



## 1997 ASSEMBLY BILL 886

March 5, 1998 - Introduced by Representatives SPILLNER, LADWIG, MUSSER, KELSO, UNDERHEIM, SCHAFFER, FREESE, PORTER and DOBYNS, cosponsored by Senator DARLING. Referred to Committee on Working Families.

1     **AN ACT to amend** 48.685 (2) (a) 1., 48.685 (2) (a) 2., 48.685 (2) (ag) 1., 48.685 (2)  
2           (ag) 2., 48.685 (2) (b) 1. (intro.), 48.685 (2) (b) 3., 48.685 (5) (intro.) and 48.685  
3           (5m); and **to create** 48.685 (2) (b) 4. and 938.396 (9) of the statutes; **relating**  
4           **to:** prohibiting a person 12 years of age or over who has been adjudicated  
5           delinquent for committing a serious crime or who has a delinquency petition  
6           pending for a serious crime from day care licensure, certification, employment,  
7           contracting or residence.

---

### ***Analysis by the Legislative Reference Bureau***

Under current law, beginning on October 1, 1998, the department of health and family services (DHFS) may not license a person to operate a day care center, a county department of human services or social services (county department) may not certify a person as a day care provider and a school board may not contract with a person to operate a day care program if DHFS, the county department or the school board knows or should know that the person has been convicted of, or has a charge pending for, a serious crime, as defined by DHFS by rule (serious crime). Current law, however, subject to certain exceptions, permits such a person to demonstrate that he or she has been rehabilitated. Similarly, under current law, beginning on October 1, 1998, a day care center, day care provider or day care program may not hire or contract with a person who will be under its control and who is expected to

**ASSEMBLY BILL 886**

have access to its clients and may not permit to reside at the day care center, day care provider or day care program a person who is expected to have access to its clients if the day care center, day care provider or day care program knows or should know that the person has been convicted of, or has a charge pending for, a serious crime, unless the person demonstrates that he or she has been rehabilitated. Current law requires, beginning on October 1, 1998, that DHFS obtain, with respect to a person applying for a license to operate a day care center, that a county department obtain, with respect to a person applying for certification as a day care provider, that a school board obtain, with respect to a person proposing to contract for the operation of a day care program, and that a day care center, day care provider and a day care program obtain, with respect to a prospective employe, contractor or nonclient resident, a criminal history search from the records maintained by the department of justice (DOJ).

This bill prohibits, beginning on October 1, 1998, DHFS from licensing a person to operate a day care center, a county department from certifying a person as a day care provider and a school board from contracting with a person to operate a day care program if DHFS, the county department or the school board knows or should know that the person has been *adjudicated delinquent* for committing a serious crime or that the person has a *delinquency petition pending* for a serious crime, unless the person demonstrates that he or she has been rehabilitated. Similarly, the bill prohibits, beginning on October 1, 1998, a day care center, day care provider or day care program from hiring or contracting with a person 12 years of age or over who will be under its control and who is expected to have access to its clients and from permitting to reside at the day care center, day care provider or day care program a person 12 years of age or over who is expected to have access to its clients if the day care center, day care provider or day care program knows or should know that the person has been *adjudicated delinquent* for committing a serious crime or that the person has a *delinquency petition pending* for a serious crime, unless the person demonstrates that he or she has been rehabilitated. Finally, the bill requires, beginning on October 1, 1998, that the clerk of the court assigned to exercise jurisdiction under the juvenile justice code (juvenile court) notify DOJ if a delinquency petition is filed with the juvenile court alleging that a juvenile has committed a serious crime or if a juvenile is adjudged delinquent for committing a serious crime. Under the bill, DOJ may disclose that information only as part of a criminal history record search made with respect to a person applying for a license to operate a day care center or for certification as a day care provider, a person proposing to contract with a school board for the operation of a day care program or a person who is a prospective employe, contractor or nonclient resident of a day care center, day care provider or day care program.

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:***

**ASSEMBLY BILL 886**

1           **SECTION 1.** 48.685 (2) (a) 1. of the statutes, as created by 1997 Wisconsin Act  
2 27, is amended to read:

3           48.685 (2) (a) 1. That the person has been convicted of a serious crime or, if the  
4 person is an applicant for issuance or continuation of a license to operate a day care  
5 center or for initial certification under s. 48.651 or for renewal of that certification  
6 or if the person is proposing to contract with a school board under s. 120.13 (14) or  
7 to renew a contract under that subsection, that the person has been convicted of a  
8 serious crime or adjudicated delinquent for committing a serious crime.

9           **SECTION 2.** 48.685 (2) (a) 2. of the statutes, as created by 1997 Wisconsin Act  
10 27, is amended to read:

11           48.685 (2) (a) 2. That the person has pending against him or her a charge for  
12 a serious crime or, if the person is an applicant for issuance or continuation of a  
13 license to operate a day care center or for initial certification under s. 48.651 or for  
14 renewal of that certification or if the person is proposing to contract with a school  
15 board under s. 120.13 (14) or to renew a contract under that subsection, that the  
16 person has pending against him or her a charge for a serious crime or a delinquency  
17 petition alleging that he or she has committed a serious crime.

18           **SECTION 3.** 48.685 (2) (ag) 1. of the statutes, as created by 1997 Wisconsin Act  
19 27, is amended to read:

20           48.685 (2) (ag) 1. That the person has been convicted of a serious crime or, if  
21 the person is 12 years of age or over and is an employe, prospective employe,  
22 contractor, prospective contractor, nonclient resident or prospective nonclient  
23 resident of a day care center that is licensed under s. 48.65 or established or  
24 contracted for under s. 120.13 (14) or of a day care provider that is certified under s.

**ASSEMBLY BILL 886****SECTION 3**

1 48.651, that the person has been convicted of a serious crime or adjudicated  
2 delinquent for committing a serious crime.

3 **SECTION 4.** 48.685 (2) (ag) 2. of the statutes, as created by 1997 Wisconsin Act  
4 27, is amended to read:

5 48.685 (2) (ag) 2. That the person has pending against him or her a charge for  
6 a serious crime or, if the person is 12 years of age or over and is an employe,  
7 prospective employe, contractor, prospective contractor, nonclient resident or  
8 prospective nonclient resident of a day care center that is licensed under s. 48.65 or  
9 established or contracted for under s. 120.13 (14) or of a day care provider that is  
10 certified under s. 48.651, that the person has pending against him or her a charge  
11 for a serious crime or a delinquency petition alleging that he or she has committed  
12 a serious crime.

13 **SECTION 5.** 48.685 (2) (b) 1. (intro.) of the statutes, as created by 1997 Wisconsin  
14 Act 27, is amended to read:

15 48.685 (2) (b) 1. (intro.) Subject to subs. 1. e., 2. and, 3. and 4., every entity  
16 shall obtain all of the following with respect to a person specified under par. (ag)  
17 (intro.):

18 **SECTION 6.** 48.685 (2) (b) 3. of the statutes, as created by 1997 Wisconsin Act  
19 27, is amended to read:

20 48.685 (2) (b) 3. ~~Subdivision 1. does not apply~~ Subject to subd. 4., an entity is  
21 not required to obtain the information specified in subd. 1. a. to e. with respect to a  
22 person under 18 years of age whose background information form under sub. (6) (am)  
23 indicates that the person is not ineligible to be employed, contracted with or  
24 permitted to reside at the entity for a reason specified in par. (ag) 1. to 5. and with  
25 respect to whom the entity otherwise has no reason to believe that the person is

**ASSEMBLY BILL 886**

1 ineligible to be employed, contracted with or permitted to reside at the entity for any  
2 of those reasons.

3 **SECTION 7.** 48.685 (2) (b) 4. of the statutes is created to read:

4 48.685 (2) (b) 4. Notwithstanding subd. 3., a day care center that is licensed  
5 under s. 48.65 or established or contracted for under s. 120.13 (14) or a day care  
6 provider that is certified under s. 48.651 shall obtain the information specified in  
7 subd. 1. a. to e. with respect to a person specified in par. (ag) (intro.) who is 12 years  
8 of age or over.

9 **SECTION 8.** 48.685 (5) (intro.) of the statutes, as created by 1997 Wisconsin Act  
10 27, is amended to read:

11 48.685 (5) (intro.) The department may license to operate an entity, a county  
12 department may certify under s. 48.651 and a school board may contract with under  
13 s. 120.13 (14) a person who otherwise may not be licensed, certified or contracted  
14 with for a reason specified in sub. (2) (a) 1. to 5., and an entity may employ, contract  
15 with or permit to reside at the entity a person who otherwise may not be employed,  
16 contracted with or permitted to reside at the entity for a reason specified in sub. (2)  
17 (ag) 1. to 5., if the person demonstrates to the department, the county department  
18 or the school board by clear and convincing evidence and in accordance with  
19 procedures established by the department by rule that he or she has been  
20 rehabilitated. No person who has been convicted of any of the following offenses, and  
21 no person 12 years of age or over who is an applicant for issuance or continuation of  
22 a license to operate a day care center or for initial certification under s. 48.651 or for  
23 renewal of that certification, who is proposing to contract with a school board under  
24 s. 120.13 (14) or to renew a contract under that subsection or who is an employe,  
25 prospective employe, contractor, prospective contractor, nonclient resident or

**ASSEMBLY BILL 886****SECTION 8**

1 prospective nonclient resident of a day care center that is licensed under s. 48.65 or  
2 established or contracted for under s. 120.13 (14) or of a day care provider that is  
3 certified under s. 48.651, and who has been convicted of any of the following offenses  
4 or adjudicated delinquent for committing any of the following offenses, may be  
5 permitted to demonstrate that he or she has been rehabilitated:

6 **SECTION 9.** 48.685 (5m) of the statutes, as created by 1997 Wisconsin Act 27,  
7 is amended to read:

8 48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license  
9 a person to operate an entity, ~~a county department may refuse to certify a day care~~  
10 ~~provider under s. 48.651, a school board may refuse to contract with a person under~~  
11 ~~s. 120.13 (14), and an entity may refuse to employ, contract with or permit to reside~~  
12 ~~at the entity a person specified in sub. (2) (ag) (intro.) if the person has been convicted~~  
13 ~~of an offense that the department has not defined as a “serious crime” by rule~~  
14 ~~promulgated under sub. (7) (a), or specified in the list established by rule under sub.~~  
15 ~~(7) (b), but that is, in the estimation of the department, county department, school~~  
16 ~~board or entity, substantially related to the care of a client. Notwithstanding s.~~  
17 111.335, the department may refuse to license a person to operate a day care center,  
18 a county department may refuse to certify a day care provider under s. 48.651, a  
19 school board may refuse to contract with a person under s. 120.13 (14), a day care  
20 center that is licensed under s. 48.65 or established or contracted for under s. 120.13  
21 (14) and a day care provider that is certified under s. 48.651 may refuse to employ,  
22 contract with or permit to reside at the day care center or day care provider a person  
23 specified in sub. (2) (ag) (intro.) who is 12 years of age or over if the person has been  
24 convicted of or adjudicated delinquent for an offense that the department has not  
25 defined as a “serious crime” by rule promulgated under sub. (7) (a), or specified in the

**ASSEMBLY BILL 886**

1 list established by rule under sub. (7) (b), but that is, in the estimation of the  
2 department, county department, school board, day care center or day care provider  
3 substantially related to the care of a client.

4 **SECTION 10.** 938.396 (9) of the statutes is created to read:

5 938.396 (9) Notwithstanding sub. (2) (a), if petition is filed under s. 938.12  
6 alleging that a juvenile has committed a serious crime, as defined in s. 48.685 (7) (a),  
7 or if a juvenile is adjudged delinquent for committing a serious crime, as defined in  
8 s. 48.685 (7) (a), the court clerk shall notify the department of justice of that fact. No  
9 other information from the juvenile's court records may be disclosed to the  
10 department of justice except by order of the court. The department of justice may  
11 disclose any information provided under this subsection only as part of a criminal  
12 history record search under s. 48.685 (2) (am) 1. or (b) 1. a.

13 **SECTION 11. Effective date.**

14 (1) This act takes effect on October 1, 1998, or on the day after publication,  
15 whichever is later.

16 (END)