

1           146.40 (4g) (a) 3. Findings of the department under sub. (4r) (b) or of the  
2 hearing officer under sub. (4r) (d) concerning the ~~misappropriation of property~~  
3 financial exploitation or the neglect or abuse of a client by an individual listed under  
4 sub. 2.

5           **SECTION 162.** 146.40 (4r) (a) of the statutes is amended to read:

6           146.40 (4r) (a) Any individual may report to the department that he or she  
7 believes that any person employed by or under contract with an entity has neglected  
8 or abused a client or ~~misappropriated the client's property~~ financially exploited the  
9 client.

10          **SECTION 163.** 146.40 (4r) (am) 1. of the statutes is amended to read:

11          146.40 (4r) (am) 1. Except as provided in sub. 2., an entity shall report to the  
12 department any allegation of ~~misappropriation of the property~~ financial exploitation  
13 of a client or of neglect or abuse of a client by any person employed by or under  
14 contract with the entity if the person is under the control of the entity.

15          **SECTION 164.** 146.40 (4r) (am) 2. of the statutes is amended to read:

16          146.40 (4r) (am) 2. An entity shall report to the department of regulation and  
17 licensing any allegation of ~~misappropriation of the property~~ financial exploitation of  
18 a client or of neglect or abuse of a client by any person employed by or under contract  
19 with the entity if that person holds a credential that is related to the person's  
20 employment at, or contract with, the entity if the person is under the control of the  
21 entity.

22          **SECTION 165.** 146.40 (4r) (am) 3. of the statutes is amended to read:

23          146.40 (4r) (am) 3. An entity that intentionally fails to report an allegation of  
24 ~~misappropriation of the property~~ financial exploitation of a client or of neglect or

1 abuse of a client may be required to forfeit not more than \$1,000 and may be subject  
2 to other sanctions specified by the department by rule.

3 **SECTION 166.** 146.40 (4r) (b) of the statutes is amended to read:

4 146.40 (4r) (b) Except as provided in pars. (em) and (err), the department shall  
5 review and investigate any report received under par. (a) or (am) and, if the  
6 allegation is substantiated, make specific, documented findings concerning the  
7 ~~misappropriation of property~~ financial exploitation or the neglect or abuse. The  
8 department shall in writing by certified mail notify the person specified in the report  
9 that the person's name and the department's findings about the person shall be listed  
10 in the registry under sub. (4g) (a) 2. and 3. unless the person contests the listings in  
11 a hearing before the division of hearings and appeals created under s. 15.103 (1). The  
12 written notification shall describe the investigation conducted by the department,  
13 enumerate the findings alleging ~~misappropriation of property~~ financial exploitation  
14 or neglect or abuse of a client and explain the consequence to the person specified in  
15 the report of waiving a hearing to contest the findings. The person specified in the  
16 report shall have 30 days after receipt of the notification to indicate to the  
17 department in writing whether he or she intends to contest the listing or to waive the  
18 hearing.

19 **SECTION 167.** 146.82 (2) (a) 7. of the statutes is amended to read:

20 146.82 (2) (a) 7. To ~~a county~~ an elder-adult-at-risk agency designated under  
21 s. 46.90 (2) or other investigating agency under s. 46.90 for purposes of s. 46.90 (4)  
22 (a) and (5) or to ~~the county protective services~~ an adult-at-risk agency designated  
23 under s. 55.02 for purposes of s. 55.043. The health care provider may release  
24 information by initiating contact with the ~~county~~ elder-adult-at-risk agency or  
25 ~~county protective services~~ adult-at-risk agency without receiving a request for

1 813.123 (1) (dm) “Financial exploitation” has the meaning given in s. 46.90 (1)  
2 (ed). ✓

3 SECTION 178. 813.123 (1) (eg) of the statutes is created to read:

4 813.123 (1) (eg) “Harassment” has the meaning given in s. 813.125 (1). ✓

5 SECTION 179. 813.123 (1) (ep) of the statutes is created to read:

6 813.123 (1) (ep) “Individual at risk” means an ✓ elder adult at risk or an adult  
7 at risk.

8 SECTION 180. 813.123 (1) (f) ✗ of the statutes is repealed.

9 SECTION 181. 813.123 (1) (fm) of the statutes is created to read:

10 813.123 (1) (fm) “Mistreatment of an animal” ✓ means cruel treatment of any  
11 animal owned by or in service to an individual at risk.

12 SECTION 182. 813.123 (1) (g) of the statutes is amended to read:

13 813.123 (1) (g) “Neglect” has the meaning given in s. ~~55.01 (4r)~~ 46.90 (1) (f). ✓

14 SECTION 183. 813.123 (1) (gr) of the statutes is created to read:

15 813.123 (1) (gr) “Self-neglect” has the meaning given in s. 46.90 (1) (g). ✓

16 SECTION 184. 813.123 (1) (gs) of the statutes is created to read:

17 813.123 (1) (gs) “Stalking” ✓ means engaging in a ✓ course of conduct, as defined  
18 in s. 940.32 (1) (a).

19 SECTION 185. 813.123 (1) (h) ✗ of the statutes is repealed.

20 SECTION 186. 813.123 (2) ✓ of the statutes is renumbered 813.123 (2) (a) and  
21 amended to read:

22 813.123 (2) (a) ✓ No action under this section may be commenced by complaint  
23 and summons. An action under this section may be commenced only by a petition  
24 described under sub. (6). ✓ The action commences with service of the petition upon the  
25 respondent if a copy of the petition is filed before service or promptly after service.

1 The ~~vulnerable adult, a parent, an adult sibling, an adult child or the legal guardian~~  
2 of the vulnerable adult or a county protective services agency <sup>✓</sup> individual at risk, any  
3 person acting on behalf of an individual at risk, an elder-adult-at-risk<sup>✓</sup> agency, or an  
4 adult-at-risk agency may be a petitioner under this section. If the petition is filed  
5 by a person other than the individual at risk, the petitioner shall serve a copy of the  
6 petition on the individual at risk. Section 813.06 does not apply to an action under  
7 this section. The respondent may respond to the petition either in writing before or  
8 at the hearing on the issuance of the injunction or orally at that hearing.

9 **SECTION 187.** 813.123 (2) (b) of the statutes is created to read:

10 813.123 (2) (b) The court may go forward with a petition filed under <sup>✓</sup> sub. (6)  
11 notwithstanding an objection by an individual at risk <sup>✓</sup> who is the subject of the  
12 petition, or an objection by the guardian of the individual at risk, if the individual  
13 at risk has been adjudicated incompetent under ch. 880. <sup>✓</sup>

\*\*\*\*NOTE: Is the "if" clause in this provision intended to modify both kinds of  
objections? If so, it should be placed at the beginning of the provision, rather than the end.

14 **SECTION 188.** 813.123 (3) <sup>✓</sup>(b) (intro.) and 1. <sup>✓</sup> of the statutes are consolidated,  
15 renumbered 813.123 <sup>✓</sup>(3) (b) and amended to read:

16 813.123 (3) (b) The court or circuit court commissioner, on its or his or her own  
17 motion or the motion of any party, may shall <sup>✓</sup> order ~~one or more of the following:~~ NO  
Φ

18 NO  
Φ 1. ~~That~~ that a guardian ad litem be appointed under s. 880.331 (1) for the  
19 vulnerable adult individual at risk, if the petition under sub. <sup>✓</sup>(6) was filed by a person  
20 other than the individual at risk, and may order that a guardian ad litem be  
21 appointed in other instances when justice so requires.

22 **SECTION 189.** 813.123 (3) (b) 2. and 3. of the statutes are renumbered 813.123  
23 (3) (c) 1. and 2. <sup>✓</sup> and amended to read:

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1 release of the information from the county elder-adult-at-risk agency or county  
2 protective services adult-at-risk agency.

3 SECTION 168. 813.123 (4) (a) 2. b. of the statutes is created to read:

4 813.123 (4) (a) 2. b. That the respondent engaged in or threatened to engage  
5 in the abuse, financial exploitation, neglect, harassment, or stalking of an individual  
6 at risk or the mistreatment of an animal.

7 SECTION 169. 813.123 (title) of the statutes is amended to read:

8 813.123 (title) ~~Vulnerable adult restraining~~ Restraining orders and  
9 injunctions for individuals at risk.

10 SECTION 170. 813.123 (1) (a) of the statutes is amended to read:

11 813.123 (1) (a) "Abuse" has the meaning given in s. 55.01 (1) ~~46.90 (1)~~ (a).  
*plain*

12 SECTION 171. 813.123 (1) (ae) of the statutes is created to read:

13 813.123 (1) (ae) "Adult at risk" has the meaning given in s. 55.01 (1e).

14 SECTION 172. 813.123 (1) (am) of the statutes is created to read:

15 813.123 (1) (am) "Adult-at-risk agency" has the meaning given in s. 55.01 (1f).

16 SECTION 173. 813.123 (1) (b) of the statutes is amended to read:

17 813.123 (1) (b) "Bodily harm" has the meaning given in s. 939.22 (4) ~~46.90~~ (1)  
18 (aj).

19 SECTION 174. 813.123 (1) (br) of the statutes is created to read:

20 813.123 (1) (br) "Caregiver" has the meaning given in s. 46.90 (1) (an).

21 SECTION 175. 813.123 (1) (c) of the statutes is repealed.

22 SECTION 176. 813.123 (1) (cg) of the statutes is created to read:

23 813.123 (1) (cg) "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).

24 SECTION 177. 813.123 (1) (dm) of the statutes is created to read:

1           813.123 (3) (c) 1. That all persons, other than the ~~vulnerable adult individual~~  
 2     at risk, the parties, their attorneys, a representative of the <sup>plain</sup> ~~county protective services~~  
 3     ~~adult at risk agency or elder-adult-at-risk agency~~, witnesses, court personnel, and  
 4     any guardian or any guardian ad litem, be excluded from any hearing under this  
 5     section.

6           2. That access to any record of an action under this section be available only  
 7     to the ~~vulnerable adult individual at risk~~, the parties, their attorneys, any guardian  
 8     or any guardian ad litem, the ~~county protective services adult-at-risk~~ <sup>✓</sup> agency or  
 9     elder-adult-at-risk agency, court personnel, and, upon appeal, any applicable court  
 10    upon appeal.

      \*\*\*NOTE: Is my change to "upon appeal" <sup>✓</sup> in this provision correct, or is the record  
 of any action really supposed to be available to all of the parties, etc., only if the case is  
 appealed?

11       **SECTION 190.** 813.123 (3) (c) (intro.) <sup>✓</sup> of the statutes is created to read:

12       813.123 (3) (c) (intro.) The court or circuit court commissioner, <sup>✓</sup> on its or his or  
 13     her own motion or the motion of any party, may order any of the following:

14       **SECTION 191.** 813.123 (4) (a) (intro.) of the statutes is amended to read:

15       813.123 (4) (a) (intro.) Unless the <sup>plain</sup> ~~vulnerable adult individual at risk~~, guardian,  
 16     or guardian ad litem consents in writing and the judge or circuit court commissioner  
 17     agrees that the contact is in the best interests of the ~~vulnerable adult~~ <sup>✓</sup> individual at  
 18     risk, a judge or circuit court commissioner shall issue a temporary restraining order  
 19     ~~ordering the respondent to avoid interference with an investigation of the vulnerable~~  
 20     ~~adult under s. 55.043, the delivery of protective services to the vulnerable adult~~  
 21     ~~under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06, as~~  
 22     specified in par. (ar), <sup>✓</sup> if all of the following occur:

23     **SECTION 192.** 813.123 (4) (a) 2. of the statutes is amended to read:

23     Fix component

renumbered 813.123(4)  
(a)2. (intro.) and

1 813.123 (4) (a) 2. <sup>(intro.)</sup> The judge or circuit court commissioner finds reasonable  
2 grounds to believe ~~that~~ any of the following:

3 a. That the respondent has interfered with, or, based on prior conduct of the  
4 respondent, may interfere with, an investigation of the ~~vulnerable adult under s.~~  
5 ~~55.043,~~ individual at risk; the delivery of protective services to the ~~vulnerable adult~~  
6 individual at risk under s. 55.05 or a protective placement of the ~~vulnerable adult~~  
7 individual at risk under s. 55.06; or the delivery of services to an elder adult at risk  
8 under s. 46.90 (5m).

\*\*\*NOTE: This draft repeals s. 46.90 (5) (d) 2. That provision states, "The court shall grant the order upon a showing that there is reasonable cause to believe that abuse, material abuse, neglect or self-neglect has occurred *and that the interference complained of, if continued, would make it difficult to determine whether abuse, material abuse, neglect or self-neglect has occurred, is occurring or may recur.*" (Emphasis mine.) Should any of the italicized standard be placed in s. 813.123 (4) (a) 2. a.?

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9 **SECTION 193.** 813.123 (4) (ar) of the statutes is created to read:

10 813.123 (4) (ar) A temporary restraining order issued under par. (a) shall order  
11 the respondent to do one or more of the following:

12 1. Avoid interference with an investigation of the elder adult at risk under s.  
13 46.90 or the adult at risk under s. 55.043, the delivery of protective services to the  
14 individual at risk under s. 55.05 or a protective placement of the individual at risk  
15 under s. 55.06, or the delivery of services to the elder adult at risk under s. 46.90 (5m).

16 2. Cease engaging in or threatening to engage in the abuse, financial  
17 exploitation, neglect, harassment, or stalking of an individual at risk or  
18 mistreatment of an animal.

19 3. Avoid the residence of the individual at risk or any other location temporarily  
20 occupied by the petitioner, or both.

\*\*\*NOTE: Why "temporarily"? Several different persons may be petitioners; why would they necessarily be temporary occupants?

1 4. Avoid contacting or causing any person other than a party's attorney or a law  
2 enforcement officer to contact the individual at risk unless the individual at risk  
3 consents in writing.

4 5. Engage in any other appropriate remedy not inconsistent with the remedies  
5 requested in the petition.

\*\*\*\*NOTE: I have greatly revised the treatment of s. 813.123 (4) (a) and (ar) from  
the proposal. Since one may treat a unit of the statutes only once (e.g., one may not both  
renumber s. 813.123 (4) (a) 2. *and* create s. 813.123 (4) (a) 2, and since one must treat  
statutes in sequence, the end result would have been very confusing to read in the bill. \*  
I have, instead, created s. 813.123 (4) (ar) to specify what the TRO may order the  
respondent to do, rather than the criteria for issuance of the TRO.

6 **SECTION 194.** 813.123 (5) (a) (intro.) of the statutes is amended to read:

7 813.123 (5) (a) (intro.) Unless the <sup>plain</sup> ~~vulnerable adult~~ individual at risk, guardian,  
8 or guardian ad litem consents in writing to ~~that a contact in writing~~ and the judge  
9 agrees that the contact is in the best interests of the ~~vulnerable adult~~ individual at  
10 risk, a judge may grant an injunction ordering the respondent to ~~avoid interference~~  
11 ~~with an investigation of the vulnerable adult under s. 55.043, the delivery of~~  
12 ~~protective services to the vulnerable adult under s. 55.05 or a protective placement~~  
13 ~~of the vulnerable adult under s. 55.06, as specified in par. (ar),~~ if all of the following  
14 occur:

15 **SECTION 195.** 813.123 (5) (a) 3. a. of the statutes is amended to read:

16 813.123 (5) (a) 3. a. That the respondent has interfered with, or, based upon  
17 prior conduct of the respondent, may interfere with <sup>an</sup> ~~an~~ investigation of the  
18 vulnerable elder adult at risk under s. 46.90 or the adult at risk under s. 55.043 and  
19 that the interference complained of, if continued, would make it difficult to  
20 determine if ~~misappropriation of property or abuse, or neglect~~ financial exploitation,  
21 neglect, harassment, or stalking of an individual at risk or mistreatment of an  
22 animal is occurring or may recur.

1           **SECTION 196.** 813.123 (5) (a) 3. b. of the statutes is amended to read:

2           813.123 (5) (a) 3. b. That the respondent has interfered with the delivery to the  
3           vulnerable-adult individual at risk of protective services under s. 55.05 or a  
4           protective placement of the vulnerable-adult individual at risk under s. 55.06 after  
5           the offer of protective services or protective placement has been made and the  
6           vulnerable-adult individual at risk or his or her guardian, if any, has consented to  
7           receipt of the protective services or protective placement; or that the respondent has  
8           interfered with the delivery of services to an elder adult at risk under s. 46.90 (5m).

9           **SECTION 197.** 813.123 (5) (a) 3. c. of the statutes is created to read:

10          813.123 (5) (a) 3. c. That the respondent has engaged in or threatened to engage  
11          in the abuse, financial exploitation, neglect, harassment, or stalking of an individual  
12          at risk or the mistreatment of an animal.

13          **SECTION 198.** 813.123 (5) (ar) of the statutes is created to read:

14          813.123 (5) (ar) An injunction granted under par. (a) shall order the respondent  
15          to do one or more of the following:

16            1. Avoid interference with an investigation of the elder adult at risk under s.  
17            46.90 or the adult at risk under s. 55.043, the delivery of protective services to the  
18            individual at risk under s. 55.05 or a protective placement of the individual at risk  
19            under s. 55.06, or the delivery of services to the elder adult at risk under s. 46.90 (5m).

20            2. Cease engaging in or threatening to engage in the abuse, financial  
21            exploitation, neglect, harassment, or stalking of an individual at risk or the  
22            mistreatment of an animal.

23            3. Avoid the residence of the individual at risk or any other location temporarily  
24            occupied by the petitioner, or both.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 813.123 (4) (ar) 3.

1           4. Avoid contacting or causing any person other than a party's attorney or a law  
2 enforcement officer to contact the individual at risk unless the individual at risk  
3 consents in writing.

4           5. Any other appropriate remedy not inconsistent with the remedies requested  
5 in the petition.

\*\*\*\*NOTE: Please see the <sup>Ⓢ</sup>\*\*\*\*NOTE under s. 813.123 (4) (ar) 5.; the same principles  
apply.

6           **SECTION 199.** 813.123 (5) (c) 1., 2. and 3. of the statutes are amended to read:

7           813.123 (5) (c) 1. An injunction under this subsection is effective according to  
8 its terms but for not more than ~~2~~ 4 years.

9           2. When an injunction that has been in effect for less than 6 months expires,  
10 the court shall extend the injunction if the petitioner states that an extension is  
11 necessary to protect the ~~vulnerable adult~~ individual at risk. This extension shall  
12 remain in effect until 6 months after the date on which the court first entered the  
13 injunction.

14           3. If the petitioner states that an extension is necessary to protect the  
15 ~~vulnerable adult~~ individual at risk, the court may extend the injunction for not more  
16 than 2 years.

17           **SECTION 200.** 813.123 (6) (a) of the statutes is amended to read:

18           813.123 (6) (a) The name of the petitioner and the ~~vulnerable adult~~ individual  
19 at risk.

20           **SECTION 201.** 813.123 (6) (c) of the statutes is amended to read:

21           813.123 (6) (c) That the respondent interfered with, or, based on prior conduct  
22 of the respondent, may interfere with, ~~an investigation of the elder adult at risk~~  
23 under s. 46.90 (5), an investigation of the ~~vulnerable adult~~ adult at risk under s.

1 55.043, the delivery of protective services to the ~~vulnerable adult~~ individual at risk  
 2 under s. 55.05 ~~or~~, a protective placement of the ~~vulnerable adult~~ individual at risk  
 3 under s. 55.06, ~~or the delivery of services to the elder~~ adult at risk under s. 46.90  
 4 (5m); or that the respondent engaged in, or threatened to engage in, the abuse,  
 5 financial exploitation, neglect, stalking, or harassment of an individual at risk or  
 6 mistreatment of an animal.

7 **SECTION 202.** 813.123 (7) of the statutes is amended to read:

8 813.123 (7) INTERFERENCE ORDER. Any order ~~under this section directing a~~ <sup>plain</sup>  
 9 ~~person to avoid interference with an investigation of a vulnerable adult under s.~~  
 10 ~~55.043, the delivery of protective services to a vulnerable adult under s. 55.05 or a~~  
 11 ~~protective placement of a vulnerable adult under s. 55.06 prohibits the person~~ ~~under~~  
 12 sub. (4) (ar) 1. or 2. or (5) (ar) 1. or 2. also shall prohibit the respondent from  
 13 intentionally preventing a representative or employee of the county protective  
 14 services agency from meeting, communicating or being in visual or audio contact  
 15 with the ~~vulnerable adult~~ adult at risk, except as provided in the order.

\*\*\*\*NOTE: I have greatly simplified this provision; please review.

16 **SECTION 203.** 813.123 (9) (intro.) of the statutes is amended to read:

17 813.123 (9) (intro.) A law enforcement officer may shall arrest and take a  
 18 person into custody if all of the following occur:

19 **SECTION 204.** 813.123 (11) of the statutes is repealed.

\* \*\*\*\*NOTE: Section 813.123 (11), stats., is extremely similar to s. 55.043 (5), stats.  
 (although ~~sc.~~ 55.043 (5) also mentions hospitals). At your direction, I repealed s. 55.043  
 (5); in ss. 46.90 (5) (a) 1. and 55.043 (1r) (a) 1g. under this draft these cases are referred  
 to DHFS for investigation, but there is no indication otherwise that DHFS would not  
 want to use the procedures under s. 813.123. There is nothing in the legislative history  
 that provides a rationale for the existence of these statutes. I also have consulted Bob  
 Nelson, who drafts in courts. His conclusion was that s. 893.82 (3) would apply, as far as  
 notice goes, and that s. 893.80 is probably inapplicable to an injunction or TRO, as  
 opposed to a claim for damages. Therefore, I have repealed s. 813.123 (11), stats. Please  
 review.

1           **SECTION 205.** 880.01 (2) of the statutes is amended to read:

2           880.01 (2) "Developmentally disabled person" means any individual having a  
3           disability attributable to mental retardation, cerebral palsy, epilepsy, autism or  
4           another neurological condition closely related to mental retardation or requiring  
5           treatment similar to that required for mentally retarded individuals, which has  
6           continued or can be expected to continue indefinitely, substantially impairs the  
7           individual from adequately providing for his or her own care or custody and  
8           constitutes a substantial handicap to the afflicted individual. The term does not  
9           include a person affected by senility which is primarily caused by the process of aging  
10          or ~~the infirmities of aging~~ degenerative brain disorder. ✓

11          **SECTION 206.** 880.01 (4) of the statutes is amended to read:

12          880.01 (4) "Incompetent" means a person adjudged by a court of record to be  
13          substantially incapable of managing his or her property or caring for himself or  
14          herself by reason of ~~infirmities of aging~~ degenerative brain disorder, ✓ developmental  
15          disabilities, or other like incapacities. Physical disability without mental incapacity  
16          is not sufficient to establish incompetence.

17          **SECTION 207.** 880.01 (5) ✓ of the statutes is renumbered 880.01 (1t) ✓ and amended  
18          to read:

19          880.01 (1t) ~~"Infirmities of aging"~~ Degenerative brain disorder ✓ means organic  
20          brain damage caused by advanced age or other physical degeneration in connection  
21          therewith to the extent that the person so afflicted the loss or dysfunction of brain  
22          cells to the extent that an individual is substantially impaired in his or her ability  
23          to adequately provide adequately for his or her own care or custody.

\*\*\*\*NOTE: It was unclear to me whether you wished to have "infirmities of aging"  
eliminated from ch. 880. Please review.

1 SECTION 208. 895.85 (2) of the statutes is amended to read:

2 895.85 (2) SCOPE. This section does not apply to awards of double damages or  
3 treble damages, or to the award of exemplary damages under ss. 46.90 (6) (e) (9) (a)  
4 and (b), 51.30 (9), 51.61 (7), 55.043 (9m) (a) and (b), 103.96 (2), 134.93 (5), 146.84 (1)  
5 (b) and (bm), 153.85, 252.14 (4), 252.15 (8) (a), 610.70 (7) (b), 943.245 (2) and (3) and  
6 943.51 (2) and (3).

7 SECTION 209. 940.225 (2) (j) of the statutes is created to read:

8 940.225 (2) (j) Is a licensee, employee, or nonclient resident of an entity, as  
9 defined in s. 50.065 (1) (c) or 48.685 (1) (b), and has sexual contact or sexual  
10 intercourse with a client of the entity.

11 SECTION 210. 940.225 (5) (ab) of the statutes is renumbered 940.225 (5) (acm).

12 SECTION 211. 940.225 (5) (ad) and (ak) of the statutes are created to read:

13 940.225 (5) (ad) "Client" means an individual who receives direct care or  
14 treatment services from an entity.

15 (ak) "Nonclient resident" means an individual who resides, or is expected to  
16 reside, at an entity, who is not a client of the entity, and who has, or is expected to  
17 have, regular, direct contact with the clients of the entity.

18 SECTION 212. 940.285 (title) of the statutes is amended to read:

19 940.285 (title) Abuse of ~~vulnerable adults~~ individuals at risk.

20 SECTION 213. 940.285 (1) (a) of the statutes is repealed.

21 SECTION 214. 940.285 (1) (ag) of the statutes is created to read:

22 940.285 (1) (ag) "Abuse" means any of the following:

- 23 1. Physical abuse, as defined in s. 46.90 (1) (fg).
- 24 2. Emotional abuse, as defined in s. 46.90 (1) (cm).
- 25 3. Sexual abuse, as defined in s. 46.90 (1) (gd).

1 4. Treatment without consent, as defined in s. 46.90 (1) (h). ✓

2 5. Unreasonable confinement or restraint, as defined in s. 46.90 (1) (i). ✓

3 6. Deprivation of a basic need for food, shelter, clothing, or personal or health  
4 care, including deprivation resulting from the failure to provide or arrange for a basic  
5 need by a person who has assumed responsibility for meeting the need voluntarily  
6 or by contract, agreement, or court order.

7 **SECTION 215.** 940.285 (1) (am) of the statutes is created to read:

8 940.285 (1) (am) “Adult at risk” has the meaning given in s. 55.01 (1e). ✓

9 **SECTION 216.** 940.285 (1) (b), (bm), (c), and (d) of the statutes are repealed. ✓

10 **SECTION 217.** 940.285 (1) (dc) of the statutes is created to read: ✓

11 940.285 (1) (dc) “Elder adult at risk” has the meaning given in s. 46.90 (1) (br). ✓

12 **SECTION 218.** 940.285 (1) (dg) of the statutes is created to read: ✓

13 940.285 (1) (dg) “Individual at risk” means an elder adult at risk or an adult  
14 at risk. ✓

15 **SECTION 219.** 940.285 (1) (e) of the statutes is repealed. ✓

16 **SECTION 220.** 940.285 (2) (title) and (2) (a) 1. to 3. of the statutes are amended  
17 to read: ✓

18 940.285 (2) (title) ~~MALTREATMENT ABUSE~~; PENALTIES. ✓

19 (a) 1. Intentionally subjects ~~a vulnerable adult~~ an individual at risk to  
20 maltreatment abuse. ✓

21 2. Recklessly subjects ~~a vulnerable adult~~ an individual at risk to ~~maltreatment~~  
22 abuse. ✓

23 3. Negligently subjects ~~a vulnerable adult~~ an individual at risk to  
24 maltreatment abuse. ✓

25 **SECTION 221.** 940.295 (1) (a) of the statutes is renumbered 940.295 (1) (am). ✓

1           **SECTION 222.** 940.295 (1) (ad) of the statutes is created to read:  
2           940.295 (1) (ad) “Abuse” has the meaning given in s. 46.90 (1) (a).

3           **SECTION 223.** 940.295 (1) (ag) of the statutes is created to read:  
4           940.295 (1) (ag) “Adult at risk” has the meaning given in s. 55.01 (1e).

5           **SECTION 224.** 940.295 (1) (b) of the statutes is amended to read:  
6           940.295 (1) (b) “Bodily harm” has the meaning given in s. ~~939.22 (4)~~ 46.90 (1)  
7           (aj).

          \*\*\*\*NOTE: I eliminated the definition of “degenerative brain disorder” proposed for  
s. 940.295 (1) (cd). Because s. 940.295 (1) (t), stats., is repealed and because the definition  
of “adult at risk” refers back to s. 55.01 (1e), the term is not used in this section.

8           **SECTION 225.** 940.295 (1) (cm) of the statutes is repealed.

9           **SECTION 226.** 940.295 (1) (hm) of the statutes is repealed.

10          **SECTION 227.** 940.295 (1) (j) of the statutes is repealed.

          \*\*\*\*NOTE: I did not draft a definition of “intentionally”, as proposed. Language in  
s. 939.23 (1), stats., makes the definitions in that section applicable to s. 940.295 when  
criminal intent is an element of a crime.

11          **SECTION 228.** 940.295 (1) (jm) of the statutes is repealed.

12          **SECTION 229.** 940.295 (1) (k) of the statutes is repealed and recreated to read:  
13          940.295 (1) (k) “Neglect” has the meaning given in s. 46.90 (1) (f).

14          **SECTION 230.** 940.295 (1) (km) of the statutes is repealed and recreated to read:  
15          940.295 (1) (km) “Negligence” means an act, omission, or course of conduct that  
16          the actor should realize creates a substantial and unreasonable risk of death, great  
17          bodily harm, or bodily harm to another person.

          \*\*\*\*NOTE: After having consulted with Mike Dsida, one of the criminal law drafters,  
I added “an act, omission, or course of” to this provision. Please review.

18          **SECTION 231.** 940.295 (1) (kp) of the statutes is repealed.

19          **SECTION 232.** 940.295 (1) (n) of the statutes is repealed.

20          **SECTION 233.** 940.295 (1) (o) of the statutes is amended to read:

1 940.295 (1) (o) "Recklessly" means conduct which <sup>✓</sup> that creates a situation of  
2 unreasonable risk of death or harm to and demonstrates a conscious disregard for  
3 the safety of the patient or resident.

4 SECTION 234. 940.295 (1) (t) <sup>✓</sup> of the statutes is repealed.

5 SECTION 235. 940.295 (3) (a) 3. of the statutes is amended to read:

6 940.295 (3) (a) 3. ~~Negligently abuses~~ Abuses or neglects, with negligence, <sup>✓</sup>  
7 patient or a resident.

\*\*\*\*NOTE: Please review my amendment of this provision.

8 SECTION 236. 940.295 (3) (b) 1g. of the statutes is amended to read:

9 940.295 (3) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances  
10 that cause death to ~~a vulnerable person~~ an individual at risk is guilty of a Class C  
11 felony. Any person violating par. (a) 3. under circumstances that cause death to ~~a~~  
12 ~~vulnerable person~~ an individual at risk <sup>✓</sup> is guilty of a Class D felony.

13 SECTION 237. 940.295 (3) (b) 1m. of the statutes is amended to read:

14 940.295 (3) (b) 1m. Any person violating par. (a) under circumstances that  
15 cause great bodily harm to ~~a vulnerable person~~ an individual at risk <sup>✓</sup> is guilty of a  
16 Class E felony.

→ INSERT 78-17 ←

17 SECTION 238. Initial applicability.

18 (1) ELDER, ADULT, AT RISK REPORTS. The treatment of sections 20.435 <sup>✓</sup> (7) (dh),  
19 46.21 (2m) <sup>✓</sup> (c), 46.215 (1m) <sup>✓</sup>, 46.22 (1) (dm) <sup>✓</sup>, 46.23 (3) (e) <sup>✓</sup>, 46.283 (4) (h) <sup>✓</sup>, 46.90 (1) (a),  
20 (aj) <sup>✓</sup>, (an) <sup>✓</sup>, (b) <sup>✓</sup>, (br) <sup>✓</sup>, (bt) <sup>✓</sup>, (c) <sup>✓</sup>, (cm) <sup>✓</sup>, (d) <sup>✓</sup>, (e) <sup>✓</sup>, (ed) <sup>✓</sup>, (eg) <sup>✓</sup>, (er) <sup>✓</sup>, (f) <sup>✓</sup>, (fg) <sup>✓</sup>, (g) <sup>✓</sup>, (gd) <sup>✓</sup>, (gr) <sup>✓</sup>, (h) <sup>✓</sup>, and  
21 (i) <sup>✓</sup>, (2) <sup>✓</sup>, (3) (title) <sup>✓</sup>, (a) <sup>✓</sup>, (b) <sup>✓</sup>, and (c) <sup>✓</sup>, (4) (a) 1. and 2., (ab) <sup>✓</sup>, (ad) <sup>✓</sup>, (ae) <sup>✓</sup>, (b) 1. b., c., and cm.  
22 and 2. c., ~~(4)~~ (c) <sup>✓</sup>, (d) <sup>✓</sup>, and (e) <sup>✓</sup>, (f) (title) <sup>✓</sup>, (a) <sup>✓</sup>, (b) <sup>✓</sup>, (br) <sup>✓</sup>, (c) <sup>✓</sup>, (d) 1. and 2., (f) <sup>✓</sup>, (g) <sup>✓</sup>, and (h) <sup>✓</sup>,  
23 (5m) (title) <sup>✓</sup>, (a) <sup>✓</sup>, (b) <sup>✓</sup>, (br) <sup>✓</sup>, and (c) <sup>✓</sup>, (6) (a) <sup>✓</sup>, (ac) <sup>✓</sup>, (b) (intro.) <sup>✓</sup>, 1., 2., 3., 4., 5., 6., 7., 9., and  
24 10., (bd) <sup>✓</sup>, (br) <sup>✓</sup>, (bt) <sup>✓</sup>, (bv) <sup>✓</sup>, (bw) <sup>✓</sup>, (by) <sup>✓</sup>, (c) 1., 2., and 3., (7) <sup>✓</sup>, (8) (a) <sup>✓</sup>, (b) <sup>✓</sup>, (c) <sup>✓</sup>, and (d) <sup>✓</sup>, and (9) <sup>✓</sup>

*and amendment of*  
*the renumbering of section 46.90 (5)(a) of the statutes,*

1 (title) and (e), 51.42 (3) (e), and 51.437 (4r) (b) of the statutes and the creation of  
2 section 46.90 (5) (a) 2. and (b) 6. of the statutes first apply to reports of alleged abuse,  
3 financial exploitation, neglect, or self-neglect received on the effective date of this  
4 subsection.

5 (2) EMERGENCY DETENTIONS AND CIVIL COMMITMENTS. The treatment of section  
6 51.01 (2g) (b), (3g), and (5) (a) of the statutes first applies to emergency detentions  
7 and civil commitments made on the effective date of this subsection.

8 (3) REQUESTS FOR SERVICE. The treatment of section 51.62 (1) (a), (ag), and (br)  
9 and (3) (a) 2m. of the statutes first applies to requests for service made to the  
10 protection and advocacy agency on the effective date of this subsection. *and (7),*

11 (4) ADULT AT RISK REPORTS. The treatment of sections 55.001, 55.01 (1), (1e), (1f),  
12 (1m), (1p), (1t), (1v), (2), (2s), (3), (4g), (4p), (4r), (6), ~~and~~ (6b), 55.02, 55.043 (title), (1)  
13 (title), (a) (intro.), 1., 2., 3., 4., and 5., (b) (intro.), 1. and 2. (intro.), a. and b., (1d), (1g),  
14 (1m), (1r) (title), (a) 2., (b) (intro.) *and* 3., 6. a. and b., (c) 2. b., and (d), ~~(2)~~ (3), (4) (title),  
15 (intro.), (a), (am), (b), (c), (d), (e), and (f) (5), (5g), (6), (7), (8), (9), and (9m), 55.06 (2)  
16 (c) and (11) (a), and 106.54 (5) of the statutes *and the renumbering of section 55.043 (2)* and the creation of section 55.043 (2)  
17 (b) of the statutes first apply to reports of alleged abuse, financial exploitation,  
18 neglect, or self-neglect received on the effective date of this subsection. *and amendment of*

19 (5) REPORTS TO DEPARTMENT. The treatment of section 146.40 (1) (ab) and (aw),  
20 (4g) (a) 3., and (4r) (a), (am) 1., 2., and 3., and (b) of the statutes first applies to reports  
21 made to the department of health and family services on the effective date of this  
22 subsection. *(fm),*

23 (6) INDIVIDUAL AT RISK RESTRAINING ORDERS AND INJUNCTIONS. The treatment of  
24 section 813.123 (title), (1) (a), (ae), (am), (b), (br), (c), (cg), (dm), (eg), (ep), (f), (g), (gr),  
25 (gs), and (h), ~~(2)~~ (3) (b) (intro.), 1., 2., and 3., *and* (c) (intro.), (4) (a) (intro.) and 2., ~~(4)~~ (ar),

the renumbering and amendment of section 813.123(2) of the statutes,

1 (5) (a) (intro.), 3. a., b., and c., (ar), (c) 1., 2., and 3., (6) (a) and (c), (7), (9) (intro.), and  
2 (11) of the statutes and the creation of section 813.123 (2) (b) and (4) (a) 2. b. first of the statutes  
3 apply to actions for restraining orders and injunctions for individuals at risk  
4 commenced on the effective date of this subsection.

5 (7) PETITIONS FOR GUARDIANSHIP. The treatment of section 880.01 (2), (4), and  
6 (5) of the statutes first applies to petitions for guardianship submitted on the  
7 effective date of this subsection.

8 (8) SEXUAL ASSAULTS OF ENTITY CLIENTS. The treatment of section 940.225 (2) (j)  
9 and (5) (ab), (ad), and (ak) of the statutes first applies to violations committed on the  
10 effective date of this subsection.

11 (9) ABUSE OF INDIVIDUALS AT RISK. The treatment of section 940.285 (title), (1)  
12 (a), (ag), (am), (b), (bm), (c), (d), (dc), (dg), and (e), and (2) (title) and (a) 1. to 3. of the  
13 statutes first applies to violations committed on the effective date of this subsection.

14 (10) ABUSE AND NEGLECT OF PATIENTS AND RESIDENTS. The treatment of section  
15 940.295 (1) (a), (ad), (ag), (b), (cm), (hm), (j), (jm), (k), (km), (kp), (n), (o), and (t) and  
16 (3) (a) 3., (b) 1g. and 1m. of the statutes first applies to violations committed on the  
17 effective date of this subsection.

INSERT 80-17

D-NOTE

78-17  
INSERT ~~78-17~~

SECTION . RN; 943.20<sup>x</sup> (2)(a); 943.20 (2)(ag) ✓

SECTION . CR; 943.20 (2)(ac)

943.20 (2)(ac) "Adult at risk" has the meaning given in s. 55.01 (1e). ✓

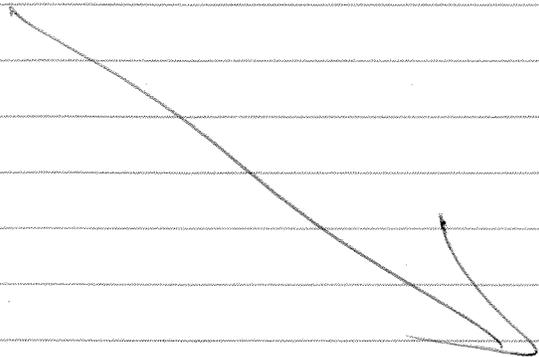
SECTION . CR; 943.20 (2)(ad) ✓

943.20 (2)(ad) "Elder adult at risk" has the meaning given in s. 46.90 (1)(br). ✓

SECTION . CR; 943.20 (2)(ae)

943.20 (2)(ae) "Individual at risk" means an elder adult at risk or an adult at risk. ✓

SECTION . RP; 943.20 (2)(e)<sup>x</sup>



INS 78-17

p. 2 of 2

Section #. 943.20 (3) (d) 6. of the statutes is amended to read:

943.20 (3) (d) 6. The property is taken from a patient or resident of a facility or program under s. 940.295 (2) or from ~~a vulnerable adult~~ an individual at risk

History: 1977 c. 173, 255, 447; 1983 a. 189; 1987 a. 266; 1991 a. 39; 1993 a. 213, 445, 486; 2001 a. 16, 109.

End of INSERT  
78-17

2005

INSERT 80-17!

EEE

LRB \_\_\_\_\_ / \_\_\_\_\_

Nonstat File Sequence:

INITIAL APPLICABILITY

- In the component bar:  
 For the action phrase, execute: ..... create → action: → \*NS: → inappl  
 For the budget action phrase, execute: ..... create → action: → \*NS: → 93XX  
 For the text, execute: ..... create → text: → \*NS: → inappl
- Nonstatutory subunits are numbered automatically. Fill in the Section # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9300 department code.

SECTION # [93] Initial applicability; .....

(#1) ( ) THEFT OF PROPERTY OF INDIVIDUALS AT RISK (CS)

The treatment of sections 943.20(2)(a), (ac), (ad), (ae), and (e) and (3) (d) 6.

of the statutes first applies to violations committed on the effective date of this subsection.

(end ins 80-17)

- In the component bar:  
 For the action phrase, execute: ..... create → action: → \*NS: → inappl  
 For the text, execute: ..... create → text: → \*NS: → inapplA
- Nonstatutory subunits are numbered automatically. Fill in the Section # or subsection # only if a "frozen" number is needed.

SECTION # . Initial applicability; .....

( #1 ) ( ) This act first applies to

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0025/P1dn  
DAK:jld:pg

November 3, 2004

To Laura Rose:

1. The proposal defines the term "financial exploitation" for purposes of ss. 46.90, 51.62, and 813.123 and chs. 55 and 146, stats., and substitutes that term for either "misappropriation of property" or "material abuse" in those statutes. I have changed the term "misappropriation of property" in other statutes (for example, s. 49.498 (3) (b) 1., stats.) that clearly seem related, but am unsure whether you want the change also to be made to ss. 48.685 (1) (av), (4m) (a) 3. and (b) 3., and (7) (c), 50.065 (1) (br), (4m) (a) 3. and (b) 3. and (7) (c), and 939.74 (2) (b), stats. Please review.
2. As we agreed, I confined the definition of "abuse" to s. 146.40, stats., instead of the whole chapter, so that it would not affect the federal definition of "abuse" that is in s. 146.82 (2) (a) 9. a., stats.
3. Please note that I did not change the term "elder person" to "elder adult at risk" in s. 973.017 (5) (title), (a) 1., and (b).
4. Do you contemplate any change to s. 146.40 (4g) (c) or (4r) (f)?
5. Please note my changes to s. 943.20 stats.; they mirror those for s. 940.285, stats. Are they what you intend?

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.state.wi.us

Mtg. w/ Laura Rose 5/27/05

-0025/PI

1. Dwyer's Note

- ✓ a. #1 - Don't make changes for ch. 48 + §939
- ✓ b. #2 - ok
- ✓ c. #3 - ok
- ✓ d. #4 - no
- ✓ e. #5 - ok

2. p. 8 - ok

✓ p. 9 - include self-neglect  
2d note - ok

✓ p. 14 - 1st note - yes

✓ add sexual assault l. 19 after death

✓ p. 15 - 2d note: Is file that reporter makes

✓ p. 17 - fix "investigatory"

✓ p. 18 - ~~First 2~~ All NOTES ok

✓ p. 19 - Note ok

✓ p. 20 - Note ok

✓ l. 11 - put in "an"

✓ p. 21 - Note ok

✓ p. 22 - Note: no other changes

✓ l. 15 - fix "agency"

✓ p. 23 - Notes: yes

✓ p. 24 - top: a ara will bring petition

✓ 2d Note: ok

✓ p. 25 - Notes: ok

✓ p. 26 - Note ok

✓ p. 28: 1st + 2d notes: ok

✓ 3rd Note: delete "minor" + sub "another <sup>person</sup>"

✓ p. 29: 1st Note ok

✓ l. 16: co dept is providing services to perp

✓ p. 30: 1st note: agrees; define "agency"

- ✓ p. 30 - 2d + 3d Notes ok
- ✓ p. 31 - Notes ok
- ✓ p. 32 - Note ok
- ✓ p. 35 - that instead which
- ✓ p. 38 - Note ok
- ✓ p. 39 - Note: add self-neglect
- ✓ p. 41 - Note: ok
- ✓ p. 42 - ✓ Note: add self neglect  
✓ 2d Note: ok  
✓ fix "investigation"
- ✓ p. 43 - Notes ok
- ✓ p. 46 - add sex assault on line 10  
✓ 2d Note: same as before
- ✓ p. 47 - 1st Note: No  
2d Note: ok
- ✓ p. 48 - ~~2d~~ All Notes: ok
- ✓ p. 49 - All Notes: ok
- ✓ p. 50 - All Notes: ok
- ✓ p. 53 - 1st Note: incl self neglect  
2d Note: Yes  
3d Note: ok
- ✓ p. 55 - Note: Good
- ✓ p. 56 - Note: ok
- ✓ p. 58 - Note: ok
- ✓ p. 61 - Notes: ok
- ✓ p. 67 - Note: Yes
- ✓ p. 68 - Note: Change is fine
- ✓ p. 69 - 1st Note: Yes; put ital in  
2d Note: l. 20 - change petitioner  
to widow, at risk
- ✓ p. 70 - Note: ok
- ✓ p. 71 - Note: ok
- ✓ p. 72 - Note: ok
- ✓ p. 73 - 1st Note: good

- ✓ p. 73 2d Note: good
- ✓ p. 74 Note: ok
- ✓ p. 77 Notes: ok
- ✓ p. 78 Note: ok

.....;

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This bill draft was prepared for the joint legislative council's special committee on recodification of chapter 55, placement and services for persons with disabilities.

**Scope and Definitions**

Under current law, Wisconsin's elder abuse law, s. 46.90, stats., establishes a system in each county for the reporting and investigation of suspected elder abuse, and the provision of services to elder persons who are being abused or neglected or experiencing material abuse. The elder abuse reporting and services system set forth in s. 46.90, stats., addresses creating public awareness of elder abuse; who is responsible for receiving and responding to reports of suspected abuse and neglect; how services are provided once abuse or neglect is documented; and how information is exchanged among providers of services.

Currently, vulnerable adults who are under the age of 60 may also be victims of abuse, neglect, or misappropriation of property. However, under current law, Milwaukee county is the only county with the explicit authority to investigate suspected abuse, neglect, or misappropriation of property of a vulnerable adult under the age of 60, to determine if there is a need for protective services. A "vulnerable adult" is defined in s. 940.285 (1) (e) as any person 18 years of age or older who either is a developmentally disabled person or has infirmities of aging, mental illness, or other like incapacities and who is either: (1) substantially mentally incapable of providing for his or her needs for food, shelter, clothing, or personal or health care; or (2) unable to report cruel maltreatment without assistance.

Currently, the statutes inconsistently define abuse, material abuse, misappropriation of property, neglect, and self-neglect, when these conditions are experienced by elder or vulnerable adults. For example, the term "material abuse" is used in s. 46.90, stats., when referring to the misuse of an elder person's property or financial resources. In ch. 55, however, the term "misappropriation of property" is used to refer to misuse of a vulnerable adult's property or financial resources.

This draft revises the current statutory provisions of Wisconsin's elder abuse law. The draft revises terminology, elder abuse reporting provisions, investigation provisions, and confidentiality of elder abuse reports and records. The draft also deletes reference to the term "elder person". Under current law, an "elder person" who could receive services under the "elder abuse system" was defined as a person who is

age 60 or older or subject to the infirmities of aging. The draft instead refers to an "elder adult-at-risk", who is defined as "a person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, or financial exploitation".

The draft also permits counties to assist persons who are at risk of experiencing abuse, neglect, or financial exploitation who are under age 60 (currently, only Milwaukee county has this authority). These persons, who are at risk due to a physical or mental condition are defined as "adults-at-risk" in ch. 55. An "adult-at-risk" is defined as "any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, or financial exploitation". In addition, the draft creates parallel provisions in ch. 55 to the elder abuse system in ch. 46 to permit abuse investigations and follow-up services to be provided on behalf of these adults-at-risk.

The draft revises definitions of several terms in current law, including the terms abuse, neglect, and self-neglect. The term "material abuse" is redefined as "financial exploitation" and made more precise with regard to what constitutes financial exploitation. Some new definitions are created, including "emotional abuse", "state official" (to whom reports of suspected abuse or neglect may also be made), and "investigative agency".

### **Reports**

Under current law, Wisconsin requires the reporting of suspected child abuse and neglect. However, there is no similar requirement for reporting the abuse of vulnerable adults, even in the most egregious cases of suspected abuse or neglect where the elder or vulnerable adult's life may be in danger. Wisconsin's elder abuse system is based on voluntary reporting of suspected abuse, neglect, and material abuse.

Once a report of suspected abuse, neglect, or material abuse is made, the county agency must investigate the report and, if it is found that the person is being abused or neglected, services must be offered to the individual. The individual has the option of refusing to accept the services. The services must be offered in the least restrictive manner necessary to achieve the objective of protecting the individual.

This draft retains the voluntary system of reporting for the majority of situations of suspected abuse or neglect. However, the draft creates a provision requiring certain categories of persons to file reports in situations where the elder person is facing a serious risk of harm or even death.

Under the draft, the following persons must file a report of suspected abuse or neglect if there is reasonable cause to believe that the elder adult-at-risk or adult-at-risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss, and is unable to make an informed judgment about whether to report the risk; or other adults-at-risk, are at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by the suspected perpetrator:

- An employee of any entity that is licensed, certified, or approved by, or registered with the department of health and family services (DHFS).
- An employee of a financial institution.
- A health care provider.
- A social worker, professional counselor, or marriage and family therapist.

These persons are not required to file a report, however, if the person believes that filing the report would not be in the best interest of the elder adult-at-risk or adult-at-risk. If the person believes this, the person must document the reasons for this belief in the case file of the person who is the suspected victim. There is a penalty for not complying with this requirement, which is a fine of not more than \$500, imprisonment not more than six months, or both.

The draft applies the immunity protections in current law to the new category of required reporters created in the draft. Therefore, a person required to file a report under the draft may not be discharged or retaliated against for doing so. The person found guilty of retaliating against a reporter is subject to a fine of not more than \$1,000, imprisonment not more than six months, or both. In addition, a person is immune from civil or criminal liability for filing a report.

The draft also increases the penalties for retaliating against a reporter, by increasing the maximum fine to \$10,000. In addition, the draft creates a rebuttable presumption that any discharge of a person or act of retaliation or discrimination that is taken against a person who makes a report, within 120 days after the report is made, establishes a rebuttable presumption that the discharge or act is retaliatory.

### **Investigations**

Under current law, upon receiving a report of abuse, material abuse, neglect or self-neglect, the county agency must either investigate the report or refer the report to another agency for investigation. If the report concerns abuse of a person who resides in a nursing home, community based residential facility, or receives services from a licensed

home health agency, the county agency must refer the report to DHFS for investigation. An investigation of a report must be commenced within 24 hours after a report is received, excluding Saturdays, Sundays, and legal holidays. An investigation of a report of material abuse shall be commenced within 5 days after a report is received, excluding Saturdays, Sundays, and legal holidays. The scope of the investigation is at the discretion of the investigating agency and may include a visit to the elder person's residence; observation of the elder person; an interview with the elder person, or the elder person's caretaker, if any; and a review of treatment and health care records.

The draft creates new provisions regarding referral of an investigation to another agency, if the county department, or agency under contract with the county department, determines that there are circumstances that would prevent conducting an independent investigation. In that case, the draft permits the DHFS or another county department to conduct the investigation. In addition, additional investigative tools are provided to investigative agencies, including the ability to interview the elder adult-at-risk or adult-at-risk, with or without the consent of the person's guardian; an interview of the guardian; transporting the person for a medical examination; and a review of the financial records of an elder adult-at-risk or adult-at-risk in cases of suspected financial exploitation. The draft also provides immunity from civil or criminal liability or a finding of unprofessional conduct if any element of an investigation was performed in good faith and under lawful authority.

### **Services**

Currently, a county agency or investigating agency must determine whether the person who is the subject of the alleged abuse or neglect is in need of services. If the department so determines, the agency must provide the necessary direct services to the person, within the limits of available funds.

The draft provides more specificity with regard to what types of services and responses may be made by an agency if a person is found to be the subject of abuse or neglect or financial exploitation. These responses include:

- Requesting immediate assistance in either initiating a protective services action or contacting law enforcement or another public agency as appropriate.
- Taking appropriate emergency action, including emergency protective placement under s. 55.06.

- Referring the case to local law enforcement for further investigation or to the district attorney, if the elder adult-at-risk agency has reason to believe that a crime has been committed.
- Referring the case to the licensing or certification authorities of the department or to other regulatory bodies if the residence, facility, or program for the elder adult-at-risk is or should be licensed or certified or is otherwise regulated.
- Referring the case to the department of regulation and licensing if the abuse, financial exploitation, neglect or self-neglect involves an individual who is required to hold a credential under chs. 440 to 460, stats.
- Bringing or referring for a petition for a guardianship and protective services or placement, if necessary.

#### **Records and Reports; Confidentiality**

Under current law, the county agency or other investigating agency must prepare a report on each investigation it conducts unless the agency finds, at the conclusion of the investigation, that the report of alleged abuse, material abuse, neglect or self-neglect is without foundation. If an agency other than the county agency conducts the investigation, it must submit a copy of the investigation report to the county agency.

Reports of suspected abuse, material abuse, neglect or self-neglect and investigation reports under this section are confidential and may not be released by the county agency or other investigating agency, except under the following circumstances:

- To the elder person and any person named in a report who is suspected of abusing or neglecting an elder person.
- To the protective services agency that is notified when an elder adult at risk is believed to be at risk of substantial physical harm, irreparable injury, or death.
- To an individual, organization, or agency designated by the DHFS or as required by law for the purposes of management audits or program monitoring and evaluation.
- For purposes of research if the research project has been approved by the department or the county agency and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher.
- Pursuant to lawful order of a court of record.

- To any agency or individual that provides direct services after an elder abuse investigation has been completed.
- To the guardian of the elder person or the guardian of any person named in a report who is suspected of abusing or neglecting an elder person.
- To law enforcement officials in accordance with the policy for notifying these officials in appropriate cases, under the elder abuse reporting system.

Current law provides penalties for violating these confidentiality requirements. Any person who violates these provisions is liable to any person damaged as a result of the violation, together with exemplary damages of not less than \$100 nor more than \$500 for each violation, plus costs and reasonable actual attorney fees. If the violation was willful, exemplary damages of not less than \$500 nor more than \$1,000 may be awarded. In addition, an individual may bring an action to enjoin a violation of the confidentiality requirements, or to compel compliance with the requirements.

Any person who requests or obtains confidential information under this subsection under false pretenses may be fined not more than \$500 or imprisoned not more than one year in the county jail, or both.

The draft creates a distinction between records and departmental report forms prepared pursuant to investigations of abuse, neglect, and financial exploitation. "Record" is defined as including any document relating to the response, investigation, assessment, and disposition of a report. A "departmental report form" is defined as including documentation of an agency's response to a report and the investigation of reported suspected abuse, financial exploitation, neglect, or self-neglect that provides a summary of the case, including the report form submitted to the state.

Report forms may be released under the same circumstances as they may be released under current law, with two additions:

- To a federal, state, or local government agency of this state or any other state that has a need for a report or record in order to carry out its responsibility to protect elder adults-at-risk or adults-at-risk from abuse, neglect, self-neglect, or financial exploitation.
- To a reporter who made the report in his or her professional capacity, regarding action to be taken to protect or provide services to the alleged victim of abuse, neglect, financial exploitation, or self-neglect.

The draft also provides the agency with the ability to not release reports in certain cases, such as when the agency determines the release might

be contrary to the interests of the victim or might cause harm to the victim, or the release might jeopardize an ongoing criminal or civil investigation.

Under the draft, records are confidential, and may not be released except under the following circumstances:

- To the elder adult-at-risk or adult-at-risk who is the victim named in the record.
- To the legal guardian, conservator, or other legal representative of the elder adult-at-risk or adult-at-risk who is the victim named in the record, provided that the legal representative of the victim is not the alleged perpetrator of the abuse, financial exploitation, or neglect.
- To law enforcement officials and agencies or a district attorney, for purposes of investigation or prosecution.
- To the DHFS, under s. 51.03 (2); or to the DHFS, a sheriff, police department, or district attorney for certain statutory death investigations
- To an employee of a county department that is providing services to the elder adult-at-risk or adult-at-risk who is the victim named in the record, or to the alleged perpetrator of abuse, to determine whether the victim should be transferred to a less restrictive or more appropriate treatment modality or facility.
- To a court, tribal court, or administrative agency for a proceeding relating to the licensure or regulation of an individual or entity regulated or licensed by the department, that was an alleged perpetrator of abuse, financial exploitation, or neglect, and the board on aging and long term care.
- To the DHFS, for management, audit, program monitoring, evaluation, billing, or collection purposes.
- To the attorney or guardian ad litem for the elder adult-at-risk or adult-at-risk who is the victim named in the record, to assist in preparing for certain court proceedings pertaining to the victim.
- To a coroner, medical examiner, pathologist, or other physician investigating the cause of death of an elder adult-at-risk or adult-at-risk that is unexplained or unusual or is associated with unexplained or suspicious circumstances.
- To staff members of the state-designated protection and advocacy agency, for the purposes of protecting and advocating for the rights of persons with developmental disabilities and mental illness.

- To an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, neglect, or exploitation of an elder adult-at-risk or adult-at-risk.
- To a grand jury, if it determines that access to specified records is necessary for the conduct of its official business.
- To a judge, tribal court, or administrative agency conducting proceedings under s. 968.26.
- Pursuant to a lawful order of a court of record.

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