



PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 48.981 (3) (a) 2. a., 48.981 (3) (a) 2. b., 48.981 (3) (a) 2. c., 48.981
2 (3) (a) 2. d., 48.981 (3) (a) 2d., 48.981 (3) (a) 2g., 967.04 (8) (b) 4. and 972.11 (2m)
3 (bm) 4.; *to renumber and amend* 48.981 (3) (a) 2. (intro.); *to amend* 48.24 (5),
4 48.981 (7) (a) 6., 48.981 (8) (c), 885.44 (2) (f), 885.44 (7) and 908.08 (3) (c); and
5 *to create* 48.981 (3) (e), 967.04 (8) (b) 4m. and 972.11 (2m) (bm) 4m. of the
6 statutes; **relating to:** depositions and testimony of children, referrals of
7 suspected child abuse by noncaregivers, and the establishment of
8 multidisciplinary child protection teams.

Analysis by the Legislative Reference Bureau

Introduction

This bill makes certain changes relating to depositions and testimony of children, referrals of suspected child abuse by noncaregivers, and the establishment of multidisciplinary child protection teams.

Depositions of children

Under current law related to evidence, when an audiovisual recording is taken of a child's statement, the official determining if that statement may be admitted into evidence must determine that the child's developmental level was appropriate to

administer the oath or affirmation that is administered before the taking of a statement, or if the oath or affirmation was not administered, that the child understood that false statements are punishable and the importance of telling the truth. Under the criminal code, when a court orders the deposition of a child or the taking of a child's testimony during a trial in a room separate from the courtroom, the child must be administered the oath or affirmation or the judge must determine that the child understands that it is wrong to tell a lie and will testify truthfully if the child's developmental level is not appropriate to administer the oath or affirmation.

Under this bill, in both the evidence law and the criminal code, the child's statement may be used if the child's statement was made under oath or affirmation and the child is 12 years of age or over, or if the child is under the age of 12, the child understands that false statements are punishable and the importance of telling the truth.

Referral of suspected child abuse by noncaregivers

Current law requires a sheriff or police department to refer to the county department of human services or social services or, in Milwaukee County, to the Department of Children and Families (DCF) or a child welfare agency under contract with DCF (collectively "agency") reports of suspected child abuse or neglect in which a caregiver is suspected of the abuse or neglect, in which a caregiver is suspected of facilitating or failing to take action to prevent the suspected abuse or neglect of a child, or in which it cannot be determined who abused or neglected the child. In cases in which a noncaregiver is suspected of the abuse of a child, however, current law permits, rather than requires, the sheriff or police department to refer the case to an agency. Current law defines "caregiver" as a relative, guardian, or legal custodian of the child; a person who resides or has resided regularly or intermittently in the same dwelling as the child; an employee of a residential facility or a 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; or any other person who exercises or has exercised temporary or permanent control or supervision over the child.

This bill requires the sheriff or police department to refer to an agency *all* cases of child abuse or neglect reported to it, regardless of whether a caregiver or noncaregiver is suspected of the abuse or neglect.

Multidisciplinary child protection teams

Under current law, child abuse and neglect reports and records are confidential and may be disclosed only under certain exceptions. One of those exceptions permits those reports and records to be disclosed to a multidisciplinary child abuse and neglect or unborn child abuse team recognized by an agency.

This bill eliminates the term "multidisciplinary child abuse and neglect or unborn child abuse team" and instead requires each agency to establish a multidisciplinary child protection team to perform certain functions authorized by the director of the agency. Under the bill, the director of an agency may authorize a multidisciplinary child protection team to: 1) provide education and training programs relating to child abuse and neglect; 2) develop resources for the

identification, prevention, and treatment of child abuse and neglect; and 3) provide case consultation to the agency or to a community-based program regarding a child or family that is receiving services from the agency or community-based program. In providing that case consultation, the multidisciplinary child protection team must appoint a committee to review the case of the child or family and make recommendations concerning the services to be provided to the child or family.

The bill permits child abuse and neglect reports and records to be disclosed to a multidisciplinary child protection team to the extent necessary for a case consultation committee of the team to provide case consultation and permits a case consultation committee member to disclose information from those reports and records only to other case consultation committee members and only for the purpose of providing that case consultation. The bill prohibits a member of a case consultation committee from disclosing what transpired at a case consultation meeting, except to the extent necessary to carry out the case consultation plan, and provides that, subject to certain exceptions, the proceedings and records of a case consultation meeting are not subject to discovery and may not be introduced into evidence in any civil or criminal proceeding against an agency or an employee of an agency arising out of a case that is the subject of the case consultation meeting.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.24 (5) of the statutes is amended to read:
2 48.24 (5) The intake worker shall request that a petition be filed, enter into an
3 informal disposition, or close the case within 60 days after receipt of referral
4 information. If the referral information is a report received under s. 48.981 (3) (a)
5 1. or 2. by a county department or, in a county having a population of 500,000 or more,
6 the department or a licensed child welfare agency under contract with the
7 department ~~under s. 48.981 (3) (a) 1., 2., or 2d.~~, that 60-day period shall begin on the
8 day on which the report is received by the county department, department, or
9 licensed child welfare agency. If the case is closed or an informal disposition is
10 entered into, the district attorney, corporation counsel, or other official under s. 48.09
11 shall receive written notice of that action. If a law enforcement officer has made a

1 recommendation concerning the child, or the unborn child and the expectant mother
2 of the unborn child, the intake worker shall forward this recommendation to the
3 district attorney, corporation counsel, or other official under s. 48.09. If a petition is
4 filed, the petition may include information received more than 60 days before filing
5 the petition to establish a condition or pattern which, together with information
6 received within the 60-day period, provides a basis for conferring jurisdiction on the
7 court. The court shall grant appropriate relief as provided in s. 48.315 (3) with
8 respect to any petition that is not referred or filed within the time periods specified
9 in this subsection. Failure to object to the fact that a petition is not requested within
10 the time period specified in this subsection waives any challenge to the court's
11 competency to act on the petition.

12 **SECTION 2.** 48.981 (3) (a) 2. (intro.) of the statutes is renumbered 48.981 (3) (a)
13 2. and amended to read:

14 48.981 (3) (a) 2. The sheriff or police department shall within 12 hours,
15 exclusive of Saturdays, Sundays, or legal holidays, refer to the county department
16 or, in a county having a population of 500,000 or more, the department or a licensed
17 child welfare agency under contract with the department all of the following types
18 of cases reported to the sheriff or police department: The county department,
19 department, or licensed child welfare agency may require that a subsequent report
20 be made in writing.

21 **SECTION 3.** 48.981 (3) (a) 2. a. of the statutes is repealed.

22 **SECTION 4.** 48.981 (3) (a) 2. b. of the statutes is repealed.

23 **SECTION 5.** 48.981 (3) (a) 2. c. of the statutes is repealed.

24 **SECTION 6.** 48.981 (3) (a) 2. d. of the statutes is repealed.

25 **SECTION 7.** 48.981 (3) (a) 2d. of the statutes is repealed.

1 **SECTION 8.** 48.981 (3) (a) 2g. of the statutes is repealed.

2 **SECTION 9.** 48.981 (3) (e) of the statutes is created to read:

3 48.981 **(3)** (e) *Multidisciplinary child protection teams.* 1. Each agency shall
4 establish a multidisciplinary child protection team to perform the functions specified
5 in subd. 2. A multidisciplinary child protection team may consist of any of the
6 following members appointed by the director of the agency:

7 a. The director of the agency or his or her designee.

8 b. The district attorney, corporation counsel, or agency legal counsel or his or
9 her designee.

10 c. The sheriff or his or her designee.

11 d. One or more members with experience and expertise in public health.

12 e. One or more members with experience and expertise in education.

13 f. One or more members who represent child and family mental health
14 programs or other community-based programs serving children and families.

15 g. One or more members who represent parental organizations combating child
16 abuse and neglect.

17 2. The director of an agency establishing a multidisciplinary child protection
18 team under subd. 1. may authorize the team to perform any of the following
19 functions:

20 a. Provide the education and training programs and public information
21 programs specified in sub. (8) (a).

22 b. Develop resources for the identification, prevention, and treatment of child
23 abuse and neglect.

24 c. Provide case consultation to the agency or, on the request of a
25 community-based program serving children and families, to the community-based

1 program regarding a child or family that is receiving services from the agency or
2 community-based program.

3 3. a. In providing case consultation under subd. 2. c., the multidisciplinary child
4 protection team shall appoint a committee to review the case of the child or family
5 that is receiving services from the agency or community-based program and make
6 recommendations concerning the services to be provided to that child or family. A
7 case consultation committee appointed under this subd. 3. a. may consist of any of
8 the members of the multidisciplinary child protection team specified in subd. 2. a.
9 to f. and any other person who is directly involved in the case as designated by the
10 members of the team performing the case consultation.

11 b. No member of a case consultation committee may disclose what transpired
12 at a case consultation meeting, except to the extent necessary to carry out the case
13 consultation plan. Notwithstanding chs. 804 and 901 to 911, the proceedings and
14 records of a case consultation meeting are not subject to discovery and may not be
15 introduced into evidence in any civil or criminal proceeding against an agency or an
16 employee of an agency arising out of a case that is the subject of the case consultation
17 meeting. This subd. 3. b. does not preclude from discovery or use in such a proceeding
18 information, documents, or records presented in a case consultation meeting that are
19 obtained from other sources. This subd. 3. b. also does not preclude a member of a
20 case consultation committee or a person who provides information to a case
21 consultation committee from testifying as to matters that are within the personal
22 knowledge of that member or person, except that the member or person may not be
23 questioned about any information that the member or person presented to the case
24 consultation committee or about any opinions formed as a result of the case
25 consultation meeting.

1 **SECTION 10.** 48.981 (7) (a) 6. of the statutes is amended to read:

2 48.981 (7) (a) 6. A multidisciplinary child abuse and neglect or unborn child
3 abuse protection team recognized by the county department or, in a county having
4 a population of 500,000 or more, the department or a licensed child welfare agency
5 under contract with the department established under sub. (3) (e) 1. to the extent
6 necessary for a case consultation committee of the team to provide case consultation
7 under sub. (3) (e) 2. c. A case consultation committee member may disclose
8 information obtained under this subdivision only to other case consultation
9 committee members and only for the purpose of providing that case consultation.

10 **SECTION 11.** 48.981 (8) (c) of the statutes is amended to read:

11 48.981 (8) (c) In meeting its responsibilities under par. (a) or (b), the
12 department, a county department, or a licensed child welfare agency under contract
13 with the department in a county having a population of 500,000 or more may contract
14 with any public or private organization ~~which~~ that meets the standards set by the
15 department or may authorize the multidisciplinary child protection team
16 established under sub. (3) (e) 1. to provide the education and training programs
17 specified in par. (a). In entering into the contracts the department, county
18 department, or licensed child welfare agency shall give priority to parental
19 organizations combating child abuse and neglect or unborn child abuse.

20 **SECTION 12.** 885.44 (2) (f) of the statutes is amended to read:

21 885.44 (2) (f) The party on whose behalf the deposition is being taken. Counsel
22 shall identify themselves on camera. The person before whom the deposition is taken
23 shall then identify himself or herself and, except as provided under ss. 908.08 (3) (c)
24 and 967.04 (8) (b) 4m., swear or affirm the witness on camera. At the conclusion of
25 the deposition the operator shall state on camera that the deposition is concluded.

1 When the length of the deposition requires the use of more than one tape, the end
2 of each tape and the beginning of each succeeding tape shall be announced on camera
3 by the operator.

4 **SECTION 13.** 885.44 (7) of the statutes is amended to read:

5 885.44 (7) CERTIFICATION OF ORIGINAL VIDEOTAPE DEPOSITION. The official before
6 whom the videotape deposition is taken shall cause a written certification to be
7 attached to the original videotape. The certification shall state that the witness was
8 fully sworn or affirmed by the official, except as provided under ss. 908.08 (3) (c) and
9 967.04 (8) (b) 4m., and that the videotape is a true record of the testimony given by
10 the witness. If the witness has not waived the right to a showing and examination
11 of the videotape deposition, the witness shall also sign the certification.

12 **SECTION 14.** 908.08 (3) (c) of the statutes is amended to read:

13 908.08 (3) (c) That if the child is age 12 or over, the child's statement was made
14 upon oath or affirmation or, if the ~~child's developmental level is inappropriate for the~~
15 ~~administration of an oath or affirmation in the usual form, upon the child's~~
16 ~~understanding~~ child is under the age of 12, that the child understands that false
17 statements are punishable and of the importance of telling the truth.

18 **SECTION 15.** 967.04 (8) (b) 4. of the statutes is repealed.

19 **SECTION 16.** 967.04 (8) (b) 4m. of the statutes is created to read:

20 967.04 (8) (b) 4m. If the child is age 12 or over, have the child's statement made
21 upon oath or affirmation. If the child is under the age of 12, determine that the child
22 understands that false statements are punishable and the importance of telling the
23 truth.

24 **SECTION 17.** 972.11 (2m) (bm) 4. of the statutes is repealed.

25 **SECTION 18.** 972.11 (2m) (bm) 4m. of the statutes is created to read:

