



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 388
[2005 Assembly Bill 539]

**Protection of Adults at Risk and
Elder Adults at Risk**

System for Protection of Elder Adults-at-Risk and Adults-at-Risk

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.

2005 Wisconsin Act 388 substantially revises the statutory provisions of Wisconsin's elder abuse law. The Act revises terminology, elder abuse reporting provisions, investigation provisions, and the confidentiality of elder abuse reports and records. The Act also deletes reference to the term "elder person" and replaces that with the term "elder adult-at-risk." Prior to Act 388, 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. Act 388 defines an "elder adult-at-risk," 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 Act also creates provisions in ch. 55 which are parallel to the elder abuse system provisions in ch. 46. This will permit abuse investigations and follow-up services to be provided on behalf of "adults-at-risk". 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."

Definition Revisions

The Act 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."

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

Voluntary and Mandatory Reporting

This Act retains the voluntary system of reporting for the majority of situations of suspected abuse or neglect. However, the Act 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 Act, 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).
- 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 for not more than six months, or both.

Investigations

Act 388 creates new provisions regarding referral of an investigation of abuse of an elder-adult-at-risk. An investigation may be referred 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 Act permits 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 Act 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 and Responses

The bill 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 and Release

The bill 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.

Reports 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 bill 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 bill, records are confidential, and may and may not be released except under certain specified circumstances.

Effective Date: Act 388 takes effect on December 1, 2006.

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