

1983 Assembly Bill 571

Date of enactment: **May 2, 1984**
Date of publication: **May 9, 1984**

1983 Wisconsin Act 398

AN ACT *to repeal* 20.435 (4) (dj); *to amend* 46.90 (8) (d); and *to create* 20.435 (4) (dj), 46.90, 51.30 (4) (b) 16, 101.222 (5), 146.82 (2) (a) 7 and 230.45 (1) (j) of the statutes, *relating to* reporting and investigating abuse or neglect of elder persons, providing penalties and making an appropriation.

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

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

	1983-84	1984-85
20.435 Health and social services,		
Department of		
(4) COMMUNITY SERVICES		
(dj) Public information;		
elder abuse	GPR B 35,000	0

SECTION 2. 20.435 (4) (dj) of the statutes is created to read:

20.435 (4) (dj) *Public information; elder abuse.* Biennially, the amounts in the schedule for the development and dissemination of public information on elder abuse and the elder abuse reporting system required under s. 46.90 (8) (d).

SECTION 2m. 20.435 (4) (dj) of the statutes, as created by 1983 Wisconsin Act ... (this act), is repealed.

SECTION 3. 46.90 of the statutes is created to read:

46.90 Elder abuse reporting system. (1) DEFINITIONS. In this section:

(a) "Abuse" means the wilful infliction on an elder person of physical pain or injury or unreasonable confinement.

(b) "County agency" means the agency in each county designated under sub. (2).

(c) "Elder person" means a person who is age 60 or older or who is subject to the infirmities of aging.

(d) "Infirmities of aging" has the meaning provided under s. 55.01 (3).

(e) "Material abuse" means the misuse of an elder person's property or financial resources.

(f) "Neglect" means a significant danger to an elder person's physical or mental health because the person who takes care of the elder person is unable or fails to provide adequate food, shelter, clothing or medical or dental care.

(g) "Self-neglect" means a significant danger to an elder person's physical or mental health because the elder person is responsible for his or her own care but is unable to provide adequate food, shelter, clothing or medical or dental care.

(2) COUNTY AGENCY DESIGNATION. Each county board shall designate an agency in the county as the county agency for the purposes of this section.

(3) COUNTY AGENCY DUTIES. (a) Each county agency shall develop a policy for notifying law enforcement officials in appropriate cases and shall establish an elder abuse reporting system to carry out the purposes of this section. Each county agency shall enter into a memorandum of understanding regarding the operation of the system with the county department of public welfare or social services and with any private or public agency, including a board created under s. 51.42 or 51.437, within the county that is participating in the elder abuse reporting system. The memorandum of understanding shall, at a minimum, identify the agencies that are responsible for the investigation of reports of abuse, material abuse, neglect or self-neglect and for the provision of specific services.

(b) Each county agency shall receive reports of abuse, material abuse, neglect or self-neglect of elder persons.

(c) Each county agency shall publicize the existence of an elder abuse reporting system in the county and shall provide a publicized telephone number which can be used by persons wishing to report suspected cases of abuse, material abuse, neglect or self-neglect.

(4) REPORTING. (a) 1. Any person may report to the county agency that he or she believes that abuse, material abuse or neglect has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, material abuse or neglect has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.

2. Any person who believes that self-neglect has occurred may report that belief and the facts and circumstances contributing to the belief to the county agency.

(b) 1. No employer may discharge or otherwise discriminate against any person for reporting in good faith under this subsection.

2. a. Any employe of a state agency who is discharged or otherwise discriminated against may file a complaint with the personnel commission under s. 230.45 (1) (j). In this subparagraph, "agency" has the meaning provided under s. 111.32 (6) (a).

b. Any employe of an employer not described in subd. 2.a who is discharged or otherwise discriminated against may file a complaint with the department of industry, labor and human relations under s. 101.222 (5).

(c) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for reporting in good faith under this subsection.

(5) INVESTIGATIONS AND PROVISION OF SERVICES. (a) Except as otherwise provided, upon receiving a report of abuse, material abuse, neglect or self-neglect, the county agency shall either investigate the report or refer the report to another agency for investigation. Upon receiving a report of abuse, material abuse, neglect or self-neglect of an elder person who resides in a community-based residential facility or a nursing home licensed under s. 50.03 or of an elder person who receives services from a home health agency licensed under s. 141.15 and the person suspected of abusing or neglecting the person is an employe of the home health agency, the county agency may not investigate the report but it shall refer the report within 24 hours after the report is received, excluding Saturdays, Sundays and legal holidays, to the department for investigation. An investigation of a report of abuse, neglect or self-neglect shall 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. If a report is referred to the department, pars. (b) to (g) and sub. (6) do not apply to the department.

(b) The scope of the investigation is at the discretion of the investigating agency and may include the following:

1. A visit to the elder person's residence.
2. Observation of the elder person.
3. An interview with the elder person. To the extent practicable, this interview shall be private.
4. An interview with any person who takes care of the elder person.
5. A review of treatment and health care records.

(c) If an investigator so requests, a sheriff or police officer shall accompany the investigator during visits to the elder person's residence and shall provide other assistance as needed.

(d) 1. If any person except the elder person in question interferes with the investigation, the investigator may apply for an order under ch. 813 prohibiting the interference.

2. 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.

(e) After the investigation is completed, the county agency or the investigating agency shall determine if the elder person or any other person involved in the alleged abuse, material abuse, neglect or self-neglect is in need of services under this chapter or ch. 47, 49, 51 or 55. Within the limits of available state and federal funds and of county funds appropriated to match the state and federal funds, the county agency shall provide the necessary services or arrange for the provision of the services with other agencies or individuals. Those services provided shall be rendered under the least restrictive conditions necessary to achieve their objective.

(f) If the investigator has reason to believe that substantial physical harm, irreparable injury or death may occur to an elder person, the investigator shall immediately notify the protective services agency designated under s. 55.02.

(g) An elder person may refuse to allow an investigation under this subsection or may refuse to accept services unless a guardian authorizes the investigation or services. The investigator shall notify the elder person of this right to refuse before or at the point of commencing an investigation and the county agency or other provider agency shall notify the elder person of this right before providing services.

(6) RECORDS; CONFIDENTIALITY. (a) The county agency or other investigating agency shall 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 shall submit a copy of the investigation report to the county agency.

(b) 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 they may be released:

1. To the elder person and any person named in a report who is suspected of abusing or neglecting an elder person. These persons may inspect the report on the investigation, except that information identifying the person who initially reported the suspected abuse, material abuse, neglect or self-neglect may not be released.

2. To the protective services agency notified under sub. (5) (f). Information obtained under this subdivision shall remain confidential.

3. To an individual, organization or agency designated by the department or as required by law for the purposes of management audits or program monitoring and evaluation. Information obtained under this subdivision shall remain confidential and shall not be used in any way that discloses the names or other identifying information about the individuals involved.

4. 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, the information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individuals involved. Such information shall remain confidential. In approving research projects under this subdivision, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

5. Pursuant to lawful order of a court of record.

6. To any agency or individual that provides services under sub. (5) (e). Information obtained under this subdivision shall remain confidential.

7. 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. These persons may inspect the report on the investigation, except that information identifying the person who initially reported the suspected abuse, material abuse, neglect or self-neglect may not be released.

8. To law enforcement officials in accordance with the policy developed under sub. (3) (a).

(c) 1. Any person, including the state or any political subdivision of the state, violating this subsection shall be liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not less than \$100 nor more than \$500 for each violation and such costs and reasonable actual attorney fees as may be incurred by the person damaged. A custodian of records incurs no liability under this subdivision for the release of records in accordance with this subsection while acting in good faith.

2. In any action brought under subd. 1 in which the court determines that the violator acted in a manner that was knowing and wilful, the violator shall be liable for such damages as may be proved together with exemplary damages of not less than \$500 nor more than \$1,000 for each violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under this paragraph that the plaintiff suffer or be threatened with actual damages.

3. An individual may bring an action to enjoin any violation of this subsection or to compel compliance with this subsection, and may in the same action seek damages as provided in this paragraph. The individual may recover costs and reasonable actual attorney fees as may be incurred in the action, if he or she prevails.

(d) 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.

(e) Any employe who violates this subsection may be subject to discharge or suspension without pay.

(7) EXCEPTION. Nothing in this section shall be construed to mean that a person is abused, neglected or in need of emergency or protective services solely because he or she consistently relies upon treatment by spiritual means through prayer for healing in accordance with his or her religious tradition.

(8) DEPARTMENT DUTIES. (a) The department shall develop a plan to assist county agencies in determining appropriate responses to reports of abuse, material abuse, neglect or self-neglect.

(b) The department shall prepare and distribute sample report forms for use by county agencies.

(c) The department shall collect statistical information from each county pertaining to each reported case of abuse, material abuse, neglect or self-neglect. The department may require investigators to submit statements to the department that summarize the information being reported. These summary statements may not name or otherwise identify individual persons. The department shall use this information to review the effectiveness of this section, to plan program changes and to formulate reports.

(d) From the funds appropriated under s. 20.435 (4) (dj), the department shall develop and disseminate information on elder abuse and the elder abuse reporting system under this section. The department shall also develop informational materials to be used by county agencies regarding elder abuse and the elder abuse reporting system. The department shall solicit contributions of labor, materials and expertise from private sources to assist in developing the informational materials.

SECTION 3m. 46.90 (8) (d) of the statutes, as created by 1983 Wisconsin Act (this act), is amended to read:

46.90 (8) (d) ~~From the funds appropriated under s. 20.435 (4) (dj), the~~ The department shall develop and disseminate information on elder abuse and the elder abuse reporting system under this section. The department shall also develop informational materials to be used by county agencies regarding elder abuse and the elder abuse reporting system. The department shall solicit contributions of labor, materials and expertise from private sources to assist in developing the informational materials.

SECTION 4. 51.30 (4) (b) 16 of the statutes is created to read:

51.30 (4) (b) 16. To the county agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for the purposes of s. 46.90 (4) (a) and (5).

SECTION 5. 101.222 (5) of the statutes is created to read.

101.222 (5) The division shall receive complaints of discharge or discrimination under s. 46.90 (4) (b) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 6. 146.82 (2) (a) 7 of the statutes is created to read:

146.82 (2) (a) 7. To a county agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for purposes of s. 46.90 (4) (a) and (5). The health care provider may release information by initiating contact with the county agency without receiving a request for release of the information from the county agency.

SECTION 7. 230.45 (1) (j) of the statutes is created to read.

230.45 (1) (j) Receive complaints of discharge or discrimination under s. 46.90 (4) (b) and process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 8. **Nonstatutory provisions.** (1) The department of health and social services shall include in its 1984-86 evaluation plan a study of whether the services provided at the state and local levels are adequate for the purpose of reducing or ameliorating abuse or neglect of elder persons.

(2) On or before December 31, 1985, the department of health and social services shall submit a report to the joint committee on finance and to the appropriate senate and assembly standing committees on the nature and amount of informational materials developed by the department concerning elder abuse and the elder abuse reporting system under section 46.90 of the statutes, as created by this act.

SECTION 9. **Effective dates.** (1) Except as provided in subsection (2), this act takes effect on the day following publication.

(2) The repeal of section 20.435 (4) (dj) of the statutes and the treatment of section 46.90 (8) (d) (by SECTION 3m) of the statutes take effect on June 30, 1985.
