptions**

Generally, under state law, all reports of suspected child abuse and neglect and related records maintained by a CPS agency and other persons, officials, and institutions are confidential. However, pursuant to federal law, several exceptions exist that allow reports and records to be disclosed to certain persons, such as the subject of a report, a child's parent, the person who reported the abuse or neglect, health care providers, law enforcement, attorneys, and courts, among several others. [s. 48.981 (7) (a), Stats.]

As an additional exception to the general rule of confidentiality, DCF is required to publicly disclose certain information when it receives reports of child abuse or neglect generally involving death, serious injury, or egregious incidents of abuse or neglect, as described in Part II. Both Wisconsin's general confidentiality requirement and the exception for public disclosure are consistent with the corresponding federal requirements explained in this Part and Part II.

## PART IV – OTHER CHILD WELFARE REPORTS AND INFORMATION PREPARED BY DCF

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Due, in part, to the limitations of Act 78 reports, chairs of the appropriate legislative standing committees that conduct Act 78 oversight hearings have allowed the presentation and discussion of other information published by DCF at the hearing. For example, the *Wisconsin Child Abuse and Neglect Report (CAN Report)* has been the focal point of discussion in recent Act 78 oversight hearings.

DCF prepares numerous reports and makes them publicly available on its website. Some of these reports are required by state or federal law, while others are not. This Part discusses other data-driven reports on the child welfare system that DCF prepares and makes publicly available. Unlike the Act 78 reports discussed in Part II, however, none of the reports described below are required to be reviewed by a legislative standing committee under current law.

### ANNUAL WISCONSIN CHILD ABUSE AND NEGLECT REPORT

DCF prepares the annual *CAN Report* pursuant to a statutory requirement that it annually prepare and transmit to the Governor and the Legislature a report on the status of both child abuse and neglect programs and unborn child abuse programs. The statutes also require DCF to provide statistical breakdowns by county in the report, if requested by a county.<sup>15</sup> The report must include the following information:

- A full statistical analysis of the child abuse and neglect reports, and the unborn child abuse reports, made through the last calendar year.
- An evaluation of services offered under s. 48.981, Stats., the statute governing the reporting and investigation of child abuse and neglect incidents, and the effectiveness of those services.
- Recommendations for additional legislative and other action to fulfill the purpose of the statute governing DCF's departmental duties.

[s. 48.47 (8) (a), Stats.]

According to DCF, the *CAN Report* provides comprehensive data and outcomes at the state and county level, and is compiled to assist state policymakers, service providers, and the public in understanding and effectively responding to child maltreatment, as well as understanding the overall statistical trends and outcomes in Wisconsin's child welfare system.

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<sup>15</sup> The five most recent *CAN Reports* are publicly available on [DCF's webpage](#) titled, *Child Welfare Reports and Dashboards*. The most recent report is the [Wisconsin CAN Report: Annual Report for Calendar Year 2018 to the Governor and Legislature](#).

## OUT-OF-HOME CARE REPORT AND DASHBOARD

State law also requires DCF to annually prepare an *Out-of-Home Care (OHC) Report* and transmit it to the Governor and the Legislature. This report must contain the number of children during the preceding calendar year who entered out-of-home care under the placement and care responsibility of a county department or DCF after finalization of an adoption or guardianship. In addition, the report may include information concerning the following:

- Length of the adoption.
- Age of the child at the time of the adoption or guardianship.
- Age at which the child entered out-of-home care.
- Type of agency involved in making the adoptive or guardianship placement.
- Any other information determined necessary to better understand factors associated with a child entering out-of-home care after finalization of an adoption or guardianship.

[s. 48.47 (8) (c), Stats.]

In addition to preparing annual the *OHC Report*, DCF publishes information on its website related to the current out-of-home care placements, a map of the physical placements of children in out-of-home care, children removed to out-of-home care in the reporting period, and children who were discharged in that reporting period. This information is referred to as the “OHC Dashboard.”<sup>16</sup>

## REPORTS RELATED TO FEDERAL CHILD AND FAMILY SERVICES REVIEWS

In order to receive federal funding under Title IV-B and Title IV-E of the Social Security Act, every five to seven years each state must undergo a federal assessment of its child welfare system, referred to as the child and family services review. [45 C.F.R. Part 1355.] This assessment is administered by the Children’s Bureau, part of the U.S. Department of Health and Human Services. Discussed below are three of the many reports that have been prepared by DCF as part of this assessment process and contain evaluation information about the state’s child welfare system.

### Child and Family Services Plans and Annual Progress and Services Reports

Part of the child and family services review process requires states to submit a *Child and Family Services Plan* (CFSP). Wisconsin also submits an annual update to its CFSP, known as the *Annual Progress and Services Report* (APSR). The CFSP and APSR include strengths and challenges that were identified in the state’s child and family services review on topics that measure the state’s progress on certain efforts.<sup>17</sup> For example, the CFSP and APSR contain information about the

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<sup>16</sup> The five most recent OHC Reports are publicly available, as well as the OHC Dashboard, are publicly available for viewing on [DCF’s webpage](#) titled, *Child Welfare Reports and Dashboard*. The most recent annual OHC Report is the [Wisconsin OHC: Annual Report for Calendar Year 2018](#).

<sup>17</sup> Information about the CFSR process in Wisconsin, and DCF’s CFSPs and APSRs are publicly available for viewing on [DCF’s webpage](#) titled, *Child and Family Services Review (CFSR) and Federal Plans*.

state's outcomes for child safety, permanency, and well-being. They also include information about how effectively the state initially trains and provides ongoing training for new and existing staff and foster parents. Federal law sets forth numerous requirements regarding these two reports, including the types of statewide information that must be collected and analyzed in the report. Federal law also requires that the CFSP and APSR be developed in consultation with a wide range of appropriate public and non-profit agencies, as well as community-based organizations, parents, including parents who are involved or have experience with the child welfare system, and others. [45 C.F.R. ss. 1355.21, 1357.15, and 1357.16.]

## Continuous Quality Improvement Reports and Dashboard

Federal law sets forth various criteria that DCF must satisfy during the child and family services review in order to be eligible to receive Title IV-B and Title IV-E funding. This list of criteria includes seven systemic factors related to the delivery of services to children and families with which DCF must also be in substantial compliance.<sup>18</sup> One of the system factors relates to quality assurance. [45 C.F.R. ss. 1355.34 (c) (3) and 1357.15 (u).] To comply with this requirement, DCF completes Continuous Quality Improvement (CQI) reports, which identify areas of strength and areas in need of improvement in the state's child welfare system by using quantitative and qualitative data. CQI reports summarize a statistically valid statewide sample of case reviews, including CPS agency decisions related to screening, identification of present danger, identification of possible or likely impending danger, and, if the case is screened-in, assignment of a response time. In addition to preparing CQI reports, DCF publishes on its website information, referred to as a **dashboard**, on cases that were randomly reviewed as part of the CQI process.<sup>19</sup>

## CHILD WELFARE REPORTS AND DASHBOARDS

In addition to all of the reports and dashboards described above, DCF prepares and makes available on its website interactive visual reports that show CPS agency summary data.<sup>20</sup> The types of interactive dashboards include:

- Child Protective Services Reports Dashboard, which contains information on reports of suspected child abuse or neglect received by a CPS social worker and CPS screening decisions.
- Initial Assessment Hub Dashboard, which contains information on completed initial assessments, including information on alleged victims, alleged maltreaters, performance, and trends.

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<sup>18</sup> The seven systemic factors with which DCF must be in substantial compliance relate to the DCF's management information system; case review system for each child and the child's family; quality assurance system; staff training; service array; responsiveness to the community; and foster and adoptive parent licensing, recruitment and retention. [45 C.F.R. s. 1355.34 (c).]

<sup>19</sup> Information about the CQI process in Wisconsin, generally, is publicly available on [DCF's webpage](#) titled, *Wisconsin Child Welfare Continuous Quality Improvement (CQI) System*. CQI reports and the CQI dashboard are also publicly available on [DCF's webpage](#) titled, *Child Welfare CQI Case Records Reports & Dashboards*.

<sup>20</sup> DCF's dashboards are publicly available on [DCF's website](#) titled, *Child Welfare Reports and Dashboards*.

- Placement Stability Dashboard, which contains statewide and county summary data about children who return to an out-of-home placement within 12 months. These are children who have left an out-of-home care to live in a permanent family setting.
- Legal Permanence Dashboard, which contains statewide and county data about children leaving out-of-home care to live in a permanent living arrangement.
- Provider Performance-Based Measures Dashboard, which is a method of tracking outcomes for out-of-home care agencies licensed by DCF, using data from the Electronic Wisconsin Statewide Automated Child Welfare Information System (eWiSACWIS) system, and providing information regarding: (1) placement outcome ratings with child counts; (2) median length of stay; and (3) levels of care totals.



## APPENDIX A

### Definitions of Child Abuse or Neglect

Wisconsin law defines “abuse,” other than when used in referring to abuse of alcohol beverages or other drugs, as 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.
- Sexual exploitation of a child
- Trafficking of a child.
- Permitting, allowing, or encouraging a child to engage in prostitution.
- Causing a child to view or listen to sexual activity.
- Exposing genitals, pubic area, or intimate parts.
- Manufacturing methamphetamine with a child physically present, in a child's home, on the premises of a child's home, in a motor vehicle located on the premises of a child's home, or 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.]

For purposes of Wisconsin’s child welfare laws, “neglect” means 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.]