November 5, 2015

To: Representative Kleefisch (Chair)
Representative Kremer (Vice-Chair)
Members, Assembly Committee on Criminal Justice and Public Safety

From: Lisa Pugh, Public Policy Director
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RE: Justice for Children Package: AB 429 and AB 431

Thank you for the opportunity to provide testimony on this important package of legislation. Protecting individuals with disabilities, including children, from abuse and neglect is the core of our work at Disability Rights Wisconsin. We are the state’s protection and advocacy agency designated by the Governor to assure that the basic rights of people with disabilities are enforced.

We have testified previously on the Justice for Children package of bills in the Senate Committee on Judiciary and Public Safety, pointing out particular concerns for children with disabilities and parents with disabilities within the abuse investigation process. Since that hearing we have conducted additional research into how other states and communities are addressing this problem and we are hopeful you might consider some simple but critical solutions today. Specifically, we are hoping the committee will work with us to create additional legislation.

First we would like to summarize some facts we uncovered while reviewing Department of Children and Families data including 90-day Summary Reports for Child Death, Serious Injury or Egregious Incidents from 2011 – 2015. It is important to note this data does not include all reports, only the most serious. We noted the following trends:

- Since February 2010, 12 children with special needs of some kind have died due to abuse or neglect in Wisconsin. An additional 8 suffered an egregious injury.
- Many cases involving children with special needs indicate repeated calls to child protective services. In one fatal case there were more than 20 calls.
- Some cases document the inability of the child to provide information or a case involving a non-verbal child. Several children were identified as having Down syndrome or autism.
- Children experiencing abuse ranged from 3 months to 17 years old. Many children in these serious cases were over age 5 and several over age 10, indicating they should have been able to clearly communicate and substantiate what had occurred, but perhaps due to their disability, they were unable to do so. However this conclusion is only an inference.
• There is little specificity on referrals to community supports of any kind, and none indicating specific supports for children with disabilities.

**Background on Abuse and Neglect of Children with Disabilities:**

Studies and available data indicate that children with disabilities are three times more likely to be a victim of some type of abuse compared to children without disabilities.¹ We bring this data to light to demonstrate that children with disabilities need special considerations and protections in this process.

**Currently the Justice for Children package does not increase protections for children with disabilities to the degree necessary.**

An overarching and disturbing trend in the DCF reports is that most cases do not result in any charges and there are often many contacts before something really has occurred. In a 2015 Waukesha case involving a 13-year-old child with autism, 40 calls were made to child welfare with repeated allegations of physical, emotional and sexual abuse and only when the police were called was the parent finally arrested and charged. This was a child who had been kept in the basement without access to a bathroom or running water, and no place to sleep.

Our agency has taken calls from people concerned about the response of Child Protective Services (CPS) when a child with a disability is involved. In one recent case a CPS worker indicated to us they did not think it was worth conducting a forensic interview of a child with communication difficulties because they did not believe they could get enough information.

Unfortunately national studies verify significant differences in the responses of CPS case workers when the alleged victim of abuse has a disability. Children with disabilities are sometimes seen as contributing to their abuse; CPS workers were found to demonstrate more empathy with abusive parents of children with disabilities, particularly when the child had emotional or behavioral disabilities. Even when severe injuries, such as a concussion or broken bones were involved, the CPS workers in one study responded differently when the child victim had a disability.²

**Examples from Other States**

Some states have attempted to address this issue and others, like Wisconsin, are becoming aware of the problem that puts vulnerable children with disabilities at increased risk. Here are some examples:

• Pennsylvania has adopted model standards for multi-disciplinary teams that include specialists that can address the unique needs of a child with a disability during an investigation.

• Idaho statute outlines that multi-disciplinary investigative teams should include someone knowledgeable about adaptive equipment supportive services for persons with disabilities.

• Connecticut standards indicate that “every effort should be made to consult with appropriate specialists regarding children with disabilities and include appropriate specialists in the interview.”

• California requires that law enforcement regularly complete standards training to include working with people with disabilities and providing necessary accommodations.


Illinois protocol requires that law enforcement determine needed accommodations or resources for victims with disabilities to ensure the victim has equal access to the investigative process.

AB 429: Referring cases of child abuse and neglect to law enforcement

This bill has the potential to address concerns about egregious cases that frequently slip through the cracks or when multiple contacts should have led to criminal charges much sooner. However, while we support increased scrutiny of certain cases, particularly those involving children with disabilities, we are concerned that the involvement of more people in an investigation will not necessarily improve the investigative process. We suggest either recognition of this issue within the bill or the introduction of separate legislation to ensure abuse or neglect of vulnerable children with disabilities is adequately addressed.

Background on Parents with Disabilities in the Child Welfare System:

Historically, individuals with disabilities have faced severe societal biases regarding their fitness to serve as parents. For many years the chief governmental response to the challenges of parenting with a mental disability was compulsory sterilization. While societal attitudes have evolved, the stereotypes about the ability of persons with mental disabilities to parent persist. Although recent research has found that parents with disabilities are not more likely to maltreat their children than parents without disabilities, studies demonstrate high rates of termination of the rights of parents with disabilities.

Parents with disabilities are much more likely to be adversely affected by the child welfare and legal systems. The National Council on Disability, an independent federal agency found that the removal rates for parents experiencing mental illness disproportionately high at 70 to 80%. Additionally, parents who are blind, deaf or have physical disabilities were also reported to have faced significant discrimination in the Child Protective services system. According to the Council, parents with disabilities are “the only distinct community of Americans who must struggle to retain custody of their children,” citing a study finding that parents with a disability label in their school records were more than three times as likely to have their parental rights terminated than parents without such a label. The structure of state laws and the failure of the state child welfare system and disability service system to offer these parents the help they need, all contribute to the high rate of loss. There is a pressing need for more preventative services and supports to keep a family intact, not send a disabled parent to jail and destroy the family. At least one study has found that children and youth experiencing similar levels of neglect or abuse who were raised in foster care did not do as well in life as those raised by their biological parents with supports. It only follows that children with disabilities could be even more adversely impacted than the population at large if removed from their families. Of course there will always be situations where involvement of the child welfare and criminal justice systems is necessary to keep a child safe. However, it is critical to examine


5 Id., at 92-93., 114, 122-126


each situation individually and consider whether the child can be safe at home *with appropriate services to the family.* This falls within the area of expertise of human services, not law enforcement.

**Protecting the Rights of Both Children and Parents with Disabilities:**

Several important improvements have been made to AB 431 in the substitute amendment and we thank you for making these changes. However, we continue to be concerned that AB 431 casts an overly broad net for child abuse and neglect investigations that will add criminalization to the stigma experienced by parents with disabilities. We are afraid that the enhanced criminal penalties associated with these bills may have a disproportionate and discriminatory impact on parents with disabilities *unless* the committee takes very specific precautions to ensure that the investigatory process treats parents with disabilities equally to those without.

Children caught up in the Child Protective Service system also have a right to be treated fairly and in a nondiscriminatory manner during the investigatory process. As we have just demonstrated, too often their voice can be muted or ignored due to failures of the system to properly recognize and accommodate their needs during an abuse or neglect investigation.

Children with disabilities may have hearing loss, mental health issues or have experienced trauma, social delays due to autism, delayed processing or expression of information; some may not speak, but instead use communication systems, symbols or technology like an iPad to communicate. In each of these cases a child would be entitled to an accommodation that may allow them to explain what happened to them.

Section 504 of the Rehabilitation Act of 1973 (Section 504)\(^8\) and Title II of the Americans with Disabilities Act of 1990 (ADA)\(^9\) protect both parents and children with disabilities from unlawful discrimination in the administration of child welfare programs, activities and services. This protection can be completely complementary to the fundamental goal of the child welfare system to keep children safe and in caring homes. Abuse and neglect investigation protocols that specifically call on the investigatory team to determine whether either the suspected abuser or child has a disability that would impact their ability to participate in the investigatory process can lead to better results, both in proving cases where abuse or neglect is occurring and differentiating those where providing services instead of criminalization to parents with disabilities can help keep the family together by providing that parent with supports.

Both Section 504 and Title II of the ADA simply require governmental agencies to develop policies, procedures and protocols that ensure that people with disabilities are able to equally participate in the services, programs or activities of a public entity. This includes the child protective investigatory process.

We believe that the current process does, in fact, discriminate against both the child and parent with disabilities by failing to recognize and accommodate the communication and other needs of people with disabilities. This proposed legislation does nothing to remedy this. We are asking this committee to consider adding a requirement that the state’s child protective services agency develop model policies and procedure to deal with situations where either the child or parent has a disability that requires an accommodation. These model policies must be replicated and enforced at the county level to be effective.

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\(^8\) 29 U.S.C. §794

This does not mean a lowering of the standards for people with disabilities, rather, in keeping with the requirement to treat all people fairly, the process must be able of being adapted to accommodate to meet the needs of the child or parent to ensure an equal opportunity to effectively tell their story, whatever that may be, to investigators. To achieve this, some states are adopting model legislation and policies that address these concerns and we can supply this committee with specific language and policies from which Wisconsin can shape a solution to this problem.

**Concerns Related to Specific Disability Types in AB 431:**

DRW continues to be concerned about the singling out of certain children with specific disabilities for this protection. Only children under six years old with physical, cognitive or developmental disabilities are covered by this added protection. Children with emotional behavioral disorders or mental illness are completely shut out, despite the fact that studies show they are particularly susceptible to abuse and neglect. This raises clear constitutional questions of equal protection when children are categorized into two classes of disabilities, one that gets protection and one does not. If the language of this section is amended to “knew or should have known” inclusion of all disabilities is much simpler. **We request that this reference be removed or clarified.**

**Parents and Families Need Access to Appropriate Supports:**

One final point. In our experience, overwhelmed parents of children with disabilities can languish on waiting lists and without access to or knowledge of appropriate supports, leaving their children at risk. Parents are often denied necessary supports and attempt to address issues in the best way they are able.

DRW recently supported a family who had been attempting for years to get the county to approve a backyard fence (an allowable Medicaid expense) for their child with a disability who was a “runner” and a danger to himself if left outside alone. Even if no harm had come to the child, such a case may have been deemed as not providing “appropriate supervision” on the part of the parent, even though they had asked repeatedly for support.

**Our Recommendations:**

For the above reasons we ask the Committee to consider the following:

- The Department of Children and Families be required to develop model policies regarding abuse and neglect investigation procedures that can effectively accommodate both adults and children with disabilities. These model policies should be shared with local investigatory agencies and they should be required to submit specific policies that comport with the model for state approval.

- When a child with a disability is referred to the child welfare system through an allegation of neglect, or when the suspected actor is a person with a disability; prior to assessment the initial referral should trigger an automatic review of applications and eligibility for community supports. The system should require that a family of a child with a disability be referred to available crisis supports or moved to the top of a waiting list for supports related to the child’s disability.

- DCF and local CPS and law enforcement agencies should be required to collect and publicly report specific data when child abuse or neglect investigations involve a child with a disability.

Thank you for the opportunity to provide input on these bills. We welcome the opportunity to work with committee members to seek improvements to ensure the protection of children with disabilities and the rights of parents where necessary.