

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **06/23/99**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Assembly Republican Caucus 6-1452**

By/Representing: **Kratochwill**

This file may be shown to any legislator: **NO**

Drafter: **yacketa**

May Contact:

Alt. Drafters: **malaigm**

Subject: **Children - day care
Health - miscellaneous**

Extra Copies: **GMM, DAK**

Pre Topic:

ARC:.....Kratochwill - no #,

Topic:

Criminal background checks

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	yacketa 06/24/99	gilfokm 06/26/99	haugeca 06/26/99	_____	ismith 06/27/99		
	malaigm 06/25/99			_____			
	yacketa 06/26/99			_____			

FE Sent For:

<END>

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: 06/23/99

Received By: yacketa

Wanted: As time permits

Identical to LRB:

For: Assembly Republican Caucus 6-1452

By/Representing: Kratochwill

This file may be shown to any legislator: NO

Drafter: yacketa

May Contact:

Alt. Drafters: malaigm

Subject: Children - day care
Health - miscellaneous

Extra Copies: GMM, DAK

Pre Topic:

ARC:.....Kratochwill - no #,

Topic:

Criminal background checks

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	yacketa	1-6-26 KMC	CH 6-7-96	CH 6-26 JP			

FE Sent For:

<END>

HEALTH AND FAMILY SERVICES

Caregiver Background Checks

Motion:

Move to modify current requirements for caregiver backgrounds checks in health care and child care facilities as follows.

- a. **Exclude EMTs.** Exempt emergency medical technicians from the required background check provisions of Chapters 48 and 50 of the state statutes.
- b. **Include BOALTC Ombudsman Staff.** Specify that the background check requirements would apply to the ombudsman staff at the Board of Aging and Long-Term Care who have direct, regular contact with clients.
- c. **Include Temporary Employment Agencies.** Expand the type of entities that are subject to the background check requirements to include temporary employment agencies providing the services of caregivers to covered health care and child care entities, and specify that the covered employes of these temporary employment agencies would include any employes who have direct, regular contact with clients.
- d. **Include Implied Contractors.** Expand the requirements for performing background checks to include implied contractors, as well as contractors. An implied contractor is someone who provides services on a regular basis, but a formal contract has not been executed and compensation may be in a form other than monetary compensation such as an exchange of services.
- e. **Direct, Regular Contact Necessary to Require Checks.** Require a background check for those employes, contractors, and non-client residents who have "direct, regular contact with clients," rather than those with access to the client. Define "direct" contact as face to face contact, and define "contact" as the physical proximity to a client that affords a person the opportunity to commit abuse or neglect of a client, or misappropriation of a client's property.
- f. **Specify All Crimes Prohibiting Employment in Statute.** Delete the current provision that requires the Department to define by rule the crimes that would be considered "serious crimes," and instead specify in statute all the crimes and other findings that would prohibit employment, licensing, or residency without a finding of rehabilitation. The following crimes and findings would be listed in statute:

**Crimes and Findings That Would
Prohibit Employment (Unless Rehabilitated)
All Entities Covered By Chapters 50 & 48**

<u>Statutory Section</u>	<u>Crime or Finding</u>
1. 940.01	1 st degree intentional homicide
2. 940.02	1 st degree reckless homicide
3. 940.03	Felony murder
4. 940.05	2 nd degree intentional homicide
5. 940.12	Assisting suicide
6. 940.19 (2) - (6)	Battery (felony)
7. 940.22 (2)	Sexual exploitation by therapist – sexual contact
8. 940.22 (3)	Sexual exploitation by therapist – duty to report
9. 940.225 (1)	1 st degree sexual assault
10. 940.225 (2)	2 nd degree sexual assault
11. 940.225 (3)	3 rd degree sexual assault
12. 940.285 (2) (b) 1. Or 2.	Abuse of vulnerable adults – (felony)
13. 940.285 (2) (b) 3., 4., or 5.	Abuse of vulnerable adults (felony or misdemeanor)
14. 940.29	Abuse of residents of a penal facility
15. 940.295	Abuse or neglect of patients and residents (felony or misdemeanor)
16. 948.01 (1)	1 st degree sexual assault of a child
17. 948.025	Repeated acts of sexual assault of same child
18. 948.03 (2) (a)	Physical abuse of a child—intentional—cause great bodily harm
19.	Substantiated reports of abuse or neglect of a client or of misappropriation of a clients property based on information maintained by DHFS.
20.	Determinations made under s. 48.981 (3) (c) that the person has abused or neglected a child.

**Crimes That Would Prohibit Employment (Unless Rehabilitated)
Applying Only to Entities Serving Minors**

1. 948.02 (2)	2 nd degree sexual assault of a child
2. 948.02 (3m)	Sexual assault of a child – Penalty enhancement; sexual assault by certain persons
3. 948.03 92) (b) or (c)	Physical abuse of a child - intentional – cause bodily harm
4. 948.12	Possession of child pornography
5. 948.13	Child sex offender working with children
6. 948.21 (1)	Neglect of a child – resulting in death (felony)
7. 948.05	Sexual exploitation of a child
8. 948.055	Causing a child to view or listen to sexual activity
9. 948.06	Incest with a child
10. 948.07	Child enticement
11. 948.08	Soliciting a child for prostitution
12. 948.11 (2) (a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony).
13. 948.30	Abduction of another's child; constructive custody

g. **Eliminate Permanent Bar.** Provide individuals the opportunity to show rehabilitation for all crimes by eliminating the current provisions that permanently bar employment, licensing, or residency for certain crimes, except if the permanent bar was required by federal law.

h. **Authority for Tribal Rehabilitation Reviews.** Authorize tribes to conduct the required rehabilitation reviews for entities located on reservations, ~~and operated or contracted by native American tribes, tribal member or tribal corporations.~~ Specify that the tribal rehabilitation review plan must be reviewed and approved by the Department. Specify that rehabilitation waivers granted by tribes shall be transferable only to other tribes that choose to accept the waiver approval.

The tribe must submit a copy of its rehabilitation review plan to DHFS, and within 90 days after receipt of the plan, DHFS must approve or disapprove the plan in writing; otherwise, the plan is deemed approved. Any disapproval must include specific reasons and a finding the plan is not rationally related to the protection of clients. If a plan is disapproved, the tribe has 30 days in which to request that the Secretary of Health and Family Services or his or her designee review the disapproval. The review must be conducted within 30 days. This review decision is final and is not subject to review under chapter 227 of the statutes.

The plan submitted by the tribe to DHFS must include all of the following: (a) the criteria to be used to determine if a person has been rehabilitated; (b) the title of the person or body designated by the tribe with whom a request for review must be filed and the title of the person or body designated by the tribe to conduct the rehabilitation review and determine if the person has been rehabilitated; (d) how the tribe will submit information to DHFS so that DHFS may submit the required annual report to the Legislature about the rehabilitation review program; (e) a copy of the form used to request a review and a copy of the form on which the written decision is made regarding whether a person has been rehabilitated;

i. **Eliminate Category of Crimes with Lesser Sanctions.** Delete the requirement that the Department specify by rule the types of misconduct for which intermediate sanctions would be allowed.

j. **Allow Third Party Retention of Records.** Allow covered health care and child care entities to maintain background check information on file or, pursuant to a contract with a school, temporary agency, corporate parent or affiliate, or third party vendor with whom the entity contracts to conduct and maintain the background checks, to have it readily available for inspection by authorized persons.

k. **When "Look Behind" Is Required.** Require DHFS, the county, school board, or provider, as is appropriate, to obtain the final disposition of any serious offense whose disposition is incomplete or unclear on the DOJ criminal history report and to take reasonable steps to contact the appropriate county Clerk of Courts for a judgment of conviction and criminal complaint relating to any crime that is disclosed on a background information disclosure form but that does not appear on the DOJ criminal history report. When a covered employee, contractor, non-client resident or licensee has been convicted of disorderly conduct, battery,

cf. 175.35 (2g) (c) 4. c.

947.01

940.19, 940.195
or 940.20

947.013

946.30

942.08

harassment, reckless endangerment, or invasion of privacy within five years of seeking employment, a contract, non-client residency, or licensure, require DHFS, the county, school board, or employer, as is appropriate, to take reasonable steps to contact the appropriate county Clerk of Courts for a judgment of conviction and criminal complaint.

l. Exclude Pending Criminal Charges as a Basis to Prohibit Employment. Exclude pending criminal charges as a basis to prohibit employment, contract, licensure or residency under Chapters 48 and 50 of the state statutes.

NOT appropriate
m. Authorize Use of NCIC Checks. Authorize DHFS, counties, school boards and providers, as is appropriate, to use at their discretion the National Crime Information Center (NCIC) for conducting either required out-of-state background checks or out-of-state checks when DHFS, county department, school board, or provider determines that the person's employment, licensing, or state court records provide a reasonable basis for further investigation. Specify that DHFS, a county department, a school board, and a provider can require the person whose background is being checked to be photographed and fingerprinted on two fingerprint cards, each bearing a complete set of the person's fingerprints. Authorize the Department of Justice to submit the fingerprint cards to the Federal Bureau of Investigation for the purposes of verifying the identity of the person fingerprinted and obtaining the person's criminal arrest and conviction records.

n. Allow Checks in Other United States Jurisdictions. Specify that out-of-state background checks include other United States jurisdictions other than "states" in order to provide for checks with federal, military, and tribal courts.

o. Study by DOC and UW. Require the Department of Corrections, in conjunction with the University of Wisconsin, to prepare a report on the correlation between prior convictions and the propensity to commit future acts of abuse, neglect, or misappropriation.

p. Delay Effective Date for Existing Employees. Specify that the effective date of the background check provisions for persons hired before October 1, 1998, or for persons hired after October 1, 1998, but before February 1, 2000, who incur a serious offense after their date of hire shall be February 1, 2000, rather than October 1, 1999, as required under current law.

Note:

1997 Wisconsin Act 27 expanded required background checks for child care and health care providers for the licensing of the providers, hiring of their employees or contractors and the residency of non-clients in their facilities. These expanded requirements became effective October 1, 1998, for new hires, new licensees and new non-client residents, and will apply to previous licensees, employees, and non-client residents beginning October 1, 1999.

Act 27 requires the Department of Health and Family Services (DHFS) to perform the required background checks on the child care and health providers that DHFS licenses or regulates, while the providers, in turn, must perform the checks on their employees. DHFS is also responsible for performing the background checks on the non-client residents in the facilities regulated by DHFS. The background check must include checks of the Department of Justice criminal history database, the DHFS abuse registry and licensing databases, and the Department of Regulation and Licensing databases of professional licenses. An integrated system has been developed to perform these checks in an automated procedure; however, if a "hit" is found on the DOJ criminal database, administrative rules may require a "look behind" to investigate the facts and circumstances of the conviction.

Act 27 requires that a person who is found to have an abuse or neglect finding or a conviction for a "serious crime" be denied licensure, employment or residency. Individuals who are subject to these sanctions can apply to DHFS for waivers of the sanctions upon proof of rehabilitation. The statutes specify convictions for five offenses for which rehabilitation cannot be sought and the Department by rule can establish additional convictions for which an individual cannot demonstrate rehabilitation. For some less serious crimes, DHFS and providers have discretion in hiring the employee without the need of a formal rehabilitation review.

The motion would make a number of changes that would provide DHFS additional flexibility in applying the background check provisions and modify the applicability of these provisions. Highlights of the more important changes are:

- a. Background checks would be required for employees, contractors and non-client residents who have "direct, regular contact with clients," rather than for those with "access to clients."
- b. The provision that would provide that certain crimes would permanently bar a person from employment, licensure, contract or residency would be eliminated, except in cases where federal laws or rules require it. A person would still have to seek and pass a rehabilitation review to obtain employment, licensure, contract or residency.
- c. All crimes and findings that would prohibit employment, contract, licensure or residency without seeking and passing a rehabilitation review would be specified in statute, rather than DHFS rule. There would be fewer crimes that would require an individual to seek a rehabilitation review than the number of crimes listed in current rules.
- d. Pending charges would be removed as a basis for prohibiting employment, contract, licensure or residency.
- e. The number of situations when a "look behind" was required for a crime would be limited to the following situations: (1) the criminal history report from DOJ does not indicate the disposition of a case; (2) a crime self-reported on the required background information disclosure form that is not on the criminal history report from DOJ; (3) any conviction for disorderly conduct, battery, harassment, reckless endangerment or invasion of privacy within five

years. A "look behind" involves a reasonable effort to contact the appropriate county Clerk of Courts for the judgement of conviction and criminal complaint.

f. The motion would delay the date by which all existing employes, contractors, providers, and non-client residents would have to have a completed check completed to February 1, 2000, from October 1, 1999.

g. Finally, the motion would exclude emergency medical technicians (EMTs) from the background check provisions.

Background Check Reform

June 37, 1999

50.065 Criminal history and patient abuse record search.

(1) In this section:

(am) "Certificate of approval" means a certificate of approval issued under s. 50.35.

(b) "Client" means a person who receives direct care or treatment services from an entity.

CR; 50.065(1)(bg) k any of the following:
1. (bg) "Caregiver" means:

a. 1. A person who is or is expected to be an employe or contractor of an entity and who has or is expected to have direct, regular contact with clients of the entity, and who is not licensed, certified or registered by the department under sub. (1)(bg)2; or

b. 2. A person who has or is actively seeking a license, certification, registration, or certificate of approval to operate an entity from the department, provided such person has or is expected to have direct, regular contact with clients of the entity.

3. Clerical, administrative, maintenance, dietary, and other support workers who do not have direct, regular contact with clients of the entity are not caregivers.

4. For purposes of this definition, "direct contact" means face-to-face contact or physical proximity that affords a person the opportunity to commit abuse of neglect of a client or misappropriation of a client's property.

(bm) "Contractor" means, with respect to an entity, a person who provides services to such entity under an express or implied contract or sub-contract, or an agent of such person. A person with admitting privileges at an entity shall be deemed a contractor of that entity for purposes of this definition.

Am; 50.065(1)(c)
(c) "Entity" means a facility, organization or service that is licensed or certified by or registered with the department to provide direct care or treatment services to clients. "Entity" includes a hospital, a personal care worker agency, and a supportive home care service agency, any agency providing to entities the services of caregivers, or any other agency which contracts with a county to provide services under ss. 46.27(7), 46.27(11), 46.275, 46.277, or 46.278, or

C. A person who is, or is apply to be, a long term care ombudsman if that person has or is expected to have reg. direct contact w/ a client.
2. "Caregiver" does not include medical technicians licensed or cert'd under CR; 50.065(1)(b2)

and who

that
a temporary employment

~~employees or contractors of the Board on Aging and Long Term Care who are caregivers.~~ "Entity" does not include any of the following:

1. Licensed or certified child care under ch. 48.
2. Kinship care under s. 48.57 (3m) or long-term kinship care under s. 48.57 (3n).
3. A person certified as a medical assistance provider, as defined in s. 49.43 (10), who is not otherwise approved under s. 50.065 (1) (cm), licensed or certified by or registered with the department.
4. An entity, as defined in s. 48.685 (1) (b).

~~5.6.~~ A public health dispensary established under s. 252.10.

~~6. A person certified as an emergency medical technician under s. 146.50.~~

(cm) "Hospital" means a facility approved as a hospital under s. 50.35.

(cn) "Non-client resident" means a person who resides at an entity, who is not a client of the entity, and who has or is expected to have access to a client of the entity.

(d) "Personal care worker agency" has the meaning specified by the department by rule.

R.P.C.; 50.065 (1)(e) (e) "Serious offense" includes the following crimes or offenses, or the equivalent crime in another state or United States jurisdiction, with respect to all entities and caregivers:

1. First-degree intentional homicide under s. 940.01.
2. First degree reckless homicide under s. 940.02.
3. Felony murder under s. 940.03. *- but not armed robbery?*
4. Second degree intentional homicide under s. 940.05.
5. Assisting suicide under s. 940.12.
- 5-6. Felony battery under s. 940.19(2) to (6).
- 6-7. Sexual exploitation by a therapist under s. 940.22(2).

8. Violation of duty to report sexual exploitation by a therapist under s. 940.22(3).

7.9. First degree sexual assault under s. 940.225 (1).

8.10. Second degree sexual assault under s. 940.225 (2).

9.11. Third degree sexual assault under s. 940.225 (3).

10.12. Felony or misdemeanor abuse of vulnerable adults under s. 940.285(2)(b)1. or 2, or under s. 940.285(2)(b)3, 4, or 5.

11.13. Abuse of residents of a penal facility under s. 940.29.

12.14. Felony or misdemeanor abuse or neglect of patients or residents under s. 940.295.

13.15. First degree sexual assault of a child under s. 948.02 (1).

14.16. Repeated acts of sexual assault of the same child under s. 948.025.

15.17. Intentional physical abuse of a child resulting in great bodily harm under s. 948.03(2)(a).

18. A substantiated report of neglect or abuse of a client, or misappropriation of a client's property, based on information maintained by the department.

19. A determination under s. 48.981(3)(c)4 that the person has abused or neglected a child.

(em) "Serious offense" includes the following crimes, or the equivalent crime in another state or United States jurisdiction, with respect to entities with clients who are children:

20 f. Second degree sexual assault of a child under s. 948.02 (2) if the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.

21 p. Sexual assault of a child by certain persons – penalty enhancement under s. 948.02(3m).

- 22 ~~3~~ 4. Intentional physical abuse of a child causing great bodily harm under s. 948.03(2)(b) or (c).
- 23 ~~4~~ 5. Sexual exploitation of a child under s. 948.05.
- 24 ~~5~~ 6. Causing a child to view or listen to sexual activity under s. 948.055.
- 25 ~~6~~ 7. Incest with a child under s. 948.06.
- 26 ~~7~~ 8. Child enticement under s. 948.07.
- 27 ~~8~~ 9. Soliciting a child for prostitution under s. 948.08.
- 28 ~~9~~ 10. Exposing a child to harmful materials or harmful descriptions or narrations under s. 948.11(2)(a) or (am).
- 29 ~~10~~ 11. Possession of child pornography under s. 948.12.
- 30 ~~11~~ 12. Child sex offender working with children under s. 948.13. ?
- 31 ~~12~~ 13. Felony neglect of a child resulting in death under s. 948.21(1).
- 32 ~~13~~ 14. Abduction of another's child under s. 948.30.

"Serious crime" has the meaning specified by the department by rule under sub. (7) (a).

(f) "Supportive home care service agency" has the meaning specified by the department by rule.

Except as provided in par (b), an

(2)(a) Notwithstanding s. 111.335, and except as provided in sub. (5), the department may not license, certify, issue a certificate of approval to or register a person to operate an entity or continue the license, certification, certificate of approval or registration of a person to operate an entity if the department knows or should have known any of the following: ~~An~~ entity shall request and review the information specified under par. (2)(c) for all caregivers who are prospective employees or contractors of the entity. An entity shall request and review the background information disclosure form under par. (2)(c)1 for all non-client residents of the entity, and shall promptly forward a copy of such background information disclosure form to the department. Effective February 1, 2000 an entity shall have requested and reviewed the information specified under par. (2)(c) for all caregivers who are employees or contractors of the entity.

1. That the person has been convicted of a serious crime.

*RP; 0.065(2)(a)
1. to 5.
RN/A 50.065(2)(a)
50.065(2)(b) in
RP (a) (intro)
RN/A (2) (a)
50.065(2)(a)
intro*

*all caregivers employed
before date of entity on
later than 1/1/2000
Non Staff?
NWS 50.065(2)
entity shall
complete
sc on*

*Initial app. First applies w/ respect to ~~ent~~ ~~app~~ caretakers
applying to entity on eff. date
First applies
RP; eff. date in ACT 27*

~~2. That the person has pending against him or her a charge for a serious crime. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.~~

~~4. That a determination has been made under s. 48.981 (3) (c) 4. that the person has abused or neglected a child.~~

~~5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.~~

~~(ag) Notwithstanding s. 111.335, and except as provided in sub. (5), an entity may not hire or contract with a person who will be under the entity's control, as defined by the department by rule, and who is expected to have access to its clients, or permit to reside at the entity a person who is not a client and who is expected to have access to a client, if the entity knows or should have known any of the following:~~

~~1. That the person has been convicted of a serious crime.~~

~~2. That the person has pending against him or her a charge for a serious crime.~~

~~3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.~~

~~4. That a determination has been made under s. 48.981 (3) (c) 4. that the person has abused or neglected a child.~~

~~5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.~~

~~(am) Subject to subd. 5. and par. (bd), the department shall obtain all of the following with respect to a person specified under par. (a) (intro.) and a person specified under par. (ag) (intro.) who is a nonclient resident or prospective nonclient resident of an entity:~~

RP/c
2 (am)

(am)

~~(b)~~ The department shall obtain the information specified under par. ~~(c)~~ with respect to a person specified under ~~par. (1)(b)~~ and with respect to non-client residents.

~~(c)~~ The department or ~~an~~ entity ~~is required to~~ shall obtain and review the following information when conducting a background check required by par. (2)(a) or (2)(b):

1. A background information disclosure form, ~~as provided by the~~ developed and distributed to department by rule.

~~1.~~ 2. A criminal history search from the records maintained by the department of justice.

~~2.~~ 3. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.

~~3.~~ 4. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.

~~4.~~ 5. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

~~5.~~ 6. Information maintained by the department under this section regarding any denial to the person of a license, certification, certificate of approval or registration or of a continuation of a license, certification, certificate of approval or registration to operate an entity for a reason specified in par. (a) 1. to 5.3(a) and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in par. (ag) 1. to 5.3(a). If the information obtained under this subdivision indicates that the person has been denied a license, certification, certificate of approval or registration, continuation of a license, certification, certificate of approval or registration, a contract, employment or permission to reside as described in this subdivision, the department need not obtain the other information specified in subs. 1. to 4. par. 2(c).

CR; (2) (bb);

~~(2)~~ 1. When the criminal history search from the records maintained by the Department of Justice does not clearly indicate the disposition of a serious offense, the department or the entity shall contact the clerk of courts to obtain the disposition of such offense.

~~(2)~~ 2. When a person's background information disclosure form discloses a conviction or finding of a serious offense that is not contained in the criminal history search from the records maintained by the Department of

Justice, the department or the entity shall contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction.

When the criminal history search from the records maintained by the Department of Justice shows a conviction for one of the following crimes and the person has been convicted of such crime within the preceding five years, the department or the entity shall contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to such crime:

(a) Disorderly conduct under s.

(b) Misdemeanor battery under s.

(c) Harassment under s.

(d) Invasion of privacy under s.

(e) Reckless endangerment under s.

- ~~(b) 1. Subject to subds. 1. e. and 2. and par. (bd), every entity shall obtain all of the following with respect to a person specified under par. (ag) (intro.) who is an employe or contractor or a prospective employe or contractor of the entity:~~
- ~~a. A criminal history search from the records maintained by the department of justice.~~
 - ~~b. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.~~
 - ~~c. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.~~
 - ~~d. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.~~
 - ~~e. Information maintained by the department under this section regarding any denial to the person of a license, certification, certificate of approval or registration or of a continuation of a license, certification, certificate of approval or registration to operate an entity for a reason specified in par. (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission~~

to reside at an entity for a reason specified in par. (ag) 1. to 5. If the information obtained under this subd. 1. e. indicates that the person has been denied a license, certification, certificate of approval or registration, continuation of a license, certification, certificate of approval or registration, a contract, employment or permission to reside as described in this subd. 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

~~2. Subdivision 1. does not apply with respect to a person with whom the entity contracts or whom the entity employs to provide infrequent or sporadic services, including maintenance services and other services that are not directly related to the care of a client.~~

Am,
(2)(b) ↓
(bd) Notwithstanding par. ~~(a)~~ and ~~(b)~~(am) and (b) 1., the department or an entity is not required to obtain the information specified in par. (am) 1. to 5. ~~(c)~~, and an entity is not required to obtain the information specified in par. (b) 1. a. to e., with respect to a person under 18 years of age whose background information form background information disclosure form under sub. (6) (am) indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in par. (ag) 1. to 5. and with respect to whom the department or entity otherwise has no reason to believe that the person is ineligible to be employed, contracted with or permitted to reside at an entity for any of those reasons does not disclose a serious offense. This paragraph does not preclude the department from obtaining, at its discretion, the information specified in par. (am) 1. to 5. (2)(c) with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

AM
(2)(b) ↓
(bg) (bg)
(bg) If an entity ~~takes an action specified in par. (ag) (intro.)~~ with respect to an employe, prospective employe, contractor or prospective contractor for whom, within the last 4 years, the information required under par. (b) 1. a. to e. and e. has already been obtained, either by another entity or by a temporary employment agency, the an entity may obtain the information required under par. (2)(c)(b) 1. a. to e. and e. from that the department, another entity or a temporary employment agency that has conducted a background check under par. (2)(c), which shall provide the information, if possible, to the entity. If an entity cannot obtain the information required under par. (b) 1. a. to e. and e. ~~(2)(c)~~ from the department, another entity or from a temporary employment agency or if an entity has reasonable grounds to believe that any information obtained from the department, another entity or from a temporary employment agency is no longer accurate, the entity shall obtain that current information from the sources specified in par. (b) 1. a. to e. and e. as required by par. (2)(c).

AM, (2)
(bm)
(bm) (bm)
(bm) If the person who is the subject of the search background check under par. (am) or (b) 1. (2)(a) or (b) is not a resident of this state, or if at any time within the

3 years preceding the date of the search that person has not been a resident of this state, the department or entity shall make a good faith effort to obtain from any state or other United States jurisdiction in which the person is a resident or was a resident within the 3 years preceding the date of the search information that is equivalent to the information specified in par. (am) 1. or (b) 1. A(2)(c)(2). Entities are authorized to request criminal history information from the National Crime Information Center. A request for such information shall be deemed a good faith effort to obtain information under par. (3)(bm), but shall not be required as part of such good faith effort.

AM;
(2)(c)

(c) ~~If the background information form~~ background information disclosure form completed by a ~~person caregiver~~ person under sub. (6) (am) indicates that the person is not ineligible to be employed or contracted with for a reason specified in par. (ag) 1. to 5., ~~does not disclose a serious offense~~, an entity may employ or contract with the ~~person caregiver~~ for not more than 60 days pending the receipt of the information sought under par. (2)(cb). ~~1.~~ If the ~~background information form~~ background information disclosure form completed by a ~~person prospective non-client resident~~ person under sub. (6) (am) indicates that the person is not ineligible to be permitted to reside at an entity for a reason specified in par. (ag) 1. to 5. ~~does not disclose a serious offense and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity for any of those reasons~~, the entity may permit the ~~person non-client resident~~ person to reside at the entity for not more than 60 days pending receipt of the information sought under par. (am)(2)(c). An entity shall provide supervision for a ~~person caregiver~~ person who is employed or contracted with, or a ~~non-client resident~~ person permitted to reside as permitted under this paragraph.

CR, (d)

(d) An entity shall either retain the most current background check information that it has obtained pursuant to para. (2)(a) or shall have access to such information when such information has been obtained by or is retained by a school, temporary agency, corporate affiliate, or third party vendor with whom the entity has a contract to obtain or retain background check information.

AM, (3)(a)

(3) (a) Every 4 years or at any time within that period that the department considers appropriate, the department shall request the information specified in sub. (2) (am) 1. to 4. (c) for all persons who are licensed to operate an entity and for all persons specified in par. (ag) (intro.) who are nonclient residents of an entity.

(b)

(b) Every 4 years or at any other time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) 1. a. to d. (c) for all persons specified in sub. (2) (ag) (intro.) caregivers who are employees or contractors of the entity.

RP; (3m)

(3m) Notwithstanding sub. (2) (b) 1. and (3) (b), if the department obtains the information required under sub. (2) (am) or (3) (a) with respect to a person specified in sub. (2) (a) (intro.) and that person is also an employe, contractor or nonclient resident of the entity, the entity is not required to obtain the information specified in sub. (2) (b) 1. or (3) (b) with respect to that person.

R-NA?
(4);
(4)(a)

(4) (a) An entity that violates sub. (2) or (3)(2)(a) may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

CR; (b)

(b) A non-client resident or a person who provides false information on a background information disclosure form required under par. (2)(b) may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

CR; (5)

(5) (a) Notwithstanding s. 111.335, and except as provided in sub. (5)(c), the department may not license, certify, issue a certificate of approval to or register a person to operate an entity or continue the license, certification, certificate of approval or registration of a person to operate an entity if the background check performed by the department discloses that such person has been convicted of or found to have committed a serious offense or, in the case of a position for which the person must be credentialed by the Department of Regulation and Licensing, the caregiver's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

no stamp
for RN's
(2)

(b) Notwithstanding s. 111.335, and except as provided in sub. (5)(c), an entity may not employ or contract with a person or permit to reside at the entity a non-client resident, if the background check conducted by the entity discloses that such person has been convicted of or found to have committed a serious offense or, in the case of a position for which the person must be credentialed by the Department of Regulation and Licensing, the caregiver's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

CR; (5) (a)

1. Sections (5)(a) and (b) may be waived by the department for any person who demonstrates to the department that he or she has been rehabilitated by clear and convincing evidence and in accordance with the procedures established by the department by rule.

2. An entity may continue to employ or contract with a person who has requested a waiver under par. (5)(c)1 while such request is pending, provided that such person has submitted a waiver request by February 1, 2000, and has been continuously employed by or under contract with the entity since October 1, 1998, or was hired by or under contract with the entity after October 1, 1998 and convicted of or found to have committed

a serious offense after such person was employed by or contracted with the entity.

RP, (5)
~~(5) The department may license, certify, issue a certificate of approval to or register to operate an entity a person who otherwise may not be licensed, certified, issued a certificate of approval or registered for a reason specified in sub. (2) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the entity a person who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason specified in sub. (2) (ag) 1. to 5., if the person demonstrates to the department by clear and convincing evidence and in accordance with procedures established by the department by rule that he or she has been rehabilitated. No person who has been convicted of any of the following offenses may be permitted to demonstrate that he or she has been rehabilitated:~~

~~—(a) First degree intentional homicide under s. 940.01.~~

~~—(b) First degree sexual assault under s. 940.225 (1).~~

~~—(c) First degree sexual assault of a child under s. 948.02 (1).~~

~~—(d) Second degree sexual assault of a child under s. 948.02 (2) if the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.~~

~~—(e) Repeated acts of sexual assault of the same child under s. 948.025 if the child had not attained the age of 13, or if the child had attained the age of 13 and had not attained the age of 16 and the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.~~

*RN, A, (5c),
(5)(c) 3.*
~~—(5e) 3. Any person who is permitted but fails under sub. (5)(c)(1) to demonstrate to the department that he or she has been rehabilitated may appeal to the secretary of health and family services or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this subsection has a right to a contested case hearing under ch. 227.~~

2
(d) Except as provided in ss. 5(c)2 and 9, the provisions of this section (5) shall apply to the department and any entity, caregiver or non-client resident who is convicted of or found to have committed a serious offense or, in the case of a position for which the person must be credentialed by the Department of Regulation and Licensing, the caregiver's credential is not current or is limited so as to restrict the person from providing adequate care to a client, provided

that such conviction, finding or credential expiration or limitation is reflected in the background check information received and reviewed by an entity or the department.

RP, (5g)
~~(5g) Beginning on January 1, 1999, and annually thereafter, the department shall submit a report to the legislature under s. 13.172 (2) that specifies the number of persons in the previous year who have requested to demonstrate to the department that they have been rehabilitated under sub. (5), the number of persons who successfully demonstrated that they have been rehabilitated under sub. (5) and the reasons for the success or failure of a person who has attempted to demonstrate that he or she has been rehabilitated.~~

Am, (5m)
(5m) Notwithstanding s. 111.335, the department may refuse to license, certify or register, or issue a certificate of approval to, an entity a person to operate an entity, and an entity may refuse to employ, contract with or permit to reside at the entity a person specified in sub. (2) (ag) (intro-), caregiver, prospective caregiver, non-client resident or prospective non-client resident, if the person has been convicted of or found to have committed an crime or offense that the department has not defined as a "serious crime offense" by rule promulgated under sub. (7) (a), or specified in the list established by rule under sub. (7) (b), but that is, in the estimation of the department or entity, substantially related to the care of a client.

RP, (6)
~~(6) (a) The department shall require any person who applies for issuance or continuation of a license, certification, certificate of approval or registration to operate an entity to complete a background information form that is provided by the department.~~

~~(am) Every 4 years an entity shall require all of the following persons to complete a background information form that is provided to the entity by the department:~~

~~1. A person who is an employe, prospective employe, contractor or prospective contractor of the entity, who will be under the entity's control and who has, or is expected to have, access to its clients, other than a person specified in sub. (2) (b) 2.~~

~~2. A person who is a resident or prospective resident at the entity and who is not a client or prospective client of the entity, if the person has, or is expected to have, access to any client of the entity.~~

~~(b) For persons specified under par. (a) who are licensed, issued a certificate of approval or certified by, or registered with, the department, for person specified in par. (am) 2., and for other persons specified by the department by rule, the entity shall send the background information form to the department.~~

For persons specified under par. (am) 1., the entity shall maintain the background information form on file for inspection by the department.

—(e) A person who provides false information on a background information form required under this subsection may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

—(7) The department shall do all of the following:

RP, (7)(a) —(a) Establish by rule a definition of "serious crime" for the purpose of this section. The definition shall include only crimes or acts that are substantially related to the care of a client. The definition shall also include those offenses specified in sub. (5) (a) to (c) and classes of crimes or acts involving abuse or neglect of a client or misappropriation of the property of a client for which no person who has committed any of those crimes or acts may be permitted to demonstrate under sub. (5) that he or she has been rehabilitated.

RP, (7)(b) —(b) Establish by rule a list of crimes or acts that are not included in the definition established under par. (a), that are substantially related to the care of clients and the commission of which warrants a less stringent measure than a bar on employment, residence or similar type of association with an entity. The rule shall be consistent with federal law and regulations and shall include a description of the measures to be taken for the crimes or acts that the department lists under this paragraph.

(c) Conduct throughout the state periodic training sessions that cover criminal background investigations; reporting and investigating misappropriation of property or abuse or neglect of a client; and any other material that will better enable entities to comply with the requirements of this section.

AM, (7)(d) —(d) Provide a ~~background information form~~ background information disclosure form that requires the person completing the form to include his or her date of birth on the form.

AM, (8) (8) The department may charge a fee for obtaining the information required under sub. (2) (am) or (3) (a)(2)(b). The fee may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), for obtaining or maintaining the information if to do so would be inconsistent with federal law.

CP, (9) (9) These requirements shall apply immediately to all persons specified under para. 1(bg)(2), all non-client residents, and all prospective caregivers and shall apply to all existing caregivers on or after February 1, 2000.

Nonstatutory provisions

The Department of Corrections, in conjunction with the University of Wisconsin, shall prepare a report based upon peer-reviewed and published research that details any crimes, the conviction for which are empirically correlated to an individual's propensity to commit future acts of abuse or neglect of a client, or misappropriation of a client's property. If the report indicates that there are additional crimes which are reasonably predictive of an individual's propensity to commit future acts of abuse, neglect or misappropriation of client property, the report shall indicate such crimes, as well as the methodology utilized and the data which supports the findings. The Department of Corrections shall submit the report to the legislature in the manner provided under section 13.172(2) of the statutes no later than July 1, 2000.

Budget Amendments 1999- 2000

Statement of Intent Caregiver Background Checks

Legislator Underheim

Amendment# 310

Staff contact

Status Pass-amen

Agency DHFS

Tax Cut

Summary CAREGIVER BACKGROUND CHECKS - See Attached

Amend item "h" of the DHFS caregiver background checks. The first paragraph of Authority for Tribal Rehabilitation Reviews should read "Authorize tribes to conduct the required rehabilitation reviews for entities located on reservations. Specify that the tribal rehabilitation review plan must be reviewed and approved by the Department. Specify that rehabilitation waivers granted by tribes shall be transferable only to other tribes that choose to accept the waiver approval.

Amend the motion to specify that persons convicted of violating s.940.225(1) or s.948.01(1) may not be hired or contracted by an entity after the bill becomes the law in a position in which the person will provide direct regular to a client.

Fiscal Impact

ARC Analyst

Request#: 3717

P amended

HEALTH AND FAMILY SERVICES

Caregiver Background Checks

Motion:

Move to modify current requirements for caregiver backgrounds checks in health care and child care facilities as follows.

a. **Exclude EMTs.** Exempt emergency medical technicians from the required background check provisions of Chapters 48 and 50 of the state statutes.

b. **Include BOALTC Ombudsman Staff.** Specify that the background check requirements would apply to the ombudsman staff at the Board of Aging and Long-Term Care who have direct, regular contact with clients.

c. **Include Temporary Employment Agencies.** Expand the type of entities that are subject to the background check requirements to include temporary employment agencies providing the services of caregivers to covered health care and child care entities, and specify that the covered employes of these temporary employment agencies would include any employes who have direct, regular contact with clients.

d. **Include Implied Contractors.** Expand the requirements for performing background checks to include implied contractors, as well as contractors. An implied contractor is someone who provides services on a regular basis, but a formal contract has not been executed and compensation may be in a form other than monetary compensation such as an exchange of services.

e. **Direct, Regular Contact Necessary to Require Checks.** Require a background check for those employes, contractors, and non-client residents who have "direct, regular contact with clients," rather than those with access to the client. Define "direct" contact as face to face contact, and define "contact" as the physical proximity to a client that affords a person the opportunity to commit abuse or neglect of a client, or misappropriation of a client's property.

f. **Specify All Crimes Prohibiting Employment in Statute.** Delete the current provision that requires the Department to define by rule the crimes that would be considered "serious crimes," and instead specify in statute all the crimes and other findings that would prohibit employment, licensing, or residency without a finding of rehabilitation. The following crimes and findings would be listed in statute:

**Crimes and Findings That Would
Prohibit Employment (Unless Rehabilitated)
All Entities Covered By Chapters 50 & 48**

<u>Statutory Section</u>	<u>Crime or Finding</u>
1. 940.01	1 st degree intentional homicide
2. 940.02	1 st degree reckless homicide
3. 940.03	Felony murder
4. 940.05	2 nd degree intentional homicide
5. 940.12	Assisting suicide
6. 940.19 (2) - (6)	Battery (felony)
7. 940.22 (2)	Sexual exploitation by therapist – sexual contact
8. 940.22 (3)	Sexual exploitation by therapist – duty to report
9. 940.225 (1)	1 st degree sexual assault
10. 940.225 (2)	2 nd degree sexual assault
11. 940.225 (3)	3 rd degree sexual assault
12. 940.285 (2) (b) 1. Or 2.	Abuse of vulnerable adults – (felony)
13. 940.285 (2) (b) 3., 4., or 5.	Abuse of vulnerable adults (felony or misdemeanor)
14. 940.29	Abuse of residents of a penal facility
15. 940.295	Abuse or neglect of patients and residents (felony or misdemeanor)
16. 948.01 (1)	1 st degree sexual assault of a child
17. 948.025	Repeated acts of sexual assault of same child
18. 948.03 (2) (a)	Physical abuse of a child—intentional—cause great bodily harm
19.	Substantiated reports of abuse or neglect of a client or of misappropriation of a clients property based on information maintained by DHFS.
20.	Determinations made under s. 48.981 (3) (c) that the person has abused or neglected a child.

**Crimes That Would Prohibit Employment (Unless Rehabilitated)
Applying Only to Entities Serving Minors**

1. 948.02 (2)	2 nd degree sexual assault of a child
2. 948.02 (3m)	Sexual assault of a child – Penalty enhancement; sexual assault by certain persons
3. 948.03 92) (b) or (c)	Physical abuse of a child - intentional – cause bodily harm
4. 948.12	Possession of child pornography
5. 948.13	Child sex offender working with children
6. 948.21 (1)	Neglect of a child – resulting in death (felony)
7. 948.05	Sexual exploitation of a child
8. 948.055	Causing a child to view or listen to sexual activity
9. 948.06	Incest with a child
10. 948.07	Child enticement
11. 948.08	Soliciting a child for prostitution
12. 948.11 (2) (a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony).
13. 948.30	Abduction of another's child; constructive custody

g. **Eliminate Permanent Bar.** Provide individuals the opportunity to show rehabilitation for all crimes by eliminating the current provisions that permanently bar employment, licensing, or residency for certain crimes, except if the permanent bar was required by federal law.

h. **Authority for Tribal Rehabilitation Reviews.** Authorize tribes to conduct the required rehabilitation reviews for entities located on reservations, ~~and operated or contracted by native American tribes, tribal member or tribal corporations.~~ Specify that the tribal rehabilitation review plan must be reviewed and approved by the Department. Specify that rehabilitation waivers granted by tribes shall be transferable only to other tribes that choose to accept the waiver approval.

The tribe must submit a copy of its rehabilitation review plan to DHFS, and within 90 days after receipt of the plan, DHFS must approve or disapprove the plan in writing; otherwise, the plan is deemed approved. Any disapproval must include specific reasons and a finding the plan is not rationally related to the protection of clients. If a plan is disapproved, the tribe has 30 days in which to request that the Secretary of Health and Family Services or his or her designee review the disapproval. The review must be conducted within 30 days. This review decision is final and is not subject to review under chapter 227 of the statutes.

The plan submitted by the tribe to DHFS must include all of the following: (a) the criteria to be used to determine if a person has been rehabilitated; (b) the title of the person or body designated by the tribe with whom a request for review must be filed and the title of the person or body designated by the tribe to conduct the rehabilitation review and determine if the person has been rehabilitated; (d) how the tribe will submit information to DHFS so that DHFS may submit the required annual report to the Legislature about the rehabilitation review program; (e) a copy of the form used to request a review and a copy of the form on which the written decision is made regarding whether a person has been rehabilitated;

i. **Eliminate Category of Crimes with Lesser Sanctions.** Delete the requirement that the Department specify by rule the types of misconduct for which intermediate sanctions would be allowed.

j. **Allow Third Party Retention of Records.** Allow covered health care and child care entities to maintain background check information on file or, pursuant to a contract with a school, temporary agency, corporate parent or affiliate, or third party vendor with whom the entity contracts to conduct and maintain the background checks, to have it readily available for inspection by authorized persons.

k. **When "Look Behind" Is Required.** Require DHFS, the county, school board, or provider, as is appropriate, to obtain the final disposition of any serious offense whose disposition is incomplete or unclear on the DOJ criminal history report and to take reasonable steps to contact the appropriate county Clerk of Courts for a judgment of conviction and criminal complaint relating to any crime that is disclosed on a background information disclosure form but that does not appear on the DOJ criminal history report. When a covered employe, contractor, non-client resident or licensee has been convicted of disorderly conduct, battery,

harassment, reckless endangerment, or invasion of privacy within five years of seeking employment, a contract, non-client residency, or licensure, require DHFS, the county, school board, or employer, as is appropriate, to take reasonable steps to contact the appropriate county Clerk of Courts for a judgment of conviction and criminal complaint.

l. **Exclude Pending Criminal Charges as a Basis to Prohibit Employment.** Exclude pending criminal charges as a basis to prohibit employment, contract, licensure or residency under Chapters 48 and 50 of the state statutes.

m. **Authorize Use of NCIC Checks.** Authorize DHFS, counties, school boards and providers, as is appropriate, to use at their discretion the National Crime Information Center (NCIC) for conducting either required out-of-state background checks or out-of-state checks when DHFS, county department, school board, or provider determines that the person's employment, licensing, or state court records provide a reasonable basis for further investigation. Specify that DHFS, a county department, a school board, and a provider can require the person whose background is being checked to be photographed and fingerprinted on two fingerprint cards, each bearing a complete set of the person's fingerprints. Authorize the Department of Justice to submit the fingerprint cards to the Federal Bureau of Investigation for the purposes of verifying the identity of the person fingerprinted and obtaining the person's criminal arrest and conviction records.

n. **Allow Checks in Other United States Jurisdictions.** Specify that out-of-state background checks include other United States jurisdictions other than "states" in order to provide for checks with federal, military, and tribal courts.

o. **Study by DOC and UW.** Require the Department of Corrections, in conjunction with the University of Wisconsin, to prepare a report on the correlation between prior convictions and the propensity to commit future acts of abuse, neglect, or misappropriation.

p. **Delay Effective Date for Existing Employees.** Specify that the effective date of the background check provisions for persons hired before October 1, 1998, or for persons hired after October 1, 1998, but before February 1, 2000, who incur a serious offense after their date of hire shall be February 1, 2000, rather than October 1, 1999, as required under current law.

Note:

1997 Wisconsin Act 27 expanded required background checks for child care and health care providers for the licensing of the providers, hiring of their employees or contractors and the residency of non-clients in their facilities. These expanded requirements became effective October 1, 1998, for new hires, new licensees and new non-client residents, and will apply to previous licensees, employees, and non-client residents beginning October 1, 1999.

Act 27 requires the Department of Health and Family Services (DHFS) to perform the required background checks on the child care and health providers that DHFS licenses or regulates, while the providers, in turn, must perform the checks on their employees. DHFS is also responsible for performing the background checks on the non-client residents in the facilities regulated by DHFS. The background check must include checks of the Department of Justice criminal history database, the DHFS abuse registry and licensing databases, and the Department of Regulation and Licensing databases of professional licenses. An integrated system has been developed to perform these checks in an automated procedure; however, if a "hit" is found on the DOJ criminal database, administrative rules may require a "look behind" to investigate the facts and circumstances of the conviction.

Act 27 requires that a person who is found to have an abuse or neglect finding or a conviction for a "serious crime" be denied licensure, employment or residency. Individuals who are subject to these sanctions can apply to DHFS for waivers of the sanctions upon proof of rehabilitation. The statutes specify convictions for five offenses for which rehabilitation cannot be sought and the Department by rule can establish additional convictions for which an individual cannot demonstrate rehabilitation. For some less serious crimes, DHFS and providers have discretion in hiring the employe without the need of a formal rehabilitation review.

The motion would make a number of changes that would provide DHFS additional flexibility in applying the background check provisions and modify the applicability of these provisions. Highlights of the more important changes are:

- a. Background checks would be required for employes, contractors and non-client residents who have "direct, regular contact with clients," rather than for those with "access to clients."
- b. The provision that would provide that certain crimes would permanently bar a person from employment, licensure, contract or residency would be eliminated, except in cases where federal laws or rules require it. A person would still have to seek and pass a rehabilitation review to obtain employment, licensure, contract or residency.
- c. All crimes and findings that would prohibit employment, contract, licensure or residency without seeking and passing a rehabilitation review would be specified in statute, rather than DHFS rule. There would be fewer crimes that would require an individual to seek a rehabilitation review than the number of crimes listed in current rules.
- d. Pending charges would be removed as a basis for prohibiting employment, contract, licensure or residency.
- e. The number of situations when a "look behind" was required for a crime would be limited to the following situations: (1) the criminal history report from DOJ does not indicate the disposition of a case; (2) a crime self-reported on the required background information disclosure form that is not on the criminal history report from DOJ; (3) any conviction for disorderly conduct, battery, harassment, reckless endangerment or invasion of privacy within five

years. A "look behind" involves a reasonable effort to contact the appropriate county Clerk of Courts for the judgement of conviction and criminal complaint.

f. The motion would delay the date by which all existing employes, contractors, providers, and non-client residents would have to have a completed check completed to February 1, 2000, from October 1, 1999.

g. Finally, the motion would exclude emergency medical technicians (EMTs) from the background check provisions.

For persons convicted of ss940.225(1) or 948.01(1), the person may not apply for rehabilitation review until at least 5 years after the end of incarceration for the crime or 5 years after conviction, whichever is later.

Malaise, Gordon

From: Lonergan, Sandra
Sent: Friday, June 25, 1999 10:26 AM
To: Malaise, Gordon; Yacker, Tina
Subject: FW: Crimes table clarification for child abuse or neglect findings

Here's one more! Sorry about all this. Sandy

-----Original Message-----

From: Sweet, Richard
Sent: Tuesday, June 22, 1999 5:38 PM
To: Lonergan, Sandra
Subject: FW: Crimes table clarification for child abuse or neglect findings

Sandy,

This sounds reasonable.

Dick

-----Original Message-----

From: Susan Dow [mailto:DOWSM@dhfs.state.wi.us]
Sent: Tuesday, June 22, 1999 12:03 PM
To: Sweet, Richard
Cc: Linda Dawson; John Kiesow; Lonergan, Sandra
Subject: Crimes table clarification for child abuse or neglect findings

Hi, Dick,

The current ss. 48.685 and 50.065 prohibit licensure or employment if the dept., counties, entities, and school boards "know or should have known" that a governmental agency has made a finding of child abuse or neglect. This is leading agencies and entities to try to find out about child abuse and neglect findings maintained in the counties. But under 48.981.(7), there are significant confidentiality limitations on persons and agencies to whom those findings can be released, so counties are having to respond that they can't release the records.

We'll have future statutory work to do to address the issue, but in the meantime, in drafting the new crimes table, or wherever #20 on the draft crimes table ends up in the statutes (i.e., "Determinations made under s. 48.981 (3)(c) that the persons has abused or neglected a child.") could we qualify that phrase by adding at the end, "if release is authorized by s. 48.981(7), Stats."? I don't think these words change current law; they just clarify the limitations on releasing these findings.

As usual, if this e-mail needs clarification, please call. (4-9893). Thanks.
Sue D.

17 south fairchild
suite 601
madison, wisconsin
608-284-6999

JASON T. KRATOCHWILL, DIRECTOR

ASSEMBLY REPUBLICAN CAUCUS

608 288.1452
tol-free 888 384.1452
fax 608 284.6999

arc caucus@legis.state.wi.us
<http://www.legis.state.wi.us/assembly/arc>

TO: Gordon Malaise, LRB

COMPANY: LRB

FROM: Matt Janky, ARC

FAX NUMBER:

NUMBER OF PAGES (including cover sheet): 3

COMMENTS:

If you have problems receiving transmission, please call the Assembly Republican Caucus at 608.286.1452
FACSIMILE CONNECTION 608.284.6999
ON THE WEB: <http://www.legis.state.wi.us/assembly/arc>



Sande, Matthew

From: Lonergan, Sandra
Sent: Wednesday, June 23, 1999 5:25 PM
To: Kratochwill, Jason; Sande, Matthew
Subject: FW: Crimes table clarification for child abuse or neglect findings

Hello Jason & Matt—

Here is a memo from Susan Dow (DHFS attorney) regarding the drafting of caregiver background checks. I'm sorry to keep sending these to you but obviously this is an issue in which people are very interested.

Thanks for your help.

Sandy

-----Original Message-----

From: Sweet, Richard
Sent: Tuesday, June 22, 1999 5:38 PM
To: Lonergan, Sandra
Subject: FW: Crimes table clarification for child abuse or neglect findings

Sandy.

This sounds reasonable.

Dick

-----Original Message-----

From: Susan Dow [<mailto:DOWSM@dhfs.state.wi.us>]
Sent: Tuesday, June 22, 1999 12:03 PM
To: Sweet, Richard
Cc: Linda Dawson; John Kiesow; Lonergan, Sandra
Subject: Crimes table clarification for child abuse or neglect findings

Hi, Dick,

The current ss. 48.685 and 50.065 prohibit licensure or employment if the dept., counties, entities, and school boards "know or should have known" that a governmental agency has made a finding of child abuse or neglect. This is leading agencies and entities to try to find out about child abuse and neglect findings maintained in the counties. But under 48.981.(7), there are significant confidentiality limitations on persons and agencies to whom those findings can be released, so counties are having to respond that they can't release the records.

We'll have future statutory work to do to address the issue, but in the meantime, in drafting the new crimes table, or wherever #20 on the draft crimes table ends up in the statutes (i.e., "Determinations made under s. 48.981 (3)© that the persons has abused or neglected a child.") could we qualify that phrase by adding at the end, "if release is authorized by s. 48.981(7), Stats."? I don't think these words change current law; they just clarify the limitations on releasing these findings.

As usual, if this e-mail needs clarification, please call. (4-9893). Thanks.
Sue D.