

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status. The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11 (5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts, Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

### ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 48.685 (5) and (7) (a) and 50.065 (5) and (7) (a), Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and s. 227.11 (2), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and s. 120.13 (14), Stats., as amended by 1997 Wisconsin Act 27, as follows:

SECTION 1. HFS 12.11 (5) (title) and (a), as created by emergency order effective October 1, 1998, are repealed and recreated to read:

HFS 12.11 (5) (title) CRIMES OF LESSER SIGNIFICANCE REQUIRING SPECIAL PRECAUTIONARY MEASURES. (a) Crimes of lesser significance. 1. An agency or entity shall impose, where warranted, less stringent measures than a bar on regulatory approval by an agency, a bar on entering into a contract for a day care program by a school board under s. 120.13 (14), Stats., or a bar of a person by an entity from employment by or contracting with an entity or permitting residency as a nonclient at an entity, if the person has been convicted of a crime of lesser significance than a serious crime and that is substantially related to the care of clients.

2. In determining whether conviction for a crime of lesser significance than a serious crime is substantially related to the care of clients, an agency or entity shall apply the criteria under sub. (3) (b).

3. Crimes of lesser significance include the following:

- a. Section 940.19 (1) - Battery to other than spouse, misdemeanor only.
- b. Section 943.01 (1) - Damage to property, misdemeanor only.
- c. Section 943.20 (3) (a) - Theft where value of property does not exceed \$1000.
- d. Section 943.50 (4) (a) - Retail theft where value of property does not exceed \$1000.
- e. Section 947.013 - Harassment, misdemeanor only.
- f. Section 951.02 - Mistreating animals, misdemeanor only.

SECTION 2. Appendix A of chapter HFS 12, as created by emergency order effective October 1, 1998, is repealed and recreated to read:

**APPENDIX A**

**CRIMES LIST**

(See s. HFS 12.11 (1) and (2))

This Appendix to ch. HFS 12 contains a list of Wisconsin crimes current as of September 16, 1998. THE LIST IS NOT EXHAUSTIVE OF THE CRIMES THAT MUST BE TAKEN INTO CONSIDERATION BY A REGULATORY AGENCY OR EMPLOYER.

If a person has a conviction for any crime not listed here or in s. HFS 12.11 (5) (a) or for a crime in another state or jurisdiction, the regulatory agency or employer must determine whether the crime is *substantially related* to the duties of the position (see s. HFS 12.11 (3)) and, if so, may refuse to give regulatory approval to the person, employ or contract with the person or give approval for a nonclient to reside at an entity or, for a crime of lesser significance than a serious crime, may impose less stringent measures than a bar.

**Key:**

**Permanent bar** – conviction means permanently barred from all programs.

**Foster care permanent bar** – conviction means permanently barred only from foster home and treatment foster home programs.

**Bar w/rehab** – conviction means barred from all programs unless rehabilitation has been demonstrated.

**Spouse** – spouse of person convicted was victim of the crime.

**5 years** – conviction means barred for 5 years from time crime is committed, then must demonstrate has been rehabilitated.

**(F)** – program sanction is for a felony conviction only.

**(M)** – program sanction is for a misdemeanor conviction.

**Wis. Stats.      Crime (F = Felony; M = Misdemeanor)      Program Sanction**

**Chapter 49 – Public Assistance**

49.49      Medicaid fraud (F or M)      Bar w/rehab

**Chapter 346 – Rules of the Road**

343.63      Operating vehicle while intoxicated (OWI) (F)  
                    • with passenger under age 16      Bar w/rehab  
                    • 3<sup>rd</sup> or greater offense      Bar w/rehab

346.62(4)      Reckless driving, causing great bodily harm (F)      Foster care permanent bar

346.67      Hit and run: failure to perform duty upon striking a person or attended vehicle (F or M)      Bar w/rehab

**Chapter 940 – Crimes Against Life and Bodily Security**

940.01      1<sup>st</sup> degree intentional homicide (F)      Permanent bar

940.02	1 <sup>st</sup> degree reckless homicide (F)	Foster care permanent bar; other, bar w/rehab
940.03	Felony murder (F)	Foster care permanent bar; other, bar w/rehab
940.05	2 <sup>nd</sup> degree intentional homicide (F)	Bar w/rehab
940.06	2 <sup>nd</sup> degree reckless homicide (F)	Foster care permanent bar; other, bar w/rehab
940.07	Homicide by negligent control of vicious animal (F)	Bar w/rehab
940.08	Homicide by negligent handling of dangerous weapon, explosives or fire. (F)	Foster care permanent bar; other bar w/rehab
940.09	Homicide by intoxicated use of vehicle or firearm (F)	Bar w/rehab
940.12	Assisting suicide (F)	Bar w/rehab
940.19(1)	Battery (M –domestic)	Bar w/rehab
940.19(2)-(6)	Battery (F)	Foster care bar for 5 years if spouse; other, bar w/rehab
940.195	Battery to an unborn child (F or M)	Bar w/rehab
940.20	Battery – special circumstances (F)	Foster care permanent bar if spouse; other, bar w/rehab
940.203	Battery or threat to a judge (F)	Foster care bar for 5 years; other, bar w/rehab
940.205	Battery or threat to Department of Revenue employe (F)	Foster care bar for 5 years; other, bar w/rehab
940.207	Battery or threat to Department of Commerce employe (F)	Foster care bar for 5 years; other, bar w/rehab
940.21	Mayhem (F)	Bar w/rehab
940.22(2)	Sexual exploitation by therapist – sexual contact (F)	Bar w/rehab
940.22(3)	Sexual exploitation by therapist – duty to report (F)	Bar w/rehab
940.225(1)	1 <sup>st</sup> degree sexual assault (F)	Permanent bar
940.225(2)	2 <sup>nd</sup> degree sexual assault (F)	Permanent bar
940.225(3)	3 <sup>rd</sup> degree sexual assault (F)	Permanent bar
940.225 (3m)	4 <sup>th</sup> degree sexual assault (M)	Bar w/rehab
940.23	Reckless injury (F)	Foster care permanent bar; other, bar w/rehab

940.285 (2)(b)1 or 2	Abuse of vulnerable adults (F)	Permanent bar
940.285 (2)(b)3, 4, or 5	Abuse of vulnerable adults (F or M)	Bar w/rehab
940.29	Abuse of residents of a penal facility (F)	Permanent bar
940.291	Law enforcement officer – failure to render aid (M)	Bar w/rehab
940.295	Abuse/neglect of a patient or resident (F)	Permanent bar
940.295	Abuse/neglect of a patient or resident (M)	Bar w/rehab
940.30	False imprisonment (F)	Bar w/rehab
940.305	Taking hostages (F)	Bar w/rehab
940.31	Kidnapping (F)	Bar w/rehab
940.32	Stalking (F or M)	Bar w/rehab
940.43	Intimidation of witnesses (F or M)	Bar w/rehab
940.45	Intimidation of victims (F or M)	Bar w/rehab

### **Chapter 941 – Crimes Against Public Health and Safety**

941.20	Endangering safety - dangerous weapon (M)	Bar w/rehab
941.20(2)	Endangers safety – dangerous weapon, discharge weapon into vehicle/building (F)	Foster care permanent bar; other, bar w/rehab
941.20(3)	Endangers safety – dangerous weapon, discharge weapon from vehicle (F)	Foster care permanent bar; other, bar w/rehab
941.21	Disarming a peace officer (F)	Foster care permanent bar
941.235	Carrying a firearm in public building (M)	Bar w/rehab
941.26	Sale, possession, use or transport of machine guns or certain other weapons (F)	Bar w/rehab
941.28	Possession of short barreled shotgun/rifle (F)	Bar w/rehab
941.29	Possession of firearm (F)	Bar w/rehab
941.296	Use or possession of a handgun and armor-piercing bullet during crime (F)	Bar w/rehab
941.298	Sale, delivery or possession of firearm silencer (F)	Bar w/rehab
941.30	Recklessly endangering safety (F)	Bar w/rehab

941.31	Possession of explosives (F)	Bar w/rehab
941.315	Possession, distribution or delivery of nitrous oxide (F)	Bar w/rehab
941.32	Administering dangerous or stupefying drug (F)	Bar w/rehab
941.327	Tampering with household product (F)	Bar w/rehab
941.38 (2)	Criminal gang member, solicit child (F)	Bar w/rehab
941.38 (3)	Criminal gang member solicitation and contact (F)	Bar w/rehab

### **Chapter 942 – Crimes Against Reputation and Civil Liberty**

942.08	Invasion of privacy (M)	Bar w/rehab
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### **Chapter 943 – Crimes Against Property**

943.01	Damage to property (F)	Bar w/rehab
943.011	Damage or threat to property of witness (F)	Bar w/rehab
943.02	Arson of a building or damage of any property by explosives (F)	Bar w/rehab
943.03	Arson of property other than a building (F)	Bar w/rehab
943.04	Arson with intent to defraud (F)	Bar w/rehab
943.06	Molotov cocktails (F)	Bar w/rehab
943.10 (1)	Burglary (F)	Bar w/rehab
943.10 (2)	Burglary while armed (F)	Foster care permanent bar; other, bar w/rehab
943.12	Possession of burglarious tools (F)	Bar w/rehab
943.20	Theft (F)	Bar w/rehab
943.201	Misappropriation of personal identifying information or documents (F)	Bar w/rehab
943.23	Operating motor vehicle without owner's consent – w/weapon & force (F)	Bar w/rehab
943.30	Threat to injure or accuse of crime (blackmail) (F)	Bar w/rehab
943.31	Threat to communicate derogatory information (F)	Bar w/rehab
943.32 (1)	Robbery (F)	Bar w/rehab
943.32 (2)	Robbery w/dangerous weapon (F)	Bar w/rehab

943.50 Retail theft (F) Bar w/rehab

**Chapter 944 – Crimes Against Sexual Morality**

944.17 Sexual gratification (M) Bar w/rehab

944.20 Lewd and lascivious behavior (M) Bar w/rehab

944.205 Photos or other representations showing nudity (F) Bar w/rehab

944.21 Obscene material or performance (F or M) Bar w/rehab

944.23 Making lewd, obscene or indecent drawings (M) Bar w/rehab

944.30 Prostitution (M) Bar w/rehab

944.32 Soliciting prostitutes (F) Bar w/rehab

944.33 Pandering (F or M) Bar w/rehab

944.34 Keeping place of prostitution (F) Bar w/rehab

**Chapter 946 – Crimes Against Government and Its Administration**

946.415 Failure to comply w/officer's attempt to take person into custody (F) Bar w/rehab

946.42 Escape from custody (F) Bar w/rehab

946.43 Assault by prisoner – confine or threaten to harm (F) Bar w/rehab

946.44 Assisting/permitting escape (F) Bar w/rehab

946.47 Harboring a felon (F) Bar w/rehab

946.50 Absconding – juvenile (F) Bar w/rehab

946.70 Impersonating peace officer to commit crime (F) Bar w/rehab

946.74(1) Aiding escape from mental institution (M) Bar w/rehab

946.74(2) Aiding escape from mental institution to commit sex crime (F) Permanent bar

946.80 – Racketeering (organized crime, RICO) (F) Bar w/rehab  
946.88

**Chapter 947 – Crimes Against Public Peace, Order and Other Interests**

947.013 Harassment (F) Bar w/rehab

**Chapter 948 – Crimes Against Children**

948.02 (1) 1<sup>st</sup> degree sexual assault of a child (F) Permanent bar

948.02 (2)	2 <sup>nd</sup> degree sexual assault of a child (F)	Bar w/rehab
	<ul style="list-style-type: none"> <li>if person was, at the time of assault, more than 4 years older than the child</li> </ul>	Permanent bar
948.02(3)	Sexual assault of a child – failure to act (F)	Permanent bar
948.025	Repeated acts of sexual assault of same child (F)	
	<ul style="list-style-type: none"> <li>if child was under the age of 13</li> </ul>	Permanent bar
	<ul style="list-style-type: none"> <li>if child was age 13, 14 or 15 and person was, at the time, more than 4 years older than the child</li> </ul>	Foster care permanent bar; other, bar w/rehab
	<ul style="list-style-type: none"> <li>other</li> </ul>	Foster care permanent bar; other, bar w/rehab
948.03 (2)(a)	Physical abuse of a child – intentionally causes great bodily harm (F)	Permanent bar
948.03(2)(b) or (c)	Physical abuse of a child-intentionally causes bodily harm (F)	Foster care permanent bar, other, bar w/rehab
948.03 (3)	Physical abuse of a child – recklessly causes bodily harm (F)	Foster care permanent bar; other, bar w/rehab
948.03 (4)(a)	Physical abuse of a child involving great bodily harm – failure to act (F)	Permanent bar
948.03(4)(b)	Physical abuse of a child involving bodily harm – failure to act (F)	Foster care permanent bar; other, bar w/rehab
948.04	Causing mental harm to a child (F)	Permanent bar
948.05	Sexual exploitation of a child (F)	Permanent bar
948.055	Causing a child to view or listen to sexual activity (F)	Permanent bar
948.06	Incest with a child (F)	Permanent bar
948.07	Child enticement (F)	Permanent bar
948.08	Soliciting a child for prostitution (F)	Permanent bar
948.09	Sexual intercourse with a child age 16 or older (M)	Bar w/rehab
948.095	Sexual assault of student by a school staff person (F)	Foster care permanent bar; other, bar w/rehab
948.10	Exposing genitals or pubic area (M)	Bar w/rehab
948.11	Exposing child to harmful material or harmful descriptions or narrations (F)	Permanent bar



948.11	Exposing child to harmful material or harmful descriptions or narrations (M)	Bar w/rehab
948.12	Possession of child pornography (F)	Permanent bar
948.13	Child sex offender working with children (F)	Permanent bar
948.20	Abandonment of a child (F)	Foster care permanent bar; other, bar w/rehab
948.21	Neglecting a child – intentional, resulting in death (F)	Permanent bar
948.21	Neglecting a child – intentional (M)	Bar w/rehab
948.22	Failure to support (F)	Foster care permanent bar
948.23	Concealing death of a child (F)	Foster care permanent bar; other, bar w/rehab
948.24	Unauthorized placement for adoption (F)	Foster care permanent bar; other, bar w/ rehab
948.30	Abduction or detention of another's child (F)	Permanent bar
948.31	Interference with custody by parent or others (F)	Foster care permanent bar; other, bar w/rehab
948.35	Solicitation of a child to commit a felony (F)	Foster care permanent bar; other, bar w/rehab
948.36	Use of a child to commit a class A felony (F)	Permanent bar
948.40	Contributing to the delinquency of a minor (F)	Foster care permanent bar; other, bar w/rehab
948.51	Hazing (F)	Foster care permanent bar; other, bar w/rehab
948.55	Leaving or storing a loaded firearm within the reach or easy access of a child (M)	Bar w/rehab
948.60	Possess dangerous weapon by a person under 18 (F)	Foster care permanent bar; other, bar w/rehab
948.605 (3)	Discharge of firearm in a school zone (F)	Foster care permanent bar; other, bar w/rehab
948.61	Possess dangerous weapon other than firearm on school premises (F)	Foster care permanent bar; other, bar w/rehab
948.62	Receiving stolen property from a child (F)	Foster care permanent bar
948.--	All other ch. 948 felonies	Foster care permanent bar

## Chapter 951 – Crimes Against Animals

951.02	Mistreating animals (F)	Bar w/rehab
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### Chapter 961 –Controlled Substances (Formerly ch. 161 crimes)

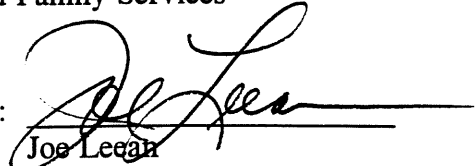
961.38	Practitioner “self-prescribing” (M)	Bar w/rehab
961.--	Manufacture, distribution or delivery of controlled substances (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of controlled substances w/intent to manufacture, distribute or deliver (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of a Schedule I or II controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of a controlled substance other than a Schedule I or II controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
961.41 (3g) (c)	Possession or attempted possession of cocaine (M)	Bar w/rehab
961.42	Keep/maintain any store, warehouse, building, etc. for use manufacture or delivery of controlled substances (M)	Bar w/rehab
961.43 (1) (a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, forgery, deception or subterfuge (F)	Foster care bar for 5 years; other, bar w/rehab
961.43 (1) (b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
961.455	Using a child for illegal drug distribution or manufacturing purposes (F)	Foster care bar for 5 years; other, bar w/rehab
961.46	Distribution to persons under 18 (F)	Foster care bar for 5 years; other, bar w/rehab
961.46	Distribution to persons under 18 (M)	Bar w/rehab
961.465	Distribution to prisoners (F or M)	Foster care bar for 5 years; other, bar w/rehab
961.49	Distribution of or possession with intent to deliver at or near certain places (F)	Foster care bar for 5 years; other, bar w/rehab
961.492	Distribution of or possession with intent to deliver on public transit (F)	Foster care bar for 5 years; other, bar w/rehab
961.575	Delivery of drug paraphernalia to a minor (M)	Bar w/rehab

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health  
and Family Services

Dated: December 4, 1998

By:

  
\_\_\_\_\_  
Joe Leah  
Secretary

SEAL:



State of Wisconsin  
**Department of Health and Family Services**

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Tommy G. Thompson, Governor  
Joe Leean, Secretary

January 27, 1999

The Honorable Judy Robson, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 15 South, State Capitol  
Madison, Wisconsin

Dear Senator Robson:

The Department of Health and Family Services has three emergency rulemaking orders in effect that will expire before the emergency rules are replaced by permanent rules unless the effective periods of the emergency orders are extended. Pursuant to s. 227.24(2), Stats., I ask the Joint Committee to extend the effective periods of the emergency orders by the number of days indicated below.

**(1) Searches of the Rooms and Personal Belongings of Certain Patients at the Wisconsin Resource Center and Mendota Mental Health Institute.** This emergency order amending s. HFS 94.24 (2) (e) will expire on March 13, 1999, unless its effective period is extended. Before August 1, 1998, staff at the Wisconsin Resource Center conducted random searches of the rooms and personal belongings of ch. 980, Stats., patients. Those searches were carried out for treatment purposes and to protect other patients and staff and, in the long run, the general public. The searches were temporarily suspended effective August 1 after a patient brought a lawsuit challenging the practice, claiming that it violated s. HFS 94.24 (2) (e) which permits searches of patient rooms and belongings only if there is documented reason to believe that security rules have been violated or if the living unit is a forensic unit. The unit housing ch. 980 patients at the Wisconsin Resource Center is not a forensic unit. The emergency order published on August 15, 1998 amended s. HFS 94.24 (2) (e) to authorize random searches of the rooms and personal belongings of ch. 980 patients at the Wisconsin Resource Center and the rooms and personal belongings of similar patients in the maximum security facility at the Mendota Mental Health Institute. The Joint Committee on December 8, 1998, extended the effective period of the emergency rules by 60 days through March 12, 1999. The replacement permanent order was sent to the Legislature on January 15, 1999 for review by standing committees. The permanent rules will be filed in late February 1999 for a May 1, 1999 effective date. Therefore, I request an extension of the effective period of the emergency rules by 49 days, from March 13, 1999 through April 30, 1999. If that period is not extended, in the interim the random searches at the Wisconsin Resource Center will again have to be suspended, with likely adverse consequences for treatment of these patients and maintenance of a secure facility for other patients and staff.

**(2) Caregiver Background Checks.** This emergency order creating HFS 12 was published on October 1, 1998, and amended on December 12, 1999, and will expire on February 28, 1999, unless extended. The order repeats the requirements in ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and adds the necessary implementing rules, for background checks conducted in a uniform manner on all persons who apply to the Department for or have received from the Department regulatory approval to operate a facility, service, agency or program that provides care or treatment to people needing it or who propose to reside at a regulated facility. Background checks

are to be carried out in the same uniform manner by county social services and human services departments and private child-placing agencies on people who want to be licenced to provide foster care for children or to adopt a child and by school boards contracting for day care services. Finally, background checks are to be carried out in the same uniform manner by the regulated facilities, service organizations and programs on all persons before they are hired or contracted with to provide care to clients or otherwise have regular contact with clients, and periodically on all persons employed by or under contract who provide care to clients or otherwise have regular contact with them. The Department, county departments, child-placing agencies and school boards are prohibited from giving regulatory approval to a person or permitting a nonclient to reside at a facility if the person has been convicted of or charged with a serious crime, has been found to have abused or neglected a client or child or misappropriated a client's property or does not have the proper professional credential, and regulated facilities, agencies, programs and services are prohibited from hiring or contracting with persons, or retaining them, for the same reasons. For some specified crimes and other acts, persons who have been convicted of them may ask the regulatory agency for a waiver of the bar based on evidence of rehabilitation. Replacement permanent rules were sent to the Legislative Council for review on November 25, 1998 and were taken to three public hearings this month. They will be sent to the Legislature by the end of February for review by legislative standing committees which means that they will not likely take effect until June 1, 1999 at the earliest. Therefore, I request an extension of the effective period of the emergency rules by 60 days, from February 28, 1999 through April 28, 1999. If the effective period is not extended, in the interim the implementation of ss. 48.685 and 50.065, Stats., with the designed increased protections to clients receiving care or treatment, will be halted.

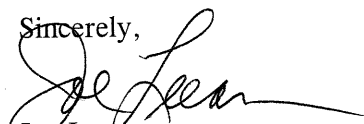
**(3) Reporting of Caregiver Misconduct.** This emergency order creating HFS 13 and amending HSS 129 was published on October 1, 1998, and will expire on February 28, 1999, unless extended. The rulemaking order expands the misconduct part of what has been called the nurse aide registry that s. 146.40 (4g), Stats., requires the Department to maintain. Subsections (4g) and (4r) of s. 146.40, Stats., were amended by 1997 Wisconsin Acts 27 and 237 to require the Department to include in the misconduct part of the registry not only the names of nurse aides for whom there are substantiated reports of misconduct (abuse, neglect or misappropriation of property) toward patients and nursing home residents but also the names of caregivers working for other adult programs regulated by the Department for whom there are substantiated reports of misconduct toward program clients, and to disclose that information to prospective employers and others upon request. Specified facilities, agencies, programs and services regulated by the Department, including home health agencies, nursing homes, hospitals, CBRFs, ambulance service providers and certified community mental health and AODA programs and services, are required to report allegations of caregiver misconduct to the Department for investigation and decision. Replacement permanent rules were sent to the Legislative Council for review on November 16, 1998 and were taken to three public hearings this month. They will be sent to the Legislature by the end of February for review by legislative standing committees which means that they will not likely take effect until June 1, 1999 at the earliest. Therefore, I request an extension of the effective period of the emergency rules by 60 days, from February 28, 1999 through April 28, 1999. If the effective period is not extended, in the interim the required reporting to the Department of misconduct by caregivers who are not nurse aides will be halted, as well as Department investigations of allegations of their misconduct, listing of substantiated allegations of non-nurse aide caregiver misconduct in the caregiver misconduct registry and release of information about non-nurse aide caregivers from the caregiver misconduct registry on request to prospective employers, which means that some caregivers with a history of misconduct toward clients may continue to provide care or treatment to clients.

Copies of the emergency orders are attached to this letter. If you have any questions about the emergency rules relating to caregiver background checks or the emergency rules relating to reporting of caregiver

Senator Robson  
January 27, 1999  
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misconduct, you may contact Linda Dawson of the Department's Office of Legal Council at 266-0355. If you have any questions about the emergency rules relating to random searches of the rooms and personal belongings of ch. 980 patients at the Wisconsin Resource Center, you may contact Neil Gebhart of the Department's Office of Legal Counsel at 267-2002.

Sincerely,



Joe Leeán  
Secretary

Attachments

cc Representative Grothman

SENATOR JUDITH B. ROBSON  
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PO BOX 7882  
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(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO Box 8952  
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(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

March 24, 1999

Secretary Joe Leean  
Department of Health and Family Services  
PO Box 7850  
1 West Wilson Street  
Madison, WI 53707-7850

Dear Secretary Leean:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on March 24, 1999. At that meeting, JCRAR received public testimony regarding **Emergency Rule HFS 12**, relating to caregiver background checks.

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 24, 1999 and adopted the following motion:

Carried unanimously: Pursuant to §227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for Review of Administrative Rules extends the effective date of **HFS 12** by 36 days, at the request of the Department of Health and Family Resources.

Ayes: (10) Senators Robson, Grobschmidt,  
\*Shibilski, Welch, and \*Darling;  
Representatives Grothman, Seratti,  
Gunderson, Kreuser, and Black

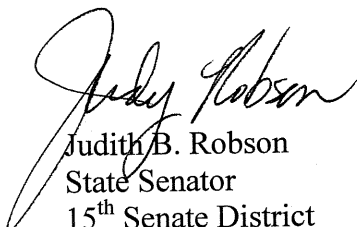
Noes: (0)

Absent: (0)\* Roll held open, voted by phone


**Motion Carried: Extension Granted.**  
10 Ayes, 0 Noes, 0 Absent.

Pursuant to §227.24(2)(c), *Wisconsin State Statutes*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District  
Co-Chair, JCRAR



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District  
Co-Chair, JCRAR

JBR:chmiv

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson





P.O. Box 7882  
MADISON, WI 53707-7882  
(608) 266-2253

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

### *Emergency Rule Extension Motion Form*

*Last Modified January 1999*

February 25, 1999  
411 South, State Capitol

Moved by Grothman, Seconded by Robson

THAT, pursuant to s. 227.24(2)(a), stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule HFS 12 and 13 by 30 days, at the request of the Department of Health and Family Services.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI			
4. Senator WELCH		✓	
5. Senator DARLING			
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals			

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON  
CO-CHAIR  
PO Box 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified March, 1999*

Date: March 24, 1999

Location: Wisconsin State Capitol, 300 SE, Madison, WI

Moved by Robson, Seconded by Kreuser

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule HFS 12 by 36 days, at the request of the Department of Health and Family Services.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT			
3. Senator SHIBLISKI	X		
4. Senator WELCH	X		
5. Senator DARLING	X		
6. Representative GROTHMAN	X		
7. Representative GUNDERSON	X		
8. Representative SERATTI	X		
9. Representative KREUSER	X		
10. Representative BLACK	X		
Totals			

Motion Carried

Motion Failed



**TO:** State Senator Judy Robson, Co-Chair  
State Representative Glenn Grothman, Co-Chair  
Members, Joint Committee on Administrative Rules

**FROM:** M. Colleen Wilson, Legislative Counsel  
Government Relations

**RE:** Chapter HFS 12 – Caregiver Background Checks

**DATE:** February 25, 1999

The State Medical Society of Wisconsin appreciates the opportunity to offer comments with regard to Chapter HFS 12 – Caregiver Background Checks. The physicians of the State Medical Society support efforts to increase the safety of their patients. They do not want the well-being of their patients jeopardized in the hospital setting.

The Department of Health and Family Services interpretation of the enabling statute presumes that all hospital medical staff bylaws establish a contractual relationship between a hospital and its medical staff. Under certain circumstances, medical staff bylaws can (but do not always) constitute a contract. (See Bass v. Ambrosius, 185 Wis. 2d 879 Ct. App. 1994) and Keane v. St. Francis Hospital, 186 Wis. 2d 637 (Ct. App. 1994)) The difficulty this poses is that not all bylaws will be considered a contract between the hospital and the medical staff. Thus, absent clarification in the enabling legislation, entities who are prohibited from contracting may unknowingly violate this law. The State Medical Society suggests that a definition of contract be drafted that specifically excludes medical staff physicians who are otherwise not contracted with the hospital. These individuals will, however, get reported, as entities will have a duty to report to the Department of Regulation and Licensing those individuals licensed under chapters 440-480, Wis. Stats..

Additionally, physicians already are required to indicate to the Department of Regulation and Licensing whether or not they have committed a crime as part of the state licensure process. We encourage the Department to utilize this existing process rather than require physicians to comply with requirements that closely resemble existing law.

The State Medical Society of Wisconsin appreciates the opportunity to provide these comments on behalf of its 8,000 members. We are happy to work with the committee on these rules as the promulgation process continues.

JOHN D. RIESCH, MD, *President*  
JACK M. LOCKHART, MD, *President-Elect*  
JOHN E. PATCHETT, JD, *Executive Vice President*  
BRADLEY L. MANNING, MD, *Treasurer*

# Wisconsin State Fire Chiefs Association

"For the Betterment of the Fire Service"

Stop Fires



Save Lives

February 25, 1999

Representative Gregg Underheim, Chairperson  
Assembly Health Committee  
P.O. Box 8953  
Madison, WI 53708

Dear Representative Underheim:

I am sending this letter in regards to the emergency rules for the Caregiver Background Checks on behalf of the Wisconsin State Fire Chiefs Association. It is our understanding that your Committee is conducting a hearing today, and unfortunately our Association only found out about it late last evening. Many of the Fire Chiefs are at a two day conference in Appleton, and therefore are not able to attend the hearing.

First of all, we would like to thank the committee members for taking the initiative and time to work with many of the interested groups to come up with a compromise on the proposed rules.

Our Association has taken a position that the rules need to be changed, but the rules definitely should include Emergency Medical Technicians. We understand that the emergency rules that will be acted on today will only be for a period of thirty days and because of that our comments will be brief.

Our Association supports including only the five crimes listed in the Caregiver Statues as crimes that should be subject to automatic license denial or revocation. In addition, we feel it is important that the analysis as to whether or not other criminal convictions are substantially job related should be left to the employer and not with the Department of Health & Family Services.

We will encourage our members to provide further testimony when the hearings are scheduled for the permanent rule. I do apologize for the lateness of this letter and we hope that you understand.

Respectfully,

A handwritten signature in black ink that reads "Robert W. Stedman".

Robert W. Stedman, Legislative Liaison  
WI State Fire Chiefs Association  
130 W. St. Paul Avenue  
Waukesha, WI 53188  
414-524-3649

**Statement of Risk Management Staff at the University of Wisconsin-Milwaukee  
Regarding Amendments to the Caregiver Background Check Requirements of Chapters 48  
and 50 of the Wisconsin State Statutes**

By  
Linda Wittmann-Kirsch, Risk Manager  
and  
Jeanne M. Kreuser, Claims Manager/Loss Control Coordinator

The impact of the Caregiver Background Check requirements of Chapters 48 and 50 to *students and educational institutions* must be given serious and critical thought as you contemplate amendments to this law.

We have three critical points we would like to add to this discussion.

First, the lack of clarity as to who must perform the checks for students -- the regulated entity or the educational institution -- has created administrative chaos. Students are literally held hostage as placements are delayed while university administrators and regulated agencies deadlock over the issues of liability and responsibility for determining who will make the final decision on whether a student is in or out of a placement.

Second, the burden in terms of time and money to the educational institutions who choose to perform at least the paperwork for the checks, if not the final decision for placement, is only beginning to be realized. Students are already feeling the need to push the process by facilitating the routing of paperwork. Institutions are just realizing how many students this law may effect -- and how costly it may be. How long can it be before these costs are also passed on to students?

Third, the overall impact of background checks on the educational process, aside from delaying placements and potentially costing students more money, is that some students will simply be denied access to programs, period. Educational administrators have already been told to make a background check part of the admission process, in order to avoid misleading prospective applicants into thinking they may actually be able to achieve a degree that leads to licensing or certification.

For these reasons, we believe that the law either needs to be amended to specifically delete students from the definition of "covered persons," or the responsibility and liability for determining the eligibility of students for placements in regulated agencies needs to be clearly defined.

R:\USERS\JEANNE\WPDOCS\JEANNE\AFFILIAT\COMMENTS.CBC

Linda Wittmann-Kirsch  
2/23/99

Jeanne M. Kreuser 2/23/99

February 18, 1999

Senator Judy Robson  
2411 East Ridge Road  
Beloit, Wisconsin 53511

Dear Senator:

My name is Daisy O'Leary and I am the aunt of Donna Grorud and Andy Feggstad.

Andy was employed at the Rock County Home and Hospital and his job was terminated as a result of an incident outside of his employment. He was fired under the New Caregivers Law.

I understand that you will introduce a bill next week to have this law revoked as to events outside of employment. I would like to have it grand-fathered so Andy and others can be covered.

As you probably have heard, Donna's father had his colon removed yesterday as a result of cancer. But he will survive.

Your cooperation will be greatly appreciated.

Respectfully,

*Daisy O'Leary*

Daisy O'Leary  
315 South Academy Street  
Janesville, Wisconsin 53545

Copy Senator Judy Robson  
State Senate  
Madison, Wisconsin

## Flury, Kelley

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**From:** CWAG [cwag@midplains.net]  
**Sent:** Tuesday, February 23, 1999 11:03 AM  
**To:** Sen.Robson; Rep.Grothman; Sen.Grobschmidt; Sen.Shibilski; Sen.Welch; Sen.Darling;  
Rep.Gunderson; Rep.Seratti; Rep.Kreuser; Rep.Black  
**Cc:** Rep.Krusick  
**Subject:** Criminal Background Checks

In preparation for your Thursday, February 25th meeting, I would like you to know that the Coalition of Wisconsin Aging Groups supports the 60-day extension of the emergency rules covering criminal background checks for health care workers. We feel that such an extension is necessary to protect the frailest of this state's population and to give health and child care providers the tools necessary to develop a systematic method to do such criminal history searches.

We encourage the committee to grant this extension and use that time to address the issues that have come to light in the January public hearings.

Thank you

Tom Frazier, Executive Director  
CWAG

**HFS 12**  
**Caregiver Background Check Law**

**History:** 1997-98 budget expanded required background checks to persons caring for or having access to children and adults who are clients of DHFS-regulated programs. Covers owners/operators, licensees, paid/contract employees, and non-client residents.

**Effective Dates:** 10/1/98 for new licensees or employees; 10/1/99 for current licensees or employees.

<b>Major Issues of Concern Raised at Public Hearings (1/99)</b>	<b>Solutions as Drafted in Amended Emergency Rule (2/99)</b>
<ul style="list-style-type: none"> <li>▪ Coverage of law is too broad.</li>   <li>▪ Crimes list:               <ol style="list-style-type: none"> <li>1. "Serious Crime" definition has no "statute of limitations"</li> <li>2. Employment consequences of crimes on current list are too harsh. Employers want more discretion in determining whether person should be hired.</li> </ol> </li>   <li>▪ Rehab review process too limiting cumbersome</li> </ul>	<ul style="list-style-type: none"> <li>▪ DHFS added definition of "access" and modified definition of "under the entity's control" to exclude persons whose duties do not include regular, direct contact with clients.  <b>RESULT:</b> Excludes many service contractors, administrative and non-caregiving support staff.</li>   <li>▪ DHFS revised crimes list.               <ul style="list-style-type: none"> <li>▪ Reduced to 3 the crimes that would act as permanent bar for all programs (outside of the 5 identified by law).</li> <li>▪ Revised crimes list so some crimes are reviewable by DHFS for 5 years; others for 10 years.</li> <li>▪ Moved significant number of crimes from "serious crimes" list.</li> <li>▪ Increased number of crimes where employer is able to determine whether conviction is substantially related to duties.</li> <li>▪ Tribes may do rehab reviews.</li> <li>▪ EMT's covered by permanent bar crimes; all others subject to "substantially related" test.</li> <li>▪ Eliminate "lesser sanction" crimes.  <b>RESULT:</b> Out of over 800 crimes -                   <ul style="list-style-type: none"> <li>▪ 5 Permanent Bar by law (all)</li> <li>▪ 3 Permanent Bar by DHFS (all)</li> <li>▪ 9 Permanent Bar by DHFS (under certain circumstances)</li> <li>▪ 49 Permanent Bar – Foster Care</li> <li>▪ 16 Bar – Foster Care - Limited by time (5 yrs) or circumstances (sp)</li> <li>▪ 53 Bar w/ rehab – Review limited by time (5 or 10 yrs) or job duties</li> <li>▪ 48 Bar w/ rehab – Review by DHFS</li> <li>▪ Remaining crimes: Employer may determine whether "substantially related" to duties.</li> </ul> </li> </ul> </li>   <li>▪ Tribes able to do reviews</li> <li>▪ Fewer crimes subject to review</li> <li>▪ Approval will be broader</li> <li>▪ Persons will be eligible to apply at any time, even if on probation or parole.</li> <li>▪ Entities able to determine whether person is rehabilitated for many crimes.</li> </ul>



**HFS 13 - Caregiver Law**  
**Investigation of Abuse, Neglect and Misappropriation of Property**

**History:** 1997-98 budget required expanded investigations of paid/contract employees or non-client residents regulated, adult facilities who abuse or neglect clients, or misappropriate clients' property.

**Effective Date:** 10/1/98

Major Issues of Concern Raised at Public Hearings (1/99)	Solutions as Drafted in Amended Emergency Rule (2/99)
<ul style="list-style-type: none"> <li>▪ Definitions of "abuse", "neglect" vague.</li>   <li>▪ Wanted reinserted in rule the ability to have a representative of person's choice present during DHFS's investigatory contacts with accused</li>   <li>▪ Complaint investigations should be shared among agencies and programs.</li>   <li>▪ More direction needed to assist facilities in determining what an "allegation" is</li> </ul>	<ul style="list-style-type: none"> <li>▪ DHFS revised definition of "abuse"; separate definition of "neglect" deleted. Defined to identify intentional, reckless or substantially careless or negligent acts.</li>   <li>▪ Rule revised to include written notice to accused that he/she may have a representative of person's choice present during contacts with DHFS during the investigation.</li>   <li>▪ Rule revised to direct sharing of investigatory information with other agencies, e.g., Wisconsin Certification Board, as appropriate.</li>   <li>▪ DHFS continuing to work on direction for facilities; must be consistent with federal requirements.</li> </ul>

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## Coalition of Wisconsin Aging Groups

Testimony Before Joint Committee on Administrative Rules  
In Support of Extension of Emergency Rule: Caregiver Background Checks  
By Betsy Abramson – March 24, 1999  
*Revise, Don't Rescind This Rule!*

The Coalition of Wisconsin Aging Groups (CWAG) strongly urges this Committee to extend the emergency rules regarding Caregiver Background Checks, HFS 12. This rule implements the law requiring background checks on prospective and current operators and employees of DHFS-regulated programs and facilities that care for vulnerable persons including the elderly and people with disabilities.

The enabling legislation and the emergency rules developed to implement it, were created to address a long-standing and well-documented problem: serious patient abuse by facility operators and employees with a history of patient abuse. Concerns about this abuse have long been raised by advocates and were the subject of a major investigative newspaper series by *The Milwaukee Journal-Sentinel* in March 1997. These articles resulted in the Legislative Audit Bureau report on DHFS's regulation of nursing homes and ultimately, many legislative proposals. One was this important law on Caregiver Background Checks.

It is very important to be clear about the purpose of this statute: to ensure that individuals with established records of patient abuse be precluded from further patient contact. Like all of the law and rule's supporters we do not want to see the rights of workers harmed; however, the main and critically important reason for these rules is patient protection. This is simply not a workers' rights bill.

Many citizens, trade associations, workers' groups and legislators have raised concerns about these emergency rules, arguing that the rules have gone too far and are harming innocent individuals who are being precluded from pursuing a livelihood. We have listened to their concerns and are sympathetic to many of the points they have raised. The response of this committee, however, should therefore be to extend the rules while directing the Department of Health and Family Services to earnestly begin a process of amending the rules to make sure they do not result in overkill – not, as has been suggested, to simply suspend the rule. The need for the rule still exists; indeed our U.S. Congress is currently holding hearings on patient abuse in nursing homes throughout the country. We must not abandon our most vulnerable citizens because of small unintended – and clearly correctable – consequences of the rules.

The Coalition of Wisconsin Aging Groups is eager to work with DHFS, interested legislators and other interested individuals to determine the problematic parts of the rules and to work cooperatively to their improvement.

We urge this Committee to extend Emergency Rule HFS 12 to enable the Department to develop appropriate changes to the rule. On behalf of the tens of thousands of Wisconsin's most vulnerable citizens, we ask: *Revise, don't rescind, this rule.*

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## Coalition of Wisconsin Aging Groups

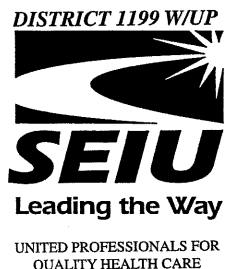
The following are examples\* of patient abuse that have occurred in Wisconsin and demonstrate the importance of Caregiver Background Checks to ensure that individuals who have been proven to have engaged in these types of actions are precluded from further patient contact.

- ◆ Sandie Johnson was convicted of four counts of patient abuse (including the bully statute) at the Central Wisconsin Center in Madison. These incidents ranged from flicking water in residents' faces to striking a blind resident, who was born without a portion of skull, on his head. Ms. Johnson was also convicted of throwing a resident with severe osteoporosis several feet across a room. She was sentenced to serve 12 months house arrest and perform 300 hours of community service (not caring for other people).
- ◆ Erich Kleditz was convicted of striking a resident of the Veterans Home in King, Wisconsin. He was sentenced to six months probation.
- ◆ Patty Hurst was convicted of shoving a washcloth into the rectum of one resident of a nursing home and taping shut the buttocks of another. She was sentenced to 60 days house arrest, community service and counseling.

Other aides under investigation included:

- ◆ A man who allegedly beat up a nursing home resident while in an elevator.
- ◆ A woman who worked at a nursing home and allegedly slapped a resident across the face and then held the resident's fist up to the resident's mouth, causing the resident to split her own lip.
- ◆ A man who was charged with stomping on empty milk cartons behind the back of a resident whom he knew to be a war veteran; the loud noise of the cartons popping allegedly caused the resident to "holler" about incoming airfare and to become very agitated, much to the sadistic delight of the nursing home worker.

*\*All Case Examples were provided by (former) Assistant Attorney General Juliet M. Brodie, of the Wisconsin Attorney General's Medicaid Fraud Control Unit at a training conference on Medical Assistance sponsored by the Elder Law Center of the Coalition of Wisconsin Aging Groups.*



**DISTRICT 1199W/UNITED PROFESSIONALS FOR QUALITY HEALTH CARE**  
**Affiliated with Service Employees International Union, AFL-CIO, CLC**

2001 West Beltline Highway, Suite 201  
Madison, Wisconsin 53713-2366  
608-277-1199 \* Fax: 608-270-2025 \* Toll Free: 888-285-1199  
Web: www.1199wup.org \* E-Mail: 1199wup@1199wup.org

*UNITED PROFESSIONALS, LEADING THE WAY TO QUALITY HEALTH CARE*

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March 23, 1999

***Via e-mail***

Senator Judy Robson, Co-Chair  
Joint Committee for Review of  
Administrative Rules  
Room 15 South  
State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Representative Glenn Grothman, Co-Chair  
Joint Committee for Review of  
Administrative Rules  
Room 15 North  
State Capitol  
P.O. Box 8952  
Madison, Wisconsin 53708-8952

**RE: March 24, 1999 Hearing on Emergency Rule DHFS 12  
(Criminal Background Check Emergency Rules)**

Dear Senator Robson and Representative Grothman:

District 1199W/United Professionals for Quality Health Care, SEIU, is a membership union representing health care workers. We represent more than 3,500 health care workers in over twenty chapters across the State of Wisconsin. Our members work in hospitals, clinics, state, county and city health departments, and nine nursing homes. We are generally supportive of the concept behind the Criminal Background Checks for Caregivers and of the emergency rules implemented by the Department of Health and Family Services, we assisted in passing the original bill.

However, we would encourage a modification to the proposed rules – to include a provision which would enable a caregiver to continue to work while appealing the results of a criminal background check to either the state agency or to the immediate employer.

March 23, 1999

Page 2

In the cases of several of our members, the criminal background checks have not identified the correct crime the person was convicted of. The people were suspended anyway and are now working to provide the correct information but it is an administrative nightmare to get some of this old data. We believe a firm foundation exists for their eventual reinstatement to their position at their nursing homes. Unfortunately though, in the meantime these individuals are without employment and faced with economic hardship. For economic sustenance, each member is being forced to turn to the unemployment compensation system – which has stated that it will fully pay all employees discharged as a result of this law. This hardship also impacts the families of our members which each is attempting to support; and the residents of the nursing home where staffing levels are already dangerously low. (See the *Milwaukee Journal Sentinel* story of March 21, 1999, front page)

We believe that this minor modification to the rules would protect the rights and interests of caregivers throughout the State of Wisconsin. We also believe that such a modification would not pose an undue burden on the employers or place those receiving care at risk.

In addition to this change in the rules, we also urge consideration of a change in the law to either: 1) eliminate the mandatory removal of any employee and give employers the option to remove, or 2) limit the removal of employees to the five major crimes listed in the rules. We believe it is important that there be a substantive correlation between the crime and the work the person is performing as a care giver. We also believe that a person who has been convicted of a crime (not one of the major ones), has paid their debt to society and has been performing as a dedicated care giver without problem for years should not be forced to pay another penalty by losing their job. A past mistake years ago should not now come back to haunt a dedicated care giver!

Thank you for your consideration of these concerns and recommendations for modifications to the emergency rules.

Sincerely,

/S/

Ann McCormick  
President

Cc: Members of the Joint Committee for Review of Administrative Rules  
Rep. Peggy Krusick

# SAINT JOHN'S

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January 27, 1999

Mr. Larry Hartzke  
Bureau of Quality Assurance  
P.O. Box 309  
Madison, Wisconsin 53701

**Re: Public hearing on HFS 12.**

**On September 30, 1999 Saint John's will award a 10-year service pin to one of its best employees. On October 1, 1999 that employee will be fired.**

Dear Mr. Hartzke:

Please include this letter with the testimony recently offered at the public hearings on HFS 12, the criminal background check law.

While I strongly support the need for criminal background checks of employees who serve residents of Wisconsin's nursing homes, I am concerned about provisions of the current law which prohibit people convicted of certain offenses from ever being employed in a care setting. The fact that on October 1, 1999 the law will be applied retroactively is particularly disturbing and potentially disruptive to the smooth operation of our nursing home facility, to our residents and to the life of one of our best employees.

We have an employee, hired in 1989, who in 1990 was convicted of a crime listed on the "permanent bar" list. This crime was not against an older person. The employee was sentenced to 10 years in prison but the sentence was stayed to one year in jail (Huber Law) and 11 years probation. At the time this employee was convicted Saint John's reviewed the case and evaluated the risk to our residents. We determined that, while the crime was very serious, it was not committed against an older person and that with proper supervision this person could be a productive and valuable employee.



*Serving Milwaukee Since 1868*

Saint John's Home of Milwaukee  
1840 North Prospect Avenue  
Milwaukee, Wisconsin 53202  
(414) 272-2022

In order to protect the person's privacy, I will not go into detail other than to say that the terms imposed by the court with regard to probation were extensive and severe. I have a letter from this person's probation officer who says that the employee will be off probation in two years. She states that this person has "never been a problem," and has faithfully fulfilled all the provisions of the court's order.

Despite committing a terrible offense, this person's life has been turned around. For 10 years this person has been a model employee. In fact, if all of our employees were as conscientious and skilled as this one, our residents would be even better served than they are. I wish we could clone this employee and I am concerned that, given today's tight job market, we may not find as good a replacement.

The worth of this employee has been proven over a 10-year period (the average nursing home employee works at one job for less than two years). Yet ironically, unless the law is changed, on October 1, 1999 this employee will have to be fired! The employee's life will be thrown into chaos despite the fact that the person has done everything required over the last nine years to pay society's debt. This person's discharge will serve no good purpose for Saint John's, our residents or society in general. This cannot be what the legislature intended when they passed this law.

Please ask the legislature to make appropriate changes to the law to remedy this situation. Allow for the "grandfather" exception for existing employees or provide an opportunity for employees like this to prove they have been rehabilitated.

Very truly yours,

Dennis M. Gralinski  
President



# The University of Wisconsin System

Senior Vice President for Academic Affairs  
1624 Van Hise Hall, 1220 Linden Drive  
Madison, Wisconsin 53706-1559  
(608) 262-8778 FAX (608) 263-2046

**Testimony Before the Joint Committee for Review of Administrative Rules  
by David J. Ward, Senior Vice President for Academic Affairs  
University of Wisconsin System  
March 24, 1999**

Members of the Joint Committee for Review of Administrative Rules:

Thank you for the opportunity to appear on behalf of the University of Wisconsin System.

The purpose of my testimony is to express the University of Wisconsin System's concerns about the new Wisconsin Caregiver Law, including the recent amendments to the rules. Let me begin by emphasizing that the university supports the spirit of the law—that is, broadly speaking, to protect vulnerable populations. My purpose in appearing at this hearing, however, is to alert the Committee as to the significant indirect impact the Caregiver Law has on our student internship and residency programs.

The University of Wisconsin System operates thirteen universities and thirteen two-year colleges throughout the state of Wisconsin. Each of these institutions offers many programs in child and health care-related fields, including medical schools, nursing schools, social work schools, teacher education programs, and counseling and psychology programs. As part of their academic curriculum, these programs require each student to gain practical experience through a *supervised* internship, clinical placement, or residency with an appropriate facility. Many of these facilities are entities affected by the new Wisconsin Caregiver Law. As such the entities are required to obtain complete criminal background information from all individuals contracting with them. The Department of Health and Family Services (DHFS) has interpreted this requirement to include "students and interns, completing educational clinical or in-service training requirements."

This interpretation has two major implications for University of Wisconsin and its students. First, the results of the background checks may affect the students' eligibility to participate in an internship, in some cases preventing them from achieving their educational goals. Not only would this affect prospective students, but it also has a significant impact on students *currently* enrolled in our programs. Many students have spent a substantial amount of time pursuing their educational goals in our programs, foregoing other opportunities, only to discover that they will not be able to complete their education due to the results or interpretation of a criminal background check.



Second, the Law is ambiguous as to who—the entity or the contracting individual or agency—is responsible for conducting the background checks. As a result, many of these entities have already attempted to shift to the university the responsibility for performing these criminal background checks through the vehicle of our affiliation agreements. These agreements have traditionally reflected the mutually beneficial relationship between the university and these entities. However, the entities' actions in response to the Caregiver Law have effectively forced University of Wisconsin System institutions to agree to conduct the background checks in order to maintain these essential training opportunities for our students. These significant and costly new responsibilities are not part of our educational mission, nor, in our view, are they consistent with the intent of this regulatory scheme.

To the extent that this will continue to represent a trend, our programs may be forced by expediency into incorporating these background checks into the admissions process and further, into using the *results* of those background checks to determine whether to admit students to or deny them participation in these affected programs. As an educational institution, the university feels that such action is inconsistent with our mission: offering *educational opportunity* to individuals from various backgrounds and experiences. The opportunities we provide allow students to determine for themselves how best to benefit from the education. Where such a decision might ultimately result in a student seeking licensure or employment outside of Wisconsin, the impact of the Caregiver Law at the educational level will preempt that possibility. In addition to limiting educational opportunity, this action further undermines the spirit of our nondiscrimination policies. While we do not currently have a policy prohibiting discrimination on the basis of criminal history, we have always recognized the Wisconsin legislature's mandate on nondiscrimination on the basis of criminal history in employment, sec. 111.335, Wis. Stats., and feel an even more compelling case can be made in the context of education.

In the administrative area, we are only beginning to appreciate the full impact of the Law. Fiscal estimates made by some of our campuses have projected that their costs will be in the tens of thousands of dollars—none of which is provided for in current budgets. Conducting a complete criminal background check will also impose an enormous burden on existing staff. Significantly, staff will have to be trained not only in how to perform and interpret the results of a background check, but also in how to conduct the necessary “follow-up” where circumstances require it. Many questions have already arisen as to the implementation of these procedures such as, for example, how to treat the case of foreign exchange students and visiting scholars.

Finally, the only section of the rules directly addressing students—HFS 12.21(1)(b)(3)—in fact places the university in legal jeopardy while potentially making the university shoulder a burden which is properly that of the regulated entity under the contemplated scope of the Caregiver regulatory scheme. That section, created by the recent amendments, allows entities to enter into an agreement with the university under which the university would retain the criminal background records while certifying to the

entity that certain students do not have a criminal history that renders them ineligible to participate in an internship.

Although the university would never readily enter into such an agreement it anticipates that, in light of the current posture of the entities as described above, the entities may likewise condition acceptance of students on the university's agreement to accept this responsibility. Such action, however, forces the university to make eligibility determinations that are not its responsibility since *the university is not the regulated entity*. Moreover, it exposes the university to potential liability in the event that university personnel should erroneously certify the eligibility of a student.

As the above discussion has shown, we believe that the administrative rules you have before you, while well-intentioned, have reached beyond the intended scope of the law to touch students who participate in supervised internships as part of their education. Accordingly, we request that the Committee clarify in the rules that students are excluded from the definition of a "covered person" under the Caregiver Law. Should the Committee be willing to adopt this proposal, we believe it would be more consistent with the spirit of the Law as originally intended by the legislature.

Thank you for your time and consideration.

Occupational Therapy Program  
Department of Health Sciences



March 23, 1999

Representative Glenn Grothman and Senator Judy Robson  
Joint Committee for Review of Administrative Rules  
Wisconsin Legislature  
State of Wisconsin  
Madison, WI

Dear Representative Grothman and Senator Robson:

I'm Barbara Jacobs from the University of Wisconsin-Milwaukee's Occupational Therapy Program. I've taught and served as Academic Fieldwork Coordinator at UW-M since the 1991-92 academic year. Currently, I place 74 students in each of two fieldwork placements which occur second semester of the senior year after all academic course work has been completed. According to our accrediting agency, the National Board for Certification in Occupational Therapy (NBCOT), students must complete six months of supervised fieldwork before sitting for the certification examination. This fieldwork is usually completed in two different settings for three months each.

My concern as I consider the impact of the caregiver background checks on our students is that this will be the "straw that broke the camel's back" in terms of facilities and clinicians being willing to provide this essential component of our students' education. While providing fieldwork education can be energizing, it can also be draining depending on the student and the current environment in the health care organization. Clinicians are currently concerned with lay-offs and job security. This new requirement for students is just one more disincentive to take students.

I am also concerned about the ability of large institutions (both our university and the hospital conglomerates we depend on for clinical education) to respond in a timely manner to the paperwork involved in implementing the checks for the numbers of students involved. Delaying the start-date of a student's fieldwork placement due to not having the paperwork in order can result in postponing his/her fieldwork completion and his/her ability to sit for the certification examination, which is held only in September and March. This adversely affects the student's ability to enter the job market, which could cost the student \$15000 in lost earnings during the 6-month wait and will have an economic ripple effect in all sorts of ways.

While I am very concerned about the welfare of the vulnerable populations this law is intended to protect, I am wondering if it is necessary to apply it to students in the same way that it is applied to employees. Our accreditation standards mandate that students are supervised by a registered occupational therapist with at least one year's clinical experience. In most of our sites, this supervision is supplemented by other health care professionals that are also available to observe student behavior and to answer student questions. Students are evaluated by their supervising clinician using a very complete

March 23, 1999

Page 2

form developed by the American Occupational Therapy Association. Fairly close scrutiny of student behavior is necessary to complete the form accurately.

Our students are also advised, prior to applying to our occupational therapy program, that both NBCOT and the state of Wisconsin regulate the practice of occupational therapy to protect the public from unsafe, illegal and unethical practitioners. We believe that students with questionable backgrounds will self-select out of our program as a result. As occupational therapists, however, we also believe in the value and efficacy of rehabilitation. Many people with questionable backgrounds deserve the opportunity to demonstrate that they have turned their lives and want to give back to society by serving the people with the disabilities they have overcome themselves.

Thank you for your attention and consideration.

Sincerely,

Barbara Jacobs, MS, OTR  
Academic Fieldwork Coordinator  
Clinical Assistant Professor



UNIVERSITY OF  
WISCONSIN-MADISON  
MEDICAL SCHOOL

March 24, 1999

Members of the Joint Committee on Administrative Rules:

As Dean of Students at the University of Wisconsin Medical School, I am writing to share my concerns about the new Wisconsin Caregiver Law. I wish to make it clear at the outset that the Medical School is in complete agreement and supportive of the intent of this new law, namely to protect the rights and well-being of patients who are under the care of other individuals. However, if students are to be included in this law, this letter is intended to inform the Committee of the following points that the Medical School believes will have a negative impact of its educational mission.

- The Medical School believes background checks on medical students are unnecessary because the patient is well protected in the current medical education system. Medical students are always carefully supervised during their clinical training. As a medical student interacts with a patient, the attending physician, house staff officer and/or nursing staff, monitors the student's every action. Although the primary intents of this close supervision are to provide feedback to the student to facilitate his/her skill acquisition, and to ensure that the patient is not unintentionally harmed by an unskilled student, a secondary benefit is that the patient is not vulnerable to deliberate mistreatment because supervisors are always present. In approximately 30 years of teaching medical students, I have never heard of a single incident in which a student deliberately harmed a patient or performed a criminal act on a patient. In fact, the corollary is a serious problem, namely patients who harass students. In addition, students are being graded and evaluated based on everything they do during their clinical training. This fact alone is a powerful motivating force for students to be on their very best behavior at all times.
- Second, the Caregiver Law has the potential to decrease the quality of a student's medical education by limiting the sites where a student can train. One might wonder why it should matter where students train as long as they get the training. In fact, it matters a great deal. The type of medicine practiced at the University Hospital is referred to as tertiary care, meaning it is highly specialized. This is not the type of practice that most of our graduates will ultimately pursue. Most will be in primary care settings. Consequently, the Medical School has developed more than 75 different clinical sites throughout the state. Exposure to these community-based settings is critical to preparing medical students for practicing medicine in the 21<sup>st</sup> century. If these clinical settings perceive they are at risk for losing their licensure status if they take medical students who have less than squeaky clean backgrounds, they will most likely err on the safe side and simply refuse to train such students. As it now stands, the Medical School has to do the background checks, while the entities have the authority to make the decision as to each

Medical School Administration

Dean's Office 608/263-4910  
Admissions 608/263/4925

1300 University Avenue Madison, WI 53706-1532 608/263-4900

FAX 608/262-2327

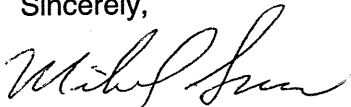
Registrar 608/263-4912  
Student Services 608/263-4920

student's eligibility. Thus, there are two problems here: One, is that the Medical School finds itself in the position of not being able to predict accurately a particular student's eligibility, and second, we are likely to have medical students whose educational opportunities have been severely curtailed, if not blocked because there are declared ineligible by the training entity. Any limitation or restriction in where a student can be trained goes against the educational mission of the Medical School.

- Third, this law is likely to have a negative impact on our admissions process. Prospective students, particularly the better ones with multiple acceptances from other schools, will be aware of the Caregiver Law because we are required to conduct background checks prior to matriculation. Given the uncertainty of where, and if, students can do their clinical training within our statewide campus, prospective students are likely to choose another medical school.
- Finally, while wholly secondary to the above issues, there is the reality of the costs involved with the background checks. We must now conduct background checks on about 600 students, and every year an additional 143 will have to undergo background checks. The monetary costs become even more evident with many of our students being non-residents or having attended an out-of-state college during the past 3 years. We are aware that obtaining criminal background information from states other than Wisconsin can cost as much as \$35 per person. In addition, we will incur administrative costs in terms of staff time spent obtaining, interpreting, and maintaining criminal records about our students.

I thank you for your time and attention. I respectfully request your consideration of the issues I have raised and urge you to exclude students as the Committee determines amendments and regulations for the Caregiver Law.

Sincerely,



Mikel H. Snow, Ph.D.  
Associate Dean for Students



**TO:** State Senator Rodney Moen, Chair  
Members, Senate Committee on Health,  
Utilities, Veterans and Military Affairs

**FROM:** M. Colleen Wilson, Legislative Counsel  
Government Relations

**RE:** Chapter HFS 12 – Caregiver Background Checks  
(HFS 98-191)

**DATE:** April 28, 1999

The State Medical Society of Wisconsin appreciates the opportunity to offer comments with regard to Chapter HFS 12 – Caregiver Background Checks. The physicians of the State Medical Society support efforts to increase the safety of their patients. They do not want the well-being of their patients jeopardized in an institutional setting.

The Department of Health and Family Services interpretation of the enabling statute presumes that all hospital medical staff bylaws establish a contractual relationship between a hospital and its medical staff. Under certain circumstances, medical staff bylaws can (but do not always) constitute a contract. (*See Bass v. Ambrosius*, 185 Wis. 2d 879 (Wis. Ct. App. 1994) and *Keane v. St. Francis Hospital*, 186 Wis. 2d 637 (Wis. Ct. App. 1994)) The difficulty this poses is that not all bylaws will be considered a contract between the hospital and the medical staff. Thus, absent clarification in the enabling legislation, entities prohibited from contracting, or that do not consider their hospital staff bylaws to be contracts may unknowingly violate this law. The State Medical Society suggests that a definition of contract be drafted that specifically excludes medical staff physicians who are otherwise not contracted with the hospital. These individuals will, however, be the subject of criminal background checks as physicians are asked by the Department of Regulation and Licensing (DRL) if they have ever been convicted of a misdemeanor, a felony or driving while intoxicated (DWI) in Wisconsin or any other state, or if they have any criminal charges or DWI charges pending.

Due to the comprehensive nature of the process used by DRL to assess its credential holders (see attached), the State Medical Society encourages the Department of Health and Family Services to require the institutions performing criminal background checks to rely on the credentialing status of persons licensed by DRL. The stated objectives of the enabling legislation can be accomplished with fewer difficulties than the process created by the proposed permanent rules.

Thank you for the opportunity to offer these comments. We are happy to work with committee members as the rule promulgation process continues.

SEP 14 1999



State of Wisconsin

Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET  
P.O. BOX 7850  
MADISON WI 53707-7850

TELEPHONE: (608) 266-8428

Tommy G. Thompson  
Governor

Joe Leean  
Secretary

September 14, 1999

The Honorable Judy Robson, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 15 South, State Capitol  
Madison, Wisconsin

The Honorable Glenn Grothman, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 15 North, State Capitol  
Madison, Wisconsin

Dear Senator Robson and Representative Grothman:

This is notification that the Department on September 16, 1999 will publish an emergency rulemaking order to modify the Crimes List appended to ch. HFS 12, its rules for implementing the Caregiver Law, ss. 48.685 and 50.065, 1997-98 Stats. A copy of the emergency order is attached to this letter.

The uniform caregiver background check requirements and bars to regulatory approval and to employment or contracting to provide services to entity clients or to live as a nonclient at an entity that are provided for by ss. 48.685 and 50.065, Stats., and the ch. HFS 12 implementing rules were effective on October 1, 1998 for applicants for regulatory approval and for employment at or contracting with a regulated entity or to live as a nonclient resident at an entity. They will be effective on October 1, 1999 for persons who received regulatory approval before October 1, 1998 or who were hired or contracted with before that date to provide services to clients of regulated entities or approved before that date to reside at regulated entities. The Department is modifying the Crimes List in ch. HFS 12 at this time by emergency rulemaking order so that some persons who under the current Crimes List would lose their approvals or jobs effective October 1, 1999, will not lose their approvals or jobs. These are the persons who would not lose their approvals or jobs once the 1999-2001 Budget Bill, which revises ss. 48.685 and 50.065, Stats., is enacted.

If you have any questions about this emergency rulemaking order, you may contact Susan Dow of the Department's Office of Legal Counsel at 264-9893.

Sincerely,

  
Paul E. Menge  
Administrative Rules Manager

Attachment



ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
REPEALING AND RECREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since October 1, 1998, the Department has been implementing statutes that became effective on that date that require use of uniform procedures to check the backgrounds of persons who apply to the Department, to a county social services or human services department that licenses foster homes for children and carries out adoption home studies, to a private child-placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non-client at the entity. The statutes, ss. 48.685 and 50.065, Stats., direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction, finding or charge, who have in their backgrounds a specified conviction, finding or charge substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or otherwise having contact with the clients of a service provider.

The new statutes, commonly referred to as the Caregiver Law, were effective on October 1, 1998, for applicants on or after that date for licensure, certification or other agency approval, and for persons applying to be hired by or to enter into a contract with a regulated entity on or after that date to provide services to clients or to take up residence as a non-client at a regulated entity.

For regulated agencies approved before October 1, 1998, and for persons employed by, under contract to or residing as non-clients at regulated entities before October 1, 1998, the Caregiver Law's required uniform procedures and "bars" are to apply beginning on October 1, 1999. That is to say, by October 1, 1999, background checks, using the uniform procedures, are to be completed for all service providers who were approved before October 1, 1998, and for all employees, contractors and non-client residents employed by, under contract to or living at a regulated entity before October 1, 1998, and action taken to withdraw approval, terminate employment or end a contract, as appropriate.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order.

Chapter HFS 12 included an appendix which consisted of a list of crimes. The original list specified 159 crimes for conviction of any one of which a person would be barred permanently (45 crimes), all programs, or would be barred temporarily, all programs, pending demonstration of rehabilitation, from being approved to be a service provider or from providing care or treatment to clients or otherwise having access to clients. The October 1998 emergency rules were modified in December 1998 and February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. The Crimes List in the current permanent rules specifies 117 crimes with 9 being permanent bar crimes for all programs.

This order again modifies ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes is reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being permanent bar crimes for all programs. The change to the ch. HFS 12 Crimes List is being made at this time because the 1999-2001 Budget Bill, now before the Legislature but not likely to take effect before October 1, 1999, is expected to provide for a more modest Crimes List than the one now appended to ch. HFS 12. This means that the Legislature intends that some persons who under the current rules would lose their jobs effective October 1, 1999, will be able to keep their jobs. The Department has the authority to further modify the Crimes List so that it corresponds to how the Legislature, after having heard arguments since October 1998 about how the Caregiver Law should be amended and implemented, wants it to work. This is what the Department is doing through this order.

#### ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 48.685 (5) and (7) (a) and 50.065 (5) and (7) (a), 1997-98 Stats., and 227.11 (2), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 48.685 and 50.065, 1997-98 Stats., as follows:

SECTION 1. Appendix A of chapter HFS 12 is repealed and recreated to read:

## Chapter HFS 12

### APPENDIX A -- CRIMES LIST SEPTEMBER 1999

This document contains a list of Wisconsin crimes current as of September 3, 1999. The statute numbers have been provided on this table for ease in identifying crimes. Unless otherwise indicated, the crimes listed have been determined by the Department of Health and Family Services to be "substantially related" to positions covered by the Caregiver Law, ss. 48.685 and 50.065, Wis. Stats.

Crimes also charged under ch. 939, Wis. Stats., are to be treated as provided for the companion crime, unless otherwise indicated. For example, ss. 939.05, 940.19(2) (Party to the Crime, Battery) would be in the "bar with rehab" category because the list provides that felony battery is in that category. However, ss. 939.32, 940.01 (Attempted 1<sup>st</sup> Degree Intentional Homicide) would be in the "bar with rehab" category rather than in the "permanent bar" category because there is a special condition or comment that so indicates.

If a person has been convicted of a crime in another state or jurisdiction, the entity or regulatory agency must locate on the table below the Wisconsin crime which is identical or most similar to the crime for which the person was convicted and apply the consequence identified. This instruction also applies if the person was convicted in Wisconsin but the statute number or crime title has been changed or amended.

Notwithstanding s. 111.335, Wis. Stats., ss. 48.685(5m) and 50.065(5m), Wis. Stats., permit a regulatory agency to deny regulatory approval or an entity to refuse to employ, contract with or permit to reside at the entity a person whom the regulatory agency or entity determines has been convicted of a crime that is "substantially related" to the care of a client. The agency or entity may review a conviction to make that determination when: (a) The person has been convicted in Wisconsin or another state or jurisdiction of any crime that is not listed in this appendix; or (b) The person has been convicted of a crime that is listed in this appendix but no longer requires rehabilitation review.

Under the Caregiver Law, other acts or offenses may carry regulatory or employment consequences. Persons with findings by a governmental agency of neglect or abuse of a client, or misappropriation of a client's property; persons with findings by a governmental agency of child abuse or neglect; and persons with current limitations on their professional credentials must demonstrate to the regulatory agency that they are rehabilitated.

#### KEY

**Shaded cell** = Bar or limitation applies to all programs and entities.

**FC** = Foster Care By federal law, conviction acts as bar for Foster Homes/Treatment Foster Homes, as follows:

**FC** = Conviction acts as permanent bar.

**FC - spouse** = Permanent bar applies when spouse was the victim in the offense.

**FC - 5 years** = Bar is for 5 years from time crime committed, then must show rehabilitation.

**FC - spouse / 5 years** = Bar is permanent when spouse was the victim, and in other cases bar is for 5 years from time crime committed and then must show rehabilitation.

\*1 = "Bar w/ rehab" if the entity serves any clients who are under the age of 18.

\*2 = "Bar w/ rehab" if conviction is for attempted crime (s. 939.32, Wis. Stats.).

**Chapter 346  
Rules of the Road**

Wis. Stats.	Crime	Permanent Bar	Bar w/ rehab.	Federal Law / Foster Care
346.62(4)	Reckless driving – cause great bodily harm (felony)			FC

**Chapter 940  
Crimes Against Life and Bodily Security**

Wis. Stats.	Crime	Permanent Bar	Bar w/ rehab.	Federal Law/ Foster Care
940.01	1 <sup>st</sup> ° Intentional homicide		*2	
940.02	1 <sup>st</sup> ° Reckless homicide			FC
940.03	Felony murder			FC
940.05	2 <sup>nd</sup> ° Intentional homicide			FC
940.06	2 <sup>nd</sup> ° Reckless homicide			FC
940.08	Homicide by negligent handling of dangerous weapon, explosives or fire			FC
940.12	Assisting suicide			
940.19 (2) - (6)	Battery			FC- spouse / 5 years
940.20	Battery – special circumstances			FC – spouse
940.203	Battery or threat to judge			FC – 5 years
940.205	Battery or threat to a Department of Revenue employe			FC – 5 years
940.207	Battery or threat to a Department of Commerce or DIHLR employe			FC – 5 years
940.21	Mayhem			FC
940.22(2)	Sexual exploitation by therapist – sexual contact			
940.22(3)	Sexual exploitation by therapist – duty to report			

940.225(1)	1 <sup>st</sup> ° sexual assault		*2	
940.225(2)	2 <sup>nd</sup> ° sexual assault			FC
940.225(3)	3 <sup>rd</sup> ° sexual assault			FC
940.23	Reckless injury			FC
940.285 (2)(b)1 or 2	Abuse of vulnerable adults (felony)			
940.285 (2)(b)3, 4, or 5	Abuse of vulnerable adults (felony or misdemeanor)			
940.29	Abuse of residents of a penal facility			
940.295	Abuse/neglect of patients & residents (felony)			
940.295	Abuse/neglect of patients & residents (misdemeanor)			
940.305	Taking hostages			FC
940.31	Kidnapping			FC

**Chapter 941  
Crimes Against Public Health and Safety**

Wis. Stats.	Crime	Permanent Bar	Bar w/ rehab.	Federal Law/ Foster Care
941.20(2) or (3)	Endangers safety by use of a dangerous weapon			FC
941.21	Disarming a peace officer			FC

**Chapter 943  
Crimes Against Property**

Wis. Stats.	Crime	Permanent Bar	Bar w/ rehab.	Federal Law/ Foster Care
943.10 (2)	Burglary while armed			FC
943.23(1g), (1m) or (1r)	Operating motor vehicle without owner's consent (OMVWOC)			FC
943.32 (2)	Robbery w/ dangerous weapon			FC

## Chapter 948 Crimes Against Children

Wis. Stats.	Crime	Permanent Bar	Bar w/ rehab.	Federal Law/ Foster Care
948.02(1)	1st° sexual assault of a child		*2	
948.02(2)	2nd° sexual assault of a child		*1	FC
	<ul style="list-style-type: none"> <li>• If person was, at the time of assault, more than 4 years older than the child</li> </ul>		*2	
948.02(3)	Sexual assault of a child – failure to act			FC
948.02(3m)	Sexual assault of a child – penalty enhancement; sexual assault by certain persons			FC
948.025	Repeated acts of sexual assault of same child			FC
	<ul style="list-style-type: none"> <li>• If child has not attained the age of 13</li> </ul>		*2	
	<ul style="list-style-type: none"> <li>• If child was over 13 but under 16 and the person was more than 4 years older</li> </ul>		*2	
948.03(2)(a)	Physical abuse of a child – intentional – cause great bodily harm			FC
948.03(2)(b) or (c)	Physical abuse of a child – intentional – cause bodily harm		*1	FC
948.03(3)	Physical abuse of a child – reckless			FC
948.03(4)	Physical abuse of a child – failure to act			FC
948.04	Causing mental harm to a child			FC
948.05	Sexual exploitation of a child		*1	FC
948.055	Causing a child to view or listen to sexual activity		*1	FC
948.06	Incest with a child		*1	FC
948.07	Child enticement		*1	FC
948.08	Soliciting a child for prostitution		*1	FC
948.095	Sexual assault of student by school staff			FC
948.11(2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony)		*1	FC



948.12	Possession of child pornography		*1	FC
948.13	Child sex offender working with children		*1	FC
948.20	Abandonment of a child			FC
948.21(1)	Neglect of a child – result in death (felony)		*1	FC
948.22	Failure to support (felony)			FC
948.23	Concealing death of child			FC
948.24	Unauthorized placement for adoption			FC
948.30	Abduction of another’s child; constructive custody		*1	FC
948.31	Interference with custody by parent or others			FC
948.35	Solicitation of a child to commit a felony			FC
948.36	Use of a child to commit a class A felony			FC
948.40	Contributing to the delinquency of a minor (felony)			FC
948.51	Hazing (felony)			FC
948.60	Possession of a dangerous weapon by a person under 18 (felony)			FC
948.605(3)	Gun-free school zones; Discharge of firearm in a school zone (felony)			FC
948.61	Dangerous weapons other than firearms on school premises (felony)			FC
948.62	Receiving stolen property from a child (felony)			FC
All other ch. 948 crimes that are felonies				FC

**Chapter 961**  
**Uniform Controlled Substances Act**  
(NOTE: Previously Chapter 161)

Wis. Stats.	Crime	Permanent Bar	Bar w/ rehab.	Federal Law/ Foster Care
961.41(1)	Manufacture, distribution or delivery (felony)			FC- 5 years
961.41 (1m)	Possession with intent to manufacture, distribute, or deliver (felony)			FC- 5 years
961.41 (3g)	Possession (felony)			FC- 5 years

961.43 (1)(a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, or forgery, deception, or subterfuge (felony)			<b>FC- 5 years</b>
961.43 (1)(b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance (felony)			<b>FC- 5 years</b>
961.455	Using a child for illegal drug distribution or manufacturing purposes (felony)			<b>FC- 5 years</b>
961.46	Distribution to persons under 18 (felony)			<b>FC- 5 years</b>
961.465	Distribution to prisoners			<b>FC- 5 years</b>
961.49	Distribution of or possession with intent to deliver at or near certain places			<b>FC- 5 years</b>
961.492	Distribution of or possession with intent to deliver on public transit (felony)			<b>FC- 5 years</b>
All other ch. 961 offenses that are felonies				<b>FC- 5 years</b>

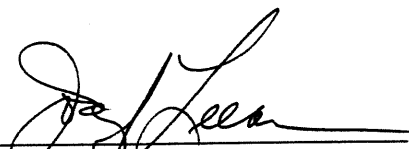


The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health and  
Family Services

Dated: **September 10, 1999**

By: \_\_\_\_\_

  
Joseph L. Lee  
Secretary

SEAL:

SENATOR JUDITH B. ROBSON  
CO-CHAIR

PO Box 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

PO Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

February 2, 1999

Secretary Joe Leean  
Department of Health and Family Services.  
1 West Wilson  
Suite 650  
Madison, WI 53702

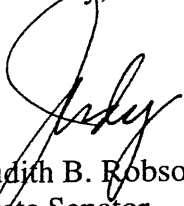
Dear Secretary Leean:


Recently legislators have been hearing complaints and concerns regarding the caregiver background checks. We commend DHFS for organizing statewide hearings and taking testimony on this issue.

Now that public testimony has been completed we understand you may be redrafting some of the rules. We would like to meet to discuss the direction for drafting of those new rules as well as suggestions for any statutory changes.

Since two of these emergency rules expire near the end of this month, we would like to meet soon with representatives of the department to discuss these concerns. Thank you for this consideration, we look forward to meeting you at your earliest convenience

Sincerely,

  
Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District

  
Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

JBR:chmiv