



1995 ASSEMBLY BILL 988

March 6, 1996 - Introduced by Representatives SILBAUGH, KRUSICK, FREESE, GOETSCH, AINSWORTH, POWERS, LADWIG, CARPENTER, OWENS, MEYER, ALBERS, GREEN, HAHN, SKINDRUD, JOHNSRUD, OLSEN, OTTE, GUNDERSON, SERATTI, KREIBICH, URBAN and HASENOHRL, cosponsored by Senators BUETTNER, CLAUSING and GROBSCHMIDT. Referred to Committee on Aging and Long-Term Care.

1 **AN ACT to amend** 49.498 (3) (b) 1., 55.043 (1) (a) (intro.), 55.043 (4) (intro.), 55.043
2 (4) (e), 55.043 (4) (f), 55.043 (5), 146.40 (4g) (a) 3., 146.40 (4r) (a), 146.40 (4r) (b)
3 and 813.123 (5) (a) 3. a.; and **to create** 20.435 (6) (di), 46.90 (9m), 50.065 and
4 165.815 of the statutes; **relating to:** requiring criminal history searches of
5 certain persons hired or proposed to be hired by certain facilities or services,
6 requiring conduct of an elder abuse awareness campaign, authorizing positions
7 for the board on aging and long-term care, clarifying requirements for
8 reporting the misappropriation of property, abuse or neglect of certain patients
9 or facility residents, making appropriations and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, intentional abuse or intentional neglect and reckless abuse or reckless neglect of a patient or resident of an adult day care center, adult family home, community-based residential facility, foster home, group home, home health agency, hospital, inpatient health care facility and certain other facilities or programs is punishable as a felony, if performed under circumstances that are likely to cause great bodily harm. If the abuse or neglect is performed under circumstances not causing or likely to cause great bodily harm, the abuse or neglect is punishable as a misdemeanor. Currently, the department of justice (DOJ) performs criminal history searches and imposes fees for the searches that are for purposes unrelated to criminal justice.

This bill requires that any person who is engaged in the business of providing the services of an adult day care center, adult family home, assisted living facility,

community-based residential facility, home health agency, hospice, nursing home or treatment facility request DOJ to perform a criminal history search on any individual who may have access to patients or residents of the facility or service whom the facility or agency proposes to hire and requires that DOJ conduct the search. The bill prohibits such a facility or agency from intentionally hiring such an individual who has been convicted of intentional or reckless abuse and who has not been pardoned.

Under 1995 Wisconsin Act 27 (the biennial budget act), funding was eliminated for the department of health and social services (DHSS) to conduct a statewide elder abuse awareness campaign. Under the campaign, DHSS was to use mass media communication and develop, print and distribute brochures and posters to increase the general public's awareness of the problem of elder abuse. Also under the biennial budget act, DHSS was renamed the department of health and family services (DHFS). This bill creates an appropriation of general purpose revenues and requires that DHFS conduct the elder abuse campaign.

This bill authorizes 2.0 additional full-time equivalent positions for the board on aging and long-term care, for treatment complaint investigations and service as mediators or advocates for the aged or disabled under the long-term care ombudsman program, and appropriates general purpose revenues for the positions.

Finally, this bill makes a change in the current law regarding the kind of abuse or neglect allegedly engaged in by a nurse's assistant that must be reported in the DHSS registry, in order to conform state law to federal law. Under current state law, an individual need only report to DHSS that he or she believes a nurse's assistant has neglected, abused or misappropriated the property of a resident or patient. The standard required under federal law includes not only the misappropriation of property, but also patient abuse or neglect. This bill incorporates this federal standard into state law.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

	1995-96	1996-97
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2 **20.435 Health and family services, department**

3 **of**

4 (6) COMMUNITY SERVICES; STATE OPERATIONS

5 (di) Elder abuse awareness cam-

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7 **SECTION 2.** 20.435 (6) (di) of the statutes is created to read:

8 20.435 **(6)** (di) *Elder abuse awareness campaign.* The amounts in the schedule
9 for the purpose of conducting a statewide elder abuse awareness campaign under s.
10 46.90 (9m).

11 **SECTION 3.** 46.90 (9m) of the statutes is created to read:

12 46.90 **(9m)** ELDER ABUSE AWARENESS CAMPAIGN. From the appropriation under
13 s. 20.435 (6) (di), the department shall conduct a statewide elder abuse awareness
14 campaign by use of mass media communication, including public service
15 announcements, and by development, printing and distribution of informational
16 brochures and posters, to increase the general public's awareness of the problem of
17 elder abuse.

18 **SECTION 4.** 49.498 (3) (b) 1. of the statutes is amended to read:

19 49.498 **(3)** (b) 1. Inform each resident, orally and in writing at the time of
20 admission to the nursing facility, of the resident's legal rights during the stay at the
21 nursing facility, including a description of the protection of personal funds under sub.
22 (8) and a statement that a resident may file a complaint with the department under
23 s. 146.40 (4r) (a) concerning neglect, abuse or misappropriation of property, neglect
24 or abuse of a resident.

1 **SECTION 5.** 50.065 of the statutes is created to read:

2 **50.065 Prior convictions, employes of certain facilities or services. (1)**

3 In this section:

4 (a) "Adult day care center" means a facility that is operated by an adult day care
5 provider that provides care and services to persons who are aged 60 or older for less
6 than 24 hours a day.

7 (b) "Treatment facility" has the meaning given in s. 51.01 (19).

8 **(2)** Any person who is engaged in the business of providing the services of an
9 adult day care center, an adult family home, an assisted living facility, a
10 community-based residential facility, a home health agency, a hospice, a nursing
11 home or a treatment facility shall request the department of justice to perform a
12 criminal history search on any individual who may have access to patients or
13 residents of the facility or service whom the adult day care center, adult family home,
14 assisted living facility, community-based residential facility, home health agency,
15 hospice, nursing home or treatment facility proposes to hire.

16 **(3)** No adult day care center, adult family home, assisted living facility,
17 community-based residential facility, home health agency, hospice, nursing home or
18 treatment facility may intentionally hire an individual who may have access to
19 patients or residents of the facility or service who has been convicted of intentional
20 abuse or intentional neglect under s. 940.295 (3) (a) 1. or reckless abuse or reckless
21 neglect under s. 940.295 (3) (a) 2. and who has not been pardoned for the violation
22 resulting in the conviction.

23 **(4)** Whoever violates sub. (3) may be required to forfeit not more than \$1,000.

24 **SECTION 6.** 55.043 (1) (a) (intro.) of the statutes is amended to read:

1 55.043 (1) (a) (intro.) If a county protective services agency has probable cause
2 to believe that there is ~~abuse, neglect or misappropriation of property, neglect or~~
3 abuse, the county protective services agency may conduct an investigation in
4 Milwaukee county to determine if the vulnerable adult in question is in need of
5 protective services. The county protective services agency shall conduct the
6 investigation in accordance with standards established by the department for
7 conducting the investigations. The investigation shall include at least one of the
8 following:

9 **SECTION 7.** 55.043 (4) (intro.) of the statutes is amended to read:

10 55.043 (4) OFFER OF SERVICES. (intro.) If upon investigation the county
11 protective services agency finds ~~abuse, neglect or misappropriation of property,~~
12 neglect or abuse, the county protective services agency may do one or more of the
13 following:

14 **SECTION 8.** 55.043 (4) (e) of the statutes is amended to read:

15 55.043 (4) (e) Refer the case to the department of regulation and licensing or
16 the appropriate examining board if the ~~abuse, neglect or misappropriation of~~
17 property, neglect or abuse involves an individual who is required to be licensed,
18 permitted, certified or registered under chs. 440 to 459.

19 **SECTION 9.** 55.043 (4) (f) of the statutes is amended to read:

20 55.043 (4) (f) Bring a petition for a guardianship and protective service or
21 protective placement if necessary to prevent ~~abuse, neglect or misappropriation of~~
22 property, neglect or abuse and if the vulnerable adult would otherwise be at risk of
23 serious harm because of an inability to arrange for necessary food, clothing, shelter
24 and services.

25 **SECTION 10.** 55.043 (5) of the statutes is amended to read:

1 55.043 (5) APPLICABILITY. This section does not apply to patients or residents
2 of state-operated or county-operated inpatient institutions or hospitals issued
3 certificates of approval under s. 50.35 unless the alleged ~~abuse, neglect or~~
4 ~~misappropriation of property, neglect or abuse~~ of such a patient or resident is alleged
5 to have been done by a person other than an employe of the inpatient institution or
6 hospital.

7 **SECTION 11.** 146.40 (4g) (a) 3. of the statutes is amended to read:

8 146.40 (4g) (a) 3. Findings of the department under sub. (4r) (b) or of the
9 hearing officer under sub. (4r) (d) concerning the ~~neglect, abuse or~~ misappropriation
10 of property, neglect or abuse by an individual listed under subd. 2.

11 **SECTION 12.** 146.40 (4r) (a) of the statutes is amended to read:

12 146.40 (4r) (a) Any individual may report to the department that he or she
13 believes that a nurse's assistant has neglected, or abused a nursing home resident
14 or a hospital patient or misappropriated the resident's or patient's property ~~of a~~
15 ~~nursing home resident or a hospital patient~~ or that a home health aide has neglected,
16 or abused a home health agency patient or misappropriated the patient's property
17 ~~of a home health agency patient.~~

18 **SECTION 13.** 146.40 (4r) (b) of the statutes is amended to read:

19 146.40 (4r) (b) The department shall review and investigate any report
20 received under par. (a) and, if the allegation is substantiated, make specific,
21 documented findings concerning the ~~neglect, abuse or~~ misappropriation of property,
22 neglect or abuse. The department shall in writing by certified mail notify the nurse's
23 assistant or home health aide specified in the report that his or her name and the
24 department's findings about him or her shall be listed in the registry under sub. (4g)
25 (a) 2. and 3. unless he or she contests the listings in a hearing before the department.

1 The written notification shall describe the investigation conducted by the
2 department, enumerate the findings alleging ~~neglect, abuse or~~ misappropriation of
3 property, neglect or abuse of a nursing home resident or hospital or home health
4 agency patient and explain the consequence to the nurse's assistant or home health
5 aide of waiving a hearing to contest the findings. The nurse's assistant or home
6 health aide named in the report shall have 30 days after receipt of the notification
7 to indicate to the department in writing whether he or she intends to contest the
8 listing or to waive the hearing.

9 **SECTION 14.** 165.815 of the statutes is created to read:

10 **165.815 Criminal history searches.** (1) The department of justice shall
11 conduct a criminal history search on any individual for whom such a request is made
12 under s. 50.065 (2) and shall convey any information gathered from the criminal
13 history search to the requester.

14 (2) The requester of a criminal history search that is conducted under sub. (1)
15 shall pay a fee as provided under s. 165.82.

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

17 813.123 (5) (a) 3. a. That the respondent has interfered with, or based upon
18 prior conduct of the respondent may interfere with, an investigation of the
19 vulnerable adult under s. 55.043 and that the interference complained of, if
20 continued, would make it difficult to determine if ~~abuse, neglect or~~ misappropriation
21 of property, neglect or abuse is occurring or may recur.

22 **SECTION 16. Nonstatutory provisions; department of justice.**

23 (1) CRIMINAL HISTORY SEARCHES. The authorized FTE positions for the
24 department of justice are increased by 2.0 PR positions on July 1, 1996, to be funded
25 from the appropriation under section 20.455 (2) (gm) of the statutes, for the purpose

1 of performing criminal history searches under section 165.815 (1) of the statutes, as
2 required under section 50.065 (2) of the statutes, as created by this act.

3 **SECTION 17. Appropriation changes; aging and long-term care board.**

4 (1) LONG-TERM CARE OMBUDSMAN PROGRAM. In the schedule under section 20.005
5 (3) of the statutes for the appropriation to the board on aging and long-term care
6 under section 20.432 (1) (a) of the statutes, as affected by the acts of 1995, the dollar
7 amount is increased by \$91,500 for fiscal year 1996-97 to increase the authorized
8 FTE positions for the board on aging and long-term care by 2.0 GPR positions
9 beginning July 1, 1996, for performance of services under section 16.009 (2) (b) of the
10 statutes.

11 **SECTION 18. Effective dates.** This act takes effect on the day after
12 publication, except as follows:

13 (1) PRIOR CONVICTIONS OF CERTAIN EMPLOYES. The treatment of section 50.065 of
14 the statutes takes effect on July 1, 1996, or on the day after publication, whichever
15 is later.

16 (END)