



## 2013 SENATE BILL 529

January 30, 2014 – Introduced by Senators OLSEN, SCHULTZ and LASSA, cosponsored by Representatives KRUG, SKOWRONSKI, MURPHY, KAHL, BIES, BALLWEG, A. OTT, KESTELL and THIESFELDT. Referred to Committee on Health and Human Services.

1     **AN ACT** *to renumber* 146.0255 (1) (a); *to renumber and amend* 146.0255 (2);  
2             *to amend* 46.238, 146.0255 (title), 146.0255 (3) (intro.) and 146.0255 (3) (b);  
3             and *to create* 146.0255 (1) (ag), 146.0255 (1) (c), 146.0255 (2) (a) (title),  
4             146.0255 (2) (b) and 146.0257 of the statutes; **relating to:** evaluation of infants  
5             for fetal alcohol spectrum disorder and referral of infants who have that  
6             condition for services and treatment.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a hospital employee who provides health care, social worker, or intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court intake worker) suspects that an infant has controlled substances in the infant's bodily fluids because of the use of those substances by the infant's mother while she was pregnant with the infant, the hospital employee, social worker, or juvenile court intake worker may refer the infant to a physician for testing of the infant's bodily fluids for those substances. If the physician determines that there is a serious risk that there are controlled substances in the infant's bodily fluids because of the use of those substances by the mother and that the health of the infant may be adversely affected by those substances, the physician may test the infant to ascertain whether the infant has those substances in the infant's bodily fluids. If the test indicates that the infant does have controlled substances in the infant's bodily fluids, the physician must report that condition to the agency that is responsible for

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conducting child abuse and neglect investigations under the Children's Code and that agency must offer services and treatment for the infant and mother.

This bill: 1) requires a hospital employee who provides health care, a social worker, or a juvenile court intake worker who suspects that an infant has fetal alcohol spectrum disorder to refer the infant to a physician for an evaluation to diagnose whether the infant has that disorder; 2) requires a physician who determines that there is a serious risk that an infant has fetal alcohol spectrum disorder to evaluate the infant to diagnose whether the infant has that disorder; 3) requires a physician who diagnoses that an infant has fetal alcohol spectrum disorder to report that diagnosis to the agency responsible for conducting child abuse and neglect investigations; and 4) requires that agency to offer services and treatment for the infant and the infant's mother.

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

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

1           **SECTION 1.** 46.238 of the statutes is amended to read:

2           **46.238 Infants and unborn children whose mothers abuse controlled**  
3 **substances ~~or~~, controlled substance analogs, or alcohol.** If an agency, as  
4 defined in s. 48.981 (1) (ag), receives a report under s. 146.0255 (2) (a) 3. or (b) 3. or  
5 146.0257 (2) and that agency is a county department under s. 46.22 or 46.23 or a  
6 licensed child welfare agency under contract with that county department, the  
7 agency shall offer to provide appropriate services and treatment to the ~~child and the~~  
8 ~~child's~~ infant and the infant's mother or to the unborn child, as defined in s. 48.02  
9 (19), and the expectant mother of the unborn child or the agency shall make  
10 arrangements for the provision of appropriate services and treatment. If an agency  
11 receives a report under s. 146.0255 (2) (a) 3. or (b) 3. or 146.0257 (2) and that agency  
12 is the department or a licensed child welfare agency under contract with the  
13 department, the agency shall refer the report to the county department under s.

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1 51.42 or 51.437 and that county department shall offer to provide, or make  
2 arrangements for the provision of, those services and that treatment.

3 **SECTION 2.** 146.0255 (title) of the statutes is amended to read:

4 **146.0255 (title) Testing infants and expectant mothers for controlled**  
5 **substances or controlled substance analogs.**

6 **SECTION 3.** 146.0255 (1) (a) of the statutes is renumbered 146.0255 (1) (ar).

7 **SECTION 4.** 146.0255 (1) (ag) of the statutes is created to read:

8 146.0255 (1) (ag) “Agency” has the meaning given in s. 48.981 (1) (ag).

9 **SECTION 5.** 146.0255 (1) (c) of the statutes is created to read:

10 146.0255 (1) (c) “Unborn child” has the meaning given in s. 48.02 (19).

11 **SECTION 6.** 146.0255 (2) of the statutes is renumbered 146.0255 (2) (a) 1. and  
12 amended to read:

13 146.0255 (2) (a) 1. ~~Any~~ If a hospital employee who provides health care, social  
14 worker, or intake worker under ch. 48 ~~may refer an infant or an expectant mother~~  
15 ~~of an unborn child, as defined in s. 48.02 (19), to a physician for testing of the bodily~~  
16 ~~fluids of the infant or expectant mother for controlled substances or controlled~~  
17 ~~substance analogs if the hospital employee who provides health care, social worker,~~  
18 ~~or intake worker suspects that the an infant or expectant mother has controlled~~  
19 ~~substances or controlled substance analogs in the infant’s bodily fluids of the infant~~  
20 ~~or expectant mother because of the use of controlled substances or controlled~~  
21 ~~substance analogs by the mother while she was pregnant with the infant or by the~~  
22 ~~expectant mother while she is pregnant with the unborn child. The physician may~~  
23 ~~test the infant or expectant mother to ascertain whether or not the infant or~~  
24 ~~expectant mother has controlled substances or controlled substance analogs in the~~  
25 ~~bodily fluids of the infant or expectant mother, if the, the hospital employee, social~~

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1 worker, or intake worker may refer the infant to a physician for testing of the bodily  
2 fluids of the infant for controlled substances or controlled substance analogs.

3 2. If a physician determines that there is a serious risk that there are controlled  
4 substances or controlled substance analogs in the bodily fluids of the ~~an~~ infant ~~or~~  
5 ~~expectant mother~~ because of the use of controlled substances or controlled substance  
6 analog by the mother while she was pregnant with the infant ~~or by the expectant~~  
7 ~~mother while she is pregnant with the unborn child~~ and that the health of the infant,  
8 ~~the unborn child or the child when born~~ may be adversely affected by the controlled  
9 substances or controlled substance analogs, the physician may test the infant to  
10 ascertain whether or not the infant has controlled substances or controlled substance  
11 analog in the infant's bodily fluids.

12 3. If the results of the ~~a~~ test under subd. 2. indicate that the infant does have  
13 controlled substances or controlled substance analogs in the infant's bodily fluids,  
14 the physician shall report the occurrence of that condition in the infant to the agency,  
15 as defined in s. 48.981 (1) (ag), that is responsible for conducting child abuse and  
16 neglect investigations under s. 48.981, and that agency shall offer to provide, or  
17 arrange or refer for the provision of, services and treatment for the ~~child and the~~  
18 ~~child's mother~~ infant and the infant's mother as provided under s. 46.238.

19 (b) 3. If the results of ~~the a~~ test under subd. 2. test indicate that the expectant  
20 mother does have controlled substances or controlled substance analogs in the  
21 expectant mother's bodily fluids, the physician may report the occurrence of that  
22 condition in the expectant mother to the agency, ~~as defined in s. 48.981 (1) (ag), that~~  
23 is responsible for conducting unborn child abuse investigations under s. 48.981, and  
24 that agency shall offer to provide, or arrange or refer for the provision of, services and  
25 treatment for the unborn child and expectant mother as provided under s. 46.238.

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1 Under this subsection paragraph, no physician may test an expectant mother  
2 without first receiving her informed consent to the testing.

3 **SECTION 7.** 146.0255 (2) (a) (title) of the statutes is created to read:

4 146.0255 (2) (a) (title) *Testing of infants.*

5 **SECTION 8.** 146.0255 (2) (b) of the statutes is created to read:

6 146.0255 (2) (b) *Testing of expectant mothers.* 1. If a hospital employee who  
7 provides health care, social worker, or intake worker under ch. 48 suspects that an  
8 expectant mother has controlled substances or controlled substance analogs in her  
9 bodily fluids because of the use of controlled substances or controlled substance  
10 analogs, the hospital employee, social worker, or intake worker may refer the  
11 expectant mother to a physician for testing of the bodily fluids of the expectant  
12 mother for controlled substances or controlled substance analogs.

13 2. If a physician determines that there is a serious risk that there are controlled  
14 substances or controlled substance analogs in the bodily fluids of an expectant  
15 mother because of the use of controlled substances or controlled substance analogs  
16 by the expectant mother and that the health of the unborn child or the child when  
17 born may be adversely affected by the controlled substances or controlled substance  
18 analogs, the physician may test the expectant mother to ascertain whether or not the  
19 expectant mother has controlled substances or controlled substance analogs in her  
20 bodily fluids.

21 **SECTION 9.** 146.0255 (3) (intro.) of the statutes is amended to read:

22 146.0255 (3) TEST RESULTS. (intro.) ~~The~~ A physician who performs a test under  
23 sub. (2) (a) 2. or (b) 2. shall provide the infant's parents or guardian or the expectant  
24 mother with all of the following information:

25 **SECTION 10.** 146.0255 (3) (b) of the statutes is amended to read:

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1           146.0255 (3) (b) A statement of explanation that the test results of an infant  
2 must, and that the test results of an expectant mother may, be disclosed to an agency  
3 under sub. (2) (a) 3. or (b) 3. if the test results are positive.

4           **SECTION 11.** 146.0257 of the statutes is created to read:

5           **146.0257 Evaluation of infants for fetal alcohol spectrum disorder. (1)**

6           DEFINITION. In this section, “agency” has the meaning given in s. 48.981 (1) (ag).

7           (2) EVALUATION. If a hospital employee who provides health care, social worker,  
8 or intake worker under ch. 48 suspects that an infant has fetal alcohol spectrum  
9 disorder, the hospital employee, social worker, or intake worker shall refer the infant  
10 to a physician for an evaluation to diagnose whether the infant has that disorder.  
11 If a physician determines that there is a serious risk that an infant has fetal alcohol  
12 spectrum disorder, the physician shall evaluate the infant to diagnose whether the  
13 infant has that disorder. If a physician diagnoses that an infant has fetal alcohol  
14 spectrum disorder, the physician shall report that diagnosis to the agency that is  
15 responsible for conducting child abuse and neglect investigations under s. 48.981,  
16 and that that agency shall offer to provide, or arrange or refer for the provision of,  
17 services and treatment for the infant and the infant’s mother as provided under s.  
18 46.238.

19           (3) DIAGNOSIS. A physician who performs an evaluation under sub. (2) shall  
20 provide the infant’s parents or guardian with all of the following information:

21           (a) An explanation concerning the evaluation that was performed, the date of  
22 that evaluation, and the diagnosis resulting from that evaluation.

23           (b) An explanation that the results of the evaluation must be disclosed to an  
24 agency under sub. (2) if the evaluation indicates a diagnosis of fetal alcohol spectrum  
25 disorder.

