

Open Meetings Law Informational Session

**for the Governor's Council on Domestic Abuse,
Committees and Workgroups**

September 26, 2024

Taylor Gilbertson, Attorney, DCF

Rachel Nili, Attorney, DCF

Stacey Cicero, Domestic Abuse Program Coordinator, DCF



Wisconsin Department of Children and Families

Before We Begin:

- This presentation does not constitute legal advice.
- Please hold questions until the end of the presentation.
- Wisconsin Open Meetings Law Compliance Guide provides detailed guidance:
 - https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/OML%20Guide_2024.pdf



Why an Open Meetings Law?

- Open meetings allow for government transparency which furthers democracy.
 - “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that **the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.**”

Wis. Stat. § 19.81(1)



Big Picture

- Wis. Stat. § 19.81
- Applies to all meetings of governmental bodies and requires:
 - Public notice prior to meeting
 - Publicly held meetings
 - Reasonably accessible and open to all members of the public.
- Few exceptions that authorize a closed session.
- Broadly interpreted to promote the policy of openness.



Governmental Bodies

- Definition:
 - State or local agency, board, committee, council, department or public body corporate created by constitution, statute, ordinance, rule or order. Wis. Stat. § 19.82(1).
- Includes purely advisory bodies.
- “Order” has been interpreted broadly and includes a directive, either formal or informal.
- Governor’s Council on Domestic Abuse as well as its Committees and Workgroups are governmental bodies.

For more information, see **Open Meetings Compliance Guide** pp. 1-8



Meeting

- Definition

- Convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power, or duties delegated to or vested in the body.
- If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purposes named above.
- Does not include any social or chance gathering or conference “which is not intended to avoid this subchapter.”

Wis. Stat. § 19.82(2)

For more information, see

Open Meetings Compliance Guide pp. 9-13



General Requirements



Wisconsin Department of Children and Families

General Requirements

- Public Notice Wis. Stat. § 19.84
 - Must include the time, date, place and subject matter of the meeting.
 - Subject is the general topic of items to be discussed.
 - “Old business”, “new business”, “miscellaneous business”, “agenda revisions”, etc. do not identify subjects and do not comply with open meetings laws.
 - Comment made by the members of a governmental body should not be lumped together as “member comments” or similar titles, members and officials have a higher standard of specificity than the general public.
 - No requirement to notice a vote if the general subject is noticed.
 - Contemplated closed sessions’ subject matter must also be noticed. Wis. Stat. § 19.84(2).
 - Must be at least 24 hours in advance of the meeting (where for “good cause” notice is impossible or impracticable, and then as soon as possible and at least two hours in advance).
 - There are specific requirements as to where it is published.

For more information, see **Open Meetings Compliance Guide** pp. 14-19



Open Sessions: Accessibility and Participation

- The public has the right to attend and observe open session meetings.
- Must be held in place reasonably accessible to members of the public and open to all.
- A governmental body does not have to allow public comment or participation.
- However, in an open meeting there can be a public comment period.
 - Such a period must be included on the meeting notice.
- During a public comment period, a body:
 - may receive information from the public and
 - may discuss any subject raised by the public but
 - may not take formal action.

For more information, see **Open Meetings Compliance Guide** pp. 19-23



Open Sessions: Remote Meetings

- The Wisconsin Attorney General has advised that telephonic or virtual meetings are generally permissible under the law.
- The public must still have a way of joining/monitoring the meeting.
 - For virtual meetings, it is recommended to include a phone number on the notice that the public can call to request another means of access to the meeting if they are unable to join using the internet.

For more information, see **Open Meetings Compliance Guide** pp. 21-22



Open Sessions: Voting

- Generally, voting should take place in open sessions.
 - Unless otherwise specifically provided, no secret ballots may be used except for electing officers of the body.
- Any member may require a roll-call vote.



For more information, see **Open Meetings Compliance Guide** pp. 23-25



General Requirements



- Record Keeping Wis. Stat. § 19.88(3)
 - Governmental body must create and preserve a record of all motions and roll-call votes at its meetings.
 - Minutes are the most common way to meet this requirement.
 - Although the law does not prescribe a timeframe, best practice to record this at the meeting or as soon thereafter as practicable.
 - Meeting records are public records under the Public Records law.



For more information, see **Open Meetings Compliance Guide** pp. 23-25



Closed Sessions



Wisconsin Department of Children and Families

Closed Sessions Wis. Stat. § 19.85

- Notice of the meeting must contain the subject matter of closed sessions if it is contemplated at the time of the notice.
- Every meeting must begin in open session.
- A motion must be passed for a closed session. Vote must be recorded.
 - Chief presiding officer must announce and record in the open session:
 - Nature of the business to be discussed and,
 - Specific statutory exemption that authorized the closed session. These are listed in Wis. Stat. § 19.85 (1)

For more information, see **Open Meetings Compliance Guide** pp. 25-28



Closed Sessions: Scope and Attendance

- Limited scope
 - When a governmental body is in closed session, it must limit its discussion:
 - to the specific business for which the closed session was authorized and
 - may not take up any other matters.
- Attendance
 - A body has discretion to allow anyone to attend a closed session.
 - No duly elected or appointed member of a body may be excluded from any meeting of that body—whether closed or open.
 - A member also may not be excluded from a meeting of a subunit of the body, unless the body has a rule to the contrary.

For more information, see **Open Meetings Compliance Guide** pp. 25-28



Closed Sessions: Statutory Bases

- (a) **Deliberating about a case** that has been the subject of a judicial or quasi-judicial trial or hearing before the body.
- (b) Considering **dismissal, demotion, licensing or discipline of a public employee** or the investigation of charges against the employee.
- (c) Considering **employment, promotion, compensation, or performance evaluation data** of a public employee.
- (d) Considering specific applications of probation, extended supervision or parole, or **considering strategy for crime detection or prevention**.
- (e) Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting “other specified public business” whenever **competitive or bargaining reasons require a closed session**.
- (f) Considering **sensitive personal information** that would be likely to have a substantial adverse effect upon an individual’s reputation.
- (g) **Conferring with legal counsel** about strategy related to litigation.

For more information, see **Open Meetings Compliance Guide** pp. 26-30



Closed Sessions: Voting

- Wisconsin Supreme Court held that a body can vote in closed session, if the vote is integral to the authorized subject of the closed session.
 - *State ex rel. Cities Serv. Oil Co. v. Bd. of Appeals*, 21 Wis. 2d 516, 124 N.W.2d 809 (1963).
- The Wisconsin Court of Appeals indicated that a body should vote in open session unless a closed vote is expressly authorized.
 - *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 370 N.W.2d 271 (Ct. App. 1985).
- **Votes should be in open session unless it would compromise the purpose of the closed session.**

For more information, see **Open Meetings Compliance Guide** p. 31



Enforcement and Penalties



- Who can enforce the Open Meetings Law?
 - The Wisconsin Attorney General and local district attorneys.
 - Individuals can file a verified complaint with the district attorney.
- What are the penalties for violation of the Open Meetings Law?
 - A member of a governmental body who “knowingly” attends a meeting held in violation of the Open Meetings law can be subject to a forfeiture of between \$25 and \$300 for each violation.
 - A court may void any action taken at a meeting held in violation of the Open Meetings law if the court finds that the interest in enforcing the law outweighs any interest in maintaining the validity of the action.
- The Attorney General has express statutory authority to respond to requests for advice on the Open Meetings Law from any person.

For more information, see **Open Meetings Compliance Guide** pp. 31-34



Frequently Asked Questions



Wisconsin Department of Children and Families

Frequently Asked Questions

- Can e-mails among the members of a body be considered “a meeting”?
 - Yes, when there are e-mails among more than one half of the body discussing matters within the scope of the body, that is “a meeting”.
 - To prevent this:
 - Avoid group discussion about matters within the scope of the body outside of meetings.
 - Don’t “reply all” to group e-mails.
 - Don’t forward to full group.

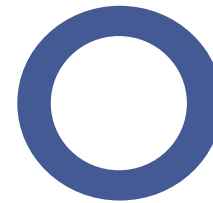
For more information, see **Open Meetings Compliance Guide** pp. 11-12



Frequently Asked Questions

- If a zoom link for a meeting doesn't work, can a new one be sent out at the beginning of the meeting?
 - Because a zoom link on a meeting notice provides the public with the access information, a meeting cannot be held on a new zoom link that is circulated at the beginning of a meeting to members because it would not be accessible to public members.

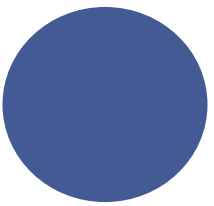
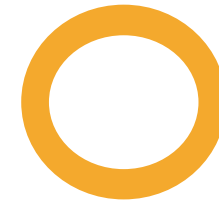
For more information, see **Open Meetings Compliance Guide** pp. 21-22



Frequently Asked Questions

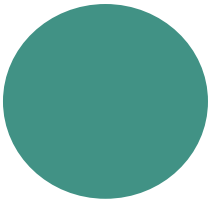
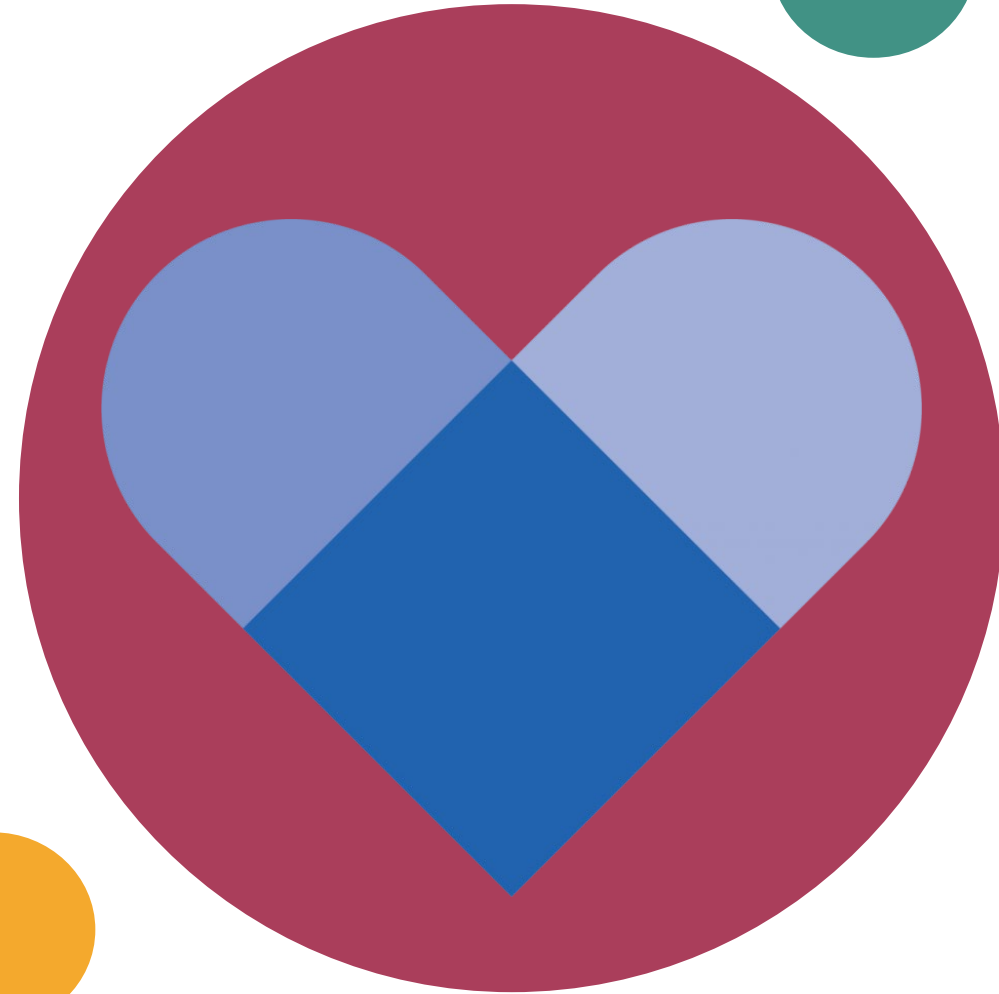
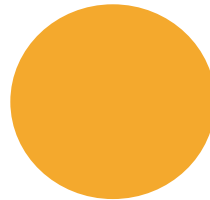
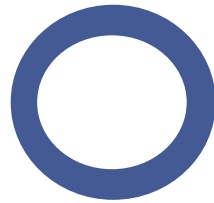
- What if survivors want to share their stories with members of the body outside of the public eye?
- The Open Meetings Law allows for closed sessions in a limited set of situations, as noted above, including when discussing **sensitive personal information** that would be likely to have a substantial adverse effect upon an individual's reputation.
- The closed session and subject matter of the closed session needs to be included on the meeting notice.
- To go into closed session, the body must follow the requirements of Wis. Stat. 19.85(1) (as discussed on previous slide).

For more information, see **Open Meetings Compliance Guide** pp. 25-31



Frequently Asked Questions

- What are some areas that are governed by a body's policies/bylaws and not the Open Meetings Law?
 - Election of chairs
 - Frequency of meetings
 - How meetings are conducted (outside of notice, openness, accessibility and record-keeping requirements)
 - Requirements for a quorum (current Council policies say it is a majority)
 - Whether to have a roll call of the public at meetings



Frequently Asked Questions

- What if a quorum of the members of a body are attending another meeting or conference (other than a “social or chance gathering”)?
 - There is a presumption in the Open Meetings Law that if more than one half of a governmental body is present, that the gathering is a “meeting” of that body.
 - BUT that presumption can be rebutted by the members demonstrating that they did not discuss any matter that is in the body’s realm of authority.
 - To avoid the presumption, the meeting could be noticed as an open meeting of the body.
 - A single notice can be used if:
 - It plainly indicates that a joint meeting will be held and gives the names of each of the bodies involved.
 - It is posted in a place where meeting notices are generally published and posted for each governmental body involved.

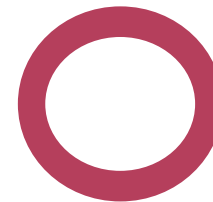
For more information, see **Open Meetings Compliance Guide** p. 13



Frequently Asked Questions

- Could the Open Meetings Law ever apply when there are fewer than one half of the members of a body present?
 - There are rare situations in which separate groups of members (less than half) meet in series, and tacitly or expressly agree to act uniformly in sufficient numbers to reach a quorum.
 - This is called a “walking quorum”, and it violates the Open Meetings Law.
 - If there is no agreement between members to act uniformly in order to reach a quorum, exchanges among separate groups of members may take place without violating the Open Meetings Law.

For more information, see **Open Meetings Compliance Guide** p. 13



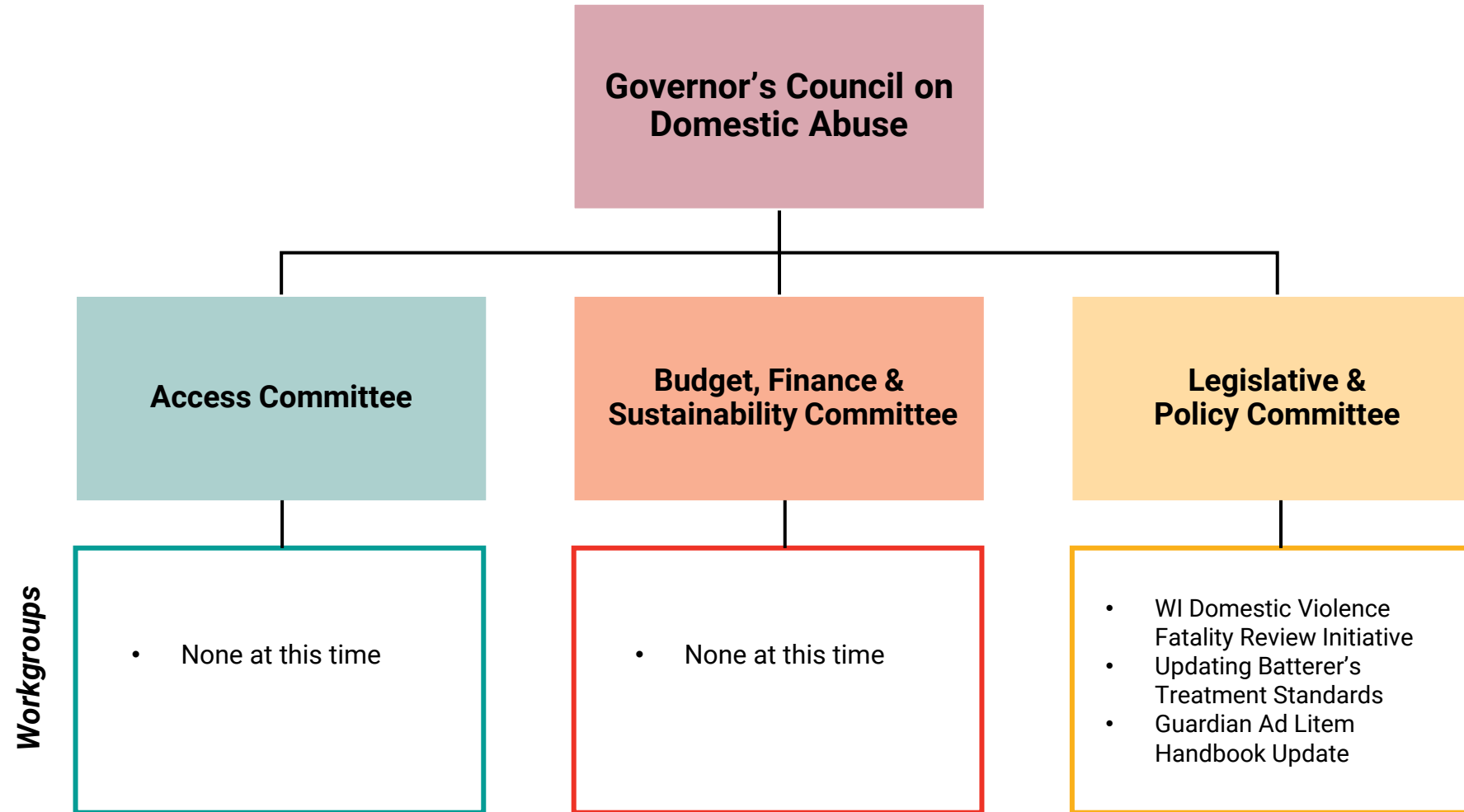
Governor's Council on Domestic Abuse

DCF Support for Committees and Workgroups

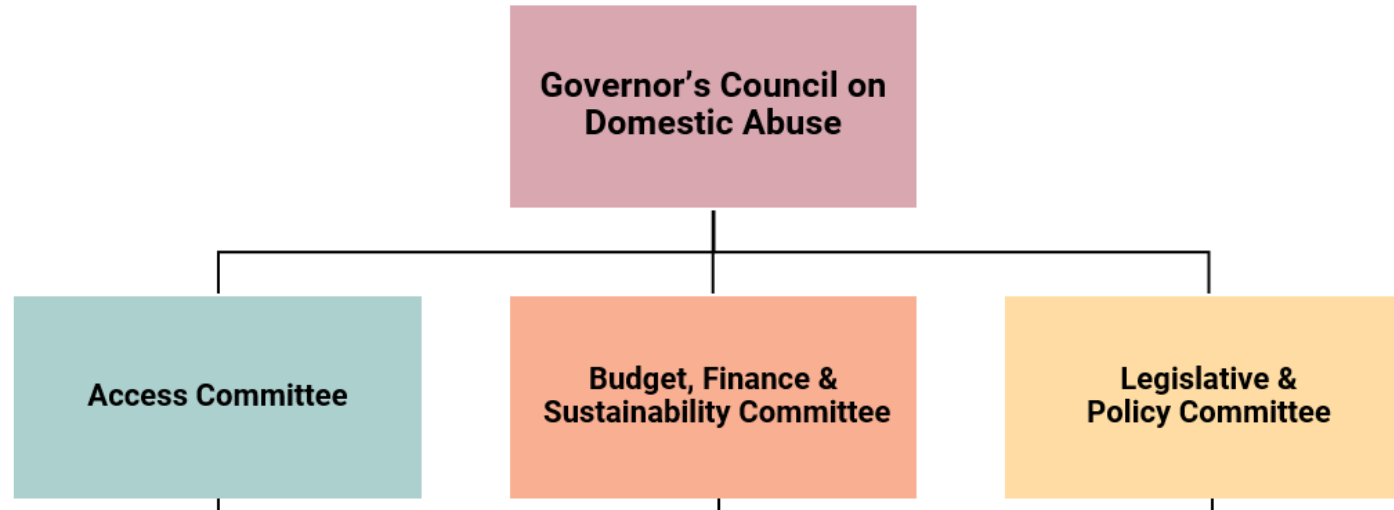
We are here to help!



Council Breakdown



Council Committees



Agendas

- DCF Staff will work with Committee Co-chairs to draft the agenda

Minutes

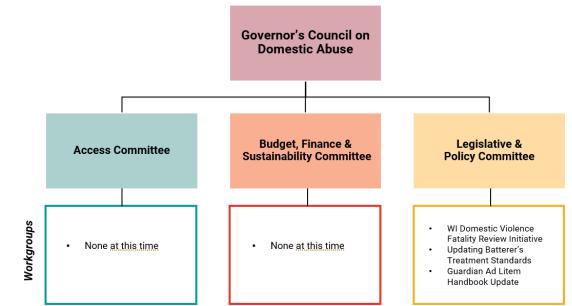
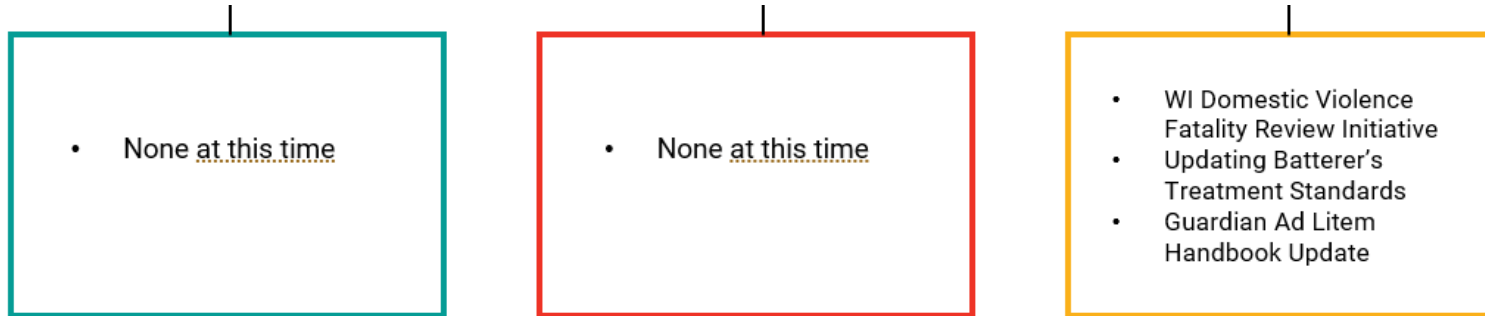
- DCF Staff will take minutes at the meeting and provide a draft to the Committee Co-chairs for review

DCF Staff will publicly notice all meetings & agendas



Committee Workgroups

Workgroups



Agendas & Minutes

- Templates provided by DCF in advance
- Agendas: if possible, please provide to DCF staff at least 10 days prior to meeting
- Minutes: if possible, please provide to DCF staff within 48 hours of completed meeting
- DCF staff will publicly notice all meetings and agendas



Questions on Agenda or Minutes?

Please reach out to the DCF Staff Stacey Cicero:

Stacey.Cicero@wisconsin.gov

Governor's Council webpage:

<https://dcf.wisconsin.gov/domesticabuse/council>



Resources

- Wisconsin Open Meetings Law Compliance Guide:
 - https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/OML%20Guide_2024.pdf

Office of Open Government

Wisconsin Department of Justice

P.O. Box 7857

Madison, WI 53707

Public Records/Open Meetings
(PROM) Help Line: (608) 267-2220

opengov@widoj.gov

