

1999 DRAFTING REQUEST

Bill

Received: **10/6/98**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget-in**

By/Representing: **Sajna**

This file may be shown to any legislator: **NO**

Drafter: **yacketa**

May Contact:

Alt. Drafters:

Subject: **Public Assistance - misc**

Extra Copies:

Pre Topic:

DOA:.....Sajna -

Topic:

Enhanced collection methods for public assistance programs

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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Instructions:

See Attached

Priority:
~~Medium~~ High

please
Submit

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		/PI 12/7 JLG					

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Jeff
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DEPARTMENT OF WORKFORCE DEVELOPMENT
FY-99-01 BIENNIAL BUDGET
STATUTORY LANGUAGE PROPOSAL

Division: UI - Public Assistance Collection
Appropriation: 338
Issue: Enhanced Collection Methods for Public Assistance Programs
Contact: Nadine Konrath 267-2187

Problem: Inadequate staff and inadequate methods to collect approximately \$50 million in overpaid economic support program debts.

Proposed Change: To collect debts resulting from payment of economic support program benefits including AFDC, Food Stamps, Medical Assistance, Child Care, job access loans, and W-2 created under Chapter 49.129(9).

The proposed changes would include provisions similar to those in the UI law used for collection of overpaid unemployment insurance benefits and delinquent unemployment insurance tax debts. These include Section 108.22(2) through (9), and Section 108.225.

Section 108.22 (2) through (9) provides for the issuance of a warrant. Once filed, the warrant shall be considered a final judgment constituting a perfected lien upon all real and personal property of the debtor located in the county where the warrant is entered. The proposed change should also include other similar provisions to those found in 108.22, which provide the use of additional enforcement tools to collect debts. These include filing of an execution where real or personal property of the debtor can be seized and sold to pay the amount due, provisions for releasing liens, provisions for commencement of garnishment actions or attachment, and provisions for voiding an erroneous warrant.

Section 108.225 provides for levy upon property belonging to a debtor while in the possession or control of a third party. Under this Section property can include all tangible and intangible personal property such as wages, salary, bank accounts, etc.

Explanatory Note: The proposed changes will provide a method toward obtaining adequate trained staff and effective collection tools. These changes will be instrumental in our attempts to reduce the current receivable balance, deter program fraud and maintain program integrity.

Fiscal Impact: Estimated increases in collections.

For SFY00	For SYF 01
Estimated increase in collections \$100,000 per collector	Estimated increase in collections \$250,000 per collector

Estimated costs (dollars and positions needed by fiscal year.

For SFY00		For SYF 01	
FTE Needed 3.0FTE	Estimated Costs \$70,000	FTE Needed 3.0 FTE	Estimated Costs \$90,000

Desired Effective Date: Effective date of budget act.

CORRESPONDENCE MEMORANDUMSTATE OF WISCONSIN
Department of Administration

Date: October 14, 1998
To: Steven Miller, LRB
From: Jennifer Sajna (6-8219)
SBO
Subject: 1999-01 Biennial Budget Drafting Requests

I have several additional drafting requests for the 1999-01 biennial budget. They include:

- TAY 1) **Treatment of Child Support Payments under W-2** – Under proposed federal regulations, states can only count the state's share of any child support passed through to a recipient towards the Maintenance of Effort requirement, if it does not affect the person's eligibility for the TANF program. Given this, please modify s.49.145(3)(b) to exclude child support payments in the calculation of income for purposes of eligibility for the W-2 program.
- RJK 2) **Social Security Numbers on the Lien Docket** – Attached is a new DWD request.
- TAY 3) **Credit Assistance** – Modify s.49.143 (2)(cr) to read "Provide or contract with another agency to provide budgeting and financial planning, including credit establishment, training to participants". Delete the rest of that paragraph and the related allocation under s.49.175.
- TAY 4) **Child Care Eligibility**– Modify the initial eligibility standard in s.49.155(1m)(c)1 from 165% to 185% of the federal poverty line, s.49.155(1m)(b)3 to remove the asset test and s.49.155(1m)(a) to cover disabled children, as defined by the department, ages 13 to 18.
- TAY 5) **TANF allocations (49.175)** – I still don't have numbers on these (or child care) but I do know that we will be eliminating the following separate allocations – s.49.175(a), (cr), (e), (d), (j), (q), (s), and (v).

Modifications to drafts already submitted:

- RJK 1) **Insurance Company Disclosure** – Amend s.49.475 to require DHFS to share the information received from the insurance companies with DWD.
- TAY 2) **Public Assistance Collections** – Allow DWD to use "UI"-type collection methods only for overpayments that did not result from an agency error.

Please have the drafters call me if they have any questions. Thanks.



Soon | D-NOTE
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0485/P1

TAY. et al...

RMC

DOA:.....Sajna - Enhanced collection methods for public assistance programs

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1

AN ACT ...; relating to: the budget.

don't
gen.
cat.

Analysis by the Legislative Reference Bureau

✓ HEALTH AND HUMAN SERVICES

ⓐ PUBLIC ASSISTANCE ✓

Under current law, if a person acquired property by gift, inheritance, court judgment or settlement or prize while that person was receiving aid to families with dependent children (AFDC) or Wisconsin works (W-2) benefits, a county department of human or of social services or a W-2 agency may sue the person on behalf of the department of workforce development (DWD) to recover that portion of the AFDC or W-2 benefits that does not exceed the value of the property acquired. Benefit payments made during that time are considered overpayments.

This bill permits DWD to recover overpaid AFDC or W-2 benefit amounts from former benefit recipients by issuing a warrant directed to the clerk of circuit court. The clerk of circuit court must enter the name of the person mentioned in the warrant and the amount for which the warrant is issued in the judgment and lien docket. Once entered, the warrant is considered a perfected lien upon the person's right, title and interest in all real and personal property. DWD may then file an execution commanding the sheriff of any county in which property of the person is found to collect and sell sufficient property to pay the amount stated in the warrant. The bill provides for a hearing on the issue of liability prior to the issuance of a warrant and

✓ and any property upon which the debtor or his or her spouse or child is dependent

permits DWD to issue a release of the warrant, which would extinguish any lien created by the warrant.

This bill also allows DWD to collect the overpaid AFDC or W-2 benefits by levy upon any property of the person to whom the benefits were paid (debtor). Under the bill, a debtor who refuses to surrender the property is subject to enforcement proceedings. A ~~3rd~~^{3rd} party who fails to surrender property that is subject to a levy is liable for up to 25% of the amount the debt. The bill sets forth the process for serving the levy and releasing the levy. The bill also exempts certain wages, ~~and~~ the first \$1,000 in a bank account from a levy. Finally, under the bill, if DWD has levied upon property of any person, except the debtor, who claims an interest in or lien on that property and claims that the property was wrongfully levied upon may bring a suit against the state.

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:

Fix component

renumbered 49.195 (1)(a) and

1

SECTION 1. 49.195 (1) of the statutes is amended to read:

2

49.195 (1) ^(a) If any parent at the time of receiving aid under s. 49.19 or a benefit

3

under s. 49.148, 49.155 or 49.157 or at any time thereafter acquires property by gift,

4

inheritance, sale of assets, court judgment or settlement of any damage claim, or by

5

winning a lottery or prize, the county granting such aid, or the Wisconsin works

6

agency granting such a benefit, may sue the parent on behalf of the department to

7

recover the value of that portion of the aid or of the benefit which does not exceed the

8

amount of the property so acquired. ~~If no suit is brought, the department may~~ recover the value of that portion of the aid or of the benefit that does not exceed the ^{was an alternative to commencing an action under} amount of the property so acquired using the procedure specified in sub. (1m). ^{this paragraph}

9

amount of the property so acquired using the procedure specified in sub. (1m). ^{new (b)} The

10

value of the aid or benefit liable for recovery under this section may not include the

11

value of work performed by a member of the family in a community work experience

12

program under s. 46.215 (1) (o), 1991 stats., s. 46.22 (1) (b) 11., 1991 stats., or s. 49.50

13

(7j) (d), 1991 stats., or in a community work experience component under s. 49.193

14

1 (6). During the life of the parent, the 10-year statute of limitations may be pleaded
 2 in defense against any suit for recovery under this section; and if such property is his
 3 or her homestead it shall be exempt from execution on the judgment of recovery until
 4 his or her death or sale of the property, whichever occurs first. ^{new § (c)} Notwithstanding the
 5 ~~foregoing~~ ^{under par. (b), if} restrictions and limitations, where the aid or benefit recipient is deceased
 6 a claim may be filed against any property in his or her estate and the statute of
 7 limitations specified in s. 859.02 shall be exclusively applicable. ^{§ (d)} The court may
 8 refuse to render judgment or allow the claim ~~in any case where~~ ^{under this subsection if} a parent, spouse or
 9 child is dependent on the property for support, and the court in rendering judgment
 10 shall take into account the current family budget requirement as fixed by the U.S.
 11 department of labor for the community or as fixed by the authorities of the
 12 community in charge of public assistance. The records of aid or benefits paid kept
 13 by the county, by the department or by the Wisconsin works agency are prima facie
 14 evidence of the value of the aid or benefits furnished. Liability under this section
 15 shall extend to any parent or stepparent whose family receives aid under s. 49.19 or
 16 benefits under s. 49.148, 49.155 or 49.157 during the period that he or she is a
 17 member of the same household, but his or her liability is limited to such period. This
 18 section does not apply to medical and health assistance payments for which recovery
 19 is prohibited or restricted by federal law or regulation.

History: 1977 c. 29; 1981 c. 93, 317; 1983 a. 27; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 307; 1989 a. 31, 96, 173; 1993 a. 16; 1995 a. 27, 289; 1997 a. 27.

20 SECTION 2. 49.195 (1m) of the statutes is created to read:

21 49.195 (1m) (a) ^{subsection} If the department initiates recovery under this ~~section~~ ^{subsection}, the
 22 department shall issue an initial determination of the parent's liability ^{consistent with Sub.} ~~under par.~~
 23 (1). ^(d) The department may set aside or amend the determination at any time prior to
 24 a hearing on the determination on the basis of subsequent information or to correct

Handwritten notes and scribbles at the bottom of the page, including a large '1' and various illegible marks.

1 a mistake, including an error of law. The department shall mail a copy of each
 2 determination to the last-known address of the parent. The parent may request a
 3 hearing as to any matter in that determination within 21[✓] days after the mailing and
 4 in accordance with a procedure prescribed by the department by rule. The
 5 department shall promptly grant a hearing ~~that is only~~ requested under this
 6 paragraph. The department shall render its decision as soon as possible after the
 7 hearing and shall send a certified copy of its decision to the last known address of the
 8 parent.

9 (b) The parent may petition the circuit court for review of the department's
 10 decision under par. (a) ~~within~~ ^{not later than} 30 days after the department's decision was mailed to
 11 the parent's last-known address. *hearing*

12 (c) Any determination under par. (a) by the department is final unless the
 13 parent files a timely request for a hearing or petition for review ~~as provided in this~~
 14 ^{under} pars. (a) and (b). A determination or decision is binding upon the department only
 15 insofar as the relevant facts were included in the record that was before the
 16 department at the time the determination was issued.

17 (d) The department may settle any determination, ^{or} decision ~~or action~~ involving
 18 ~~a determination or decision~~ issued under this subsection. The department shall
 19 promulgate rules setting forth factors to be considered by the department in settling
 20 ^{determinations or decisions} actions or proposed actions under this paragraph.

21 (e) 1. If any person fails to pay to the department any amount ~~found to be due~~
 22 ^{determined or decided under} in proceedings pursuant to par. (a), ~~provided that~~ ^{hearing or} no appeal ~~is pending~~ ^{of that determination}
 23 ^{requesting a hearing or} and that the time for taking an appeal ~~or review~~ ^{or decision} has expired, the department ~~shall~~

24 ~~authorized representative~~ may issue a warrant directed to the clerk of circuit court
 25 ^{of} any county ~~of the state.~~

1 2. The clerk of circuit court shall enter in the judgment and lien docket the
2 name of the person mentioned in the warrant, the amount for which the warrant is
3 issued and the date ~~when such copy is~~ ^{on which the clerk} entered. ^{that information}

4 3. A warrant entered under ^{subd. 2.} shall be considered in all respects as a final
5 judgment constituting a perfected lien upon the person's right, title and interest in
6 all real and personal property located in the county ~~where~~ ^{in which} the warrant is entered.

7 4. After issuing a warrant, the department, ~~or any authorized representative~~
8 may file an execution with the clerk of circuit court for filing ~~by the clerk of circuit~~
9 ~~court~~ with the sheriff of ^{the} any county ~~where~~ ^{where} real or personal property of the person is
10 ~~found~~, commanding the sheriff to levy upon and sell sufficient real and personal
11 property of the person to pay the amount stated in the warrant in the same manner
12 as upon an execution against property issued upon the judgment of a court of record,
13 and to return the warrant to the department and pay to it the money collected by
14 virtue of the warrant within 60 days after receipt of the warrant.

15 (f) The clerk of circuit court shall accept, file and enter the warrant in the
16 judgment and lien docket without prepayment of any fee, but the clerk of circuit court
17 shall submit a statement of the proper fee semiannually to the department covering
18 the periods from January 1 to June 30 and July 1 to December 31 unless a different
19 billing period is agreed to between the clerk of circuit court and the department. The
20 department shall pay the fees, but shall add the fees provided by s. 814.61 (5) for
21 entering the warrants to the amount of the warrant and shall collect the fees from
22 the person named in the warrant when satisfaction or release is presented for entry.

23 (g) If a warrant that is not satisfied in full is returned, the department may
24 enforce the amount due as if the department had recovered judgment against the

✓
The execution may not command the sheriff to levy upon or sell any property upon which the parent or his or her spouse or child is dependent for support.

1 person named in the warrant for the same amount ~~and an execution had been~~
2 ~~returned wholly or partially not satisfied.~~

3 (h) When the amount set forth in a warrant ~~to date of payment~~ and all costs
4 due the department have been paid to it, the department shall issue a satisfaction
5 of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall
6 immediately enter a satisfaction of the judgment on the judgment and lien docket.
7 The department shall send a copy of the satisfaction to the person named in the
8 warrant.

9 (j) If the department finds that the interests of the state will not be jeopardized,
10 the department may issue a release of any warrant with respect to any real or
11 personal property upon which the warrant is a lien or cloud upon title. Upon
12 presentation to the clerk and payment of the fee for filing the release, the clerk shall
13 enter the release of record. The release is conclusive that the lien or cloud upon the
14 title of the property covered by the release is extinguished.

15 (k) Notwithstanding s. 49.96, at any time after the filing of a warrant, the
16 department may commence and maintain a garnishee action as provided by ch. 812
17 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a
18 judgment. The place of trial of such an action may be either in Dane county or the
19 county where the debtor resides and may not be changed from the county in which
20 that action is commenced, except upon consent of the parties.

21 (j) If the department issues an erroneous warrant, the department shall issue
22 a notice of withdrawal of the warrant to the clerk of circuit court for the county in
23 which the warrant is filed. The clerk shall void the warrant and any ^{resulting} liens ~~attached~~

24 *(by me)*
25 **SECTION 3.** 49.196 of the statutes is created to read:

1 **49.196 Levy for benefit overpayments. (1) DEFINITIONS.** In this section:

2 (a) "Debt" means the amount ^{of parental liability determined} ~~for which a person is liable~~ under s. 49.195.

3 ^b ~~(a)~~ "Debtor" means a ^{parent} ~~person~~ who is liable under s. 49.195.

4 ^c ~~(b)~~ "Disposable earnings" means that part of the earnings of any ^{debtor} ~~individual~~
5 after the deduction from those earnings of any amounts required by law to be
6 withheld, any life, health, dental or similar type of insurance premiums, union dues,
7 any amount necessary to comply with a court order to contribute to the support of
8 minor children, and any levy, wage assignment or garnishment executed prior to the
9 date of a levy under this section.

10 ^d ~~(c)~~ "Federal minimum hourly wage" means that wage prescribed by 29 USC 206

11 (a) (1).

12 ^e ~~(d)~~ "Levy" means all powers of distraint and seizure.

13 ^f ~~(e)~~ "Property" includes all tangible and intangible personal property and rights
14 to such property, including compensation paid or payable for personal services,
15 whether denominated as wages, salary, commission, bonus or otherwise, periodic
16 payments received pursuant to a pension or retirement program, rents, proceeds of
17 insurance and contract payments.

18 **(2) POWERS OF LEVY AND DISTRAINT.** [✓] If any debtor neglects or refuses to pay a debt
19 after the department has made demand for payment, the department may collect
20 that debt and the expenses of the levy by levy upon any property belonging to the
21 debtor. Whenever the value of any property that has been levied upon under this
22 section is not sufficient to satisfy the claim of the department, the department may
23 levy upon any additional property of the person until the debt and expenses of the
24 levy are fully paid.

1 (3) DUTIES TO SURRENDER. ✓ Any person in possession of or obligated with respect
 2 to property or rights to property that is subject to levy and upon which a levy has been
 3 made shall, upon demand of the department, surrender the property or rights or
 4 discharge the obligation to the department, except that part of the property or rights
 5 which is, at the time of the demand, subject to any prior attachment or execution
 6 under any judicial process.

7 (4) FAILURE TO SURRENDER; ENFORCEMENT OF LEVY. ✓ (a) Any debtor who fails or
 8 refuses to surrender any property or rights to property that is subject to levy, upon
 9 demand by the department, is subject to proceedings to enforce the amount of the
 10 levy.

11 (b) Any 3rd party who fails to surrender any property or rights to property
 12 subject to levy, upon demand of the department, is subject to proceedings to enforce
 13 the levy. The 3rd party is not liable to the department under this paragraph for more
 14 than 25% of the debt. The department shall serve a ~~final demand~~ ^{the levy} as provided under
 15 sub. ~~(13)~~ ^{# 12} on any 3rd party who fails to surrender property. ✓ ^{under this paragraph ✓} Proceedings shall not be
 16 initiated by the department until 5 days after service of the final demand. The
 17 department shall issue a determination under s. 49.195 (1m) (a) ✓ to the 3rd party for
 18 the amount of the liability.

19 (c) When a 3rd party surrenders the property or rights to the property on
 20 demand of the department or discharges the obligation to the department for which
 21 the levy is made, the 3rd party is discharged from any obligation or liability to the
 22 debtor with respect to the property or rights to the property arising from the
 23 surrender or payment to the department.

24 (5) ACTIONS AGAINST THIS STATE. ✓ (a) If the department has levied upon property,
 25 any person, other than the debtor who is liable to pay the debt out of which the levy

1 arose, who claims an interest in or lien on that property and claims that that property
2 was wrongfully levied upon may bring a civil action against the state in the circuit
3 court for Dane county. That action may be brought whether or not that property has
4 been surrendered to the department. The court may grant only the relief under par.
5 (b). No other action to question the validity of or restrain or enjoin a levy by the
6 department may be maintained.

7 (b) In an action under par. (a), if a levy would irreparably injure rights to
8 property, the court may enjoin the enforcement of that levy. If the court determines
9 that the property has been wrongfully levied upon, it may grant a judgment for the
10 amount of money obtained by levy.

11 (c) For purposes of an adjudication under this subsection, the determination
12 of the debt upon which the interest or lien of the department is based is conclusively
13 presumed to be valid.

14 (6) DETERMINATION OF EXPENSES. The department shall determine its costs and
15 expenses to be paid in all cases of levy.

16 (7) USE OF PROCEEDS. (a) The department shall apply all money obtained under
17 this section first against the expenses of the proceedings and then against the
18 liability in respect to which the levy was made and any other liability owed to the
19 department by the debtor.

20 (b) The department may refund or credit any amount left after the applications
21 under par. (a), upon submission of a claim ^{for that amount} ~~thereof~~ and satisfactory proof of the claim,
22 to the person entitled to that amount.

23 (8) RELEASE OF LEVY. The department may release the levy upon all or part of
24 property levied upon to facilitate the collection of the liability or to grant relief from
25 a wrongful levy, but that release does not prevent any later levy.

1 (9) WRONGFUL LEVY. ✓ If the department determines that property has been
2 wrongfully levied upon, the department may return the property at any time, or may
3 return an amount of money equal to the amount of money levied upon.

4 (10) PRESERVATION OF REMEDIES. The availability of the remedy under this
5 section does not abridge the right of the department to pursue other remedies.

6 (11) EVASION. ✓ Any person who removes, deposits or conceals or aids in
7 removing, depositing or concealing any property upon which a levy is authorized
8 under this section ✓ with intent to evade or defeat the assessment or collection of any
9 debt may be fined not more than \$5,000 ✓ or imprisoned for not more than 3 ✓ years or
10 both, and shall be liable to the state for the costs of prosecution.

11 (12) NOTICE BEFORE LEVY. ✓ If no appeal or other proceeding for review permitted
12 by law is pending and the time for taking an appeal or petitioning for review has
13 expired, the department shall make a demand to the debtor for payment of the debt
14 which is subject to levy and give notice that the department may pursue legal action
15 for collection of the debt against the debtor. The department shall make the demand
16 for payment and give the notice at least 10 days prior to the levy, personally or by any
17 type of mail service which requires a signature of acceptance, at the address of the
18 debtor as it appears on the records of the department. The demand for payment and
19 notice shall include a statement of the amount of the debt, including interest and
20 penalties, and the name of the debtor who is liable for the debt. The debtor's refusal
21 or failure to accept or receive the notice does not prevent the department from
22 making the levy. Notice prior to levy is not required for a subsequent levy on any debt
23 of the same debtor within one year of the date of service of the original levy.

1 ⁽¹²⁾
~~(13)~~ SERVICE OF LEVY. ✓ (a) The department shall serve the levy upon the debtor
2 and 3rd party by personal service or by any type of mail service which requires a
3 signature of acceptance.

4 (b) Personal service shall be made upon an individual, other than a minor or
5 incapacitated person, by delivering a copy of the levy to the debtor or 3rd party
6 personally; by leaving a copy of the levy at the debtor's dwelling or usual place of
7 abode with some person of suitable age and discretion residing there; by leaving a
8 copy of the levy at the business establishment with an officer or employe of the
9 establishment; or by delivering a copy of the levy to an agent authorized by law to
10 receive service of process.

11 (c) The department representative who serves the levy shall certify service of
12 process on the notice of levy form and the person served shall acknowledge receipt
13 of the certification by signing and dating it. If service is made by mail, the return
14 receipt is the certificate of service of the levy.

15 (d) The debtor's or 3rd party's failure to accept or receive service of the levy does
16 not invalidate the levy.

17 ⁽¹³⁾
~~(14)~~ ANSWER BY 3RD PARTY. ✓ Within 45 days after the service of the levy upon a
18 3rd party, the 3rd party shall file an answer with the department stating whether
19 the 3rd party is in possession of or obligated with respect to property or rights to
20 property of the debtor, including a description of the property or the rights to property
21 and the nature and dollar amount of any such obligation.

22 ⁽¹⁴⁾
~~(15)~~ DURATION OF LEVY. ✓ A levy is effective from the date on which the levy is first
23 served on the 3rd party until the liability out of which the levy arose is satisfied, until
24 the levy is released or until one year from the date of service, whichever occurs first.

(15) ^[C.S.] Exempt (a)

1 ~~(16) WAGES EXEMPT FROM LEVY~~ The debtor is entitled to an exemption from levy
2 of the greater of the following:

3 ~~(17)~~^{1.} A subsistence allowance of 75% of the debtor's disposable earnings then due
4 and owing.

5 ~~(18)~~^{2.} An amount equal to 30 times the federal minimum hourly wage for each full
6 week of the debtor's pay period; or, in the case of earnings for a period other than a
7 week, a subsistence allowance computed so that it is equivalent to that amount using
8 a multiple of the federal [✓] minimum hourly wage prescribed by the department by
9 rule.

10 ~~(17) EXEMPTIONS~~ The first \$1,000 of an account in a depository institution is
11 exempt from any levy to recover a benefit overpayment. ~~No other property is exempt~~
12 ~~from levy except as provided in sub (16).~~

13 ~~(18)~~⁽¹⁷⁾ RESTRICTION ON EMPLOYMENT PENALTIES BY REASON OF LEVY. [✓] No employer
14 may discharge or otherwise discriminate with respect to the terms and conditions of
15 employment against any employe by reason of the fact that his or her earnings have
16 been subject to levy for any one levy or because of compliance with any provision of
17 this section. Any person who violates this subsection may be fined not more than
18 \$1,000 [✓] or imprisoned for not more than [✓] one year or both.

19 ~~(18)~~⁽¹⁷⁾ APPEAL. [✓] Any debtor who is subject to a levy proceeding made by the
20 department has the right to appeal the levy proceeding ~~under s. 49.195 (1m)(b).~~ The
21 appeal is limited to questions of prior payment of the debt that the department is
22 proceeding against, and mistaken identity of the debtor. The levy is not stayed
23 pending an appeal in any case where property is secured through the levy.

(c) Property upon which the debtor ^{or} his or her spouse or child is dependent
is exempt from levy.

1 ⁽¹⁸⁾
 2 ~~(26)~~ COST OF LEVY. Any 3rd party is entitled to a levy fee of \$5[✓] for each levy in
 3 any case where property is secured through the levy. The 3rd party shall deduct the
 4 fee from the proceeds of the levy.

5 ^{✓ 10 ✓}
 6 SECTION 4. 49.196 (~~11~~) of the statutes, as created by 1999 Wisconsin Act (this
 7 act), is amended to read:

8 ¹⁰
 9 49.196 (~~11~~) EVASION. Any person who removes, deposits or conceals or aids in
 10 removing, depositing or concealing any property upon which a levy is authorized
 11 under this section with intent to evade or defeat the assessment or collection of any
 12 debt may be fined not more than \$5,000 or imprisoned for not more than 3 years[✓] 4
 13 years and 6 months or both, and shall be liable to the state for the costs of prosecution.

14 ^{✓ 16 ✓}
 15 SECTION 5. 49.196 (~~18~~) of the statutes, as created by 1999 Wisconsin Act (this
 16 act), is amended to read:

17 ¹⁶
 18 49.196 (~~18~~) RESTRICTION ON EMPLOYMENT PENALTIES BY REASON OF LEVY. [✓] No
 19 employer may discharge or otherwise discriminate with respect to the terms and
 20 conditions of employment against any employe by reason of the fact that his or her
 21 earnings have been subject to levy for any one levy or because of compliance with any
 provision of this section. Any person who violates this subsection may be fined not
 more than \$1,000 or imprisoned for not more than ~~6 months~~ ^{one year} 2 years or both.

22 ^{57 ✓}
 SECTION 94~~XX~~. **Effective dates; workforce development.**

23 ^{✓ 10 16 ✓}
 24 (1) COLLECTION METHODS FOR PUBLIC ASSISTANCE. The [✓] amendment of section
 25 49.196 (~~11~~) and (~~18~~) of the statutes takes effect on December 31, 1999. [✓]

(END) [✓]

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

LRB-0485/P1dn

TAY. *pat.*...

*+
Jig*

Jennifer Sajna:

1. The language in this draft is taken almost verbatim from ss. 108.10, 108.22 and 108.225. Unfortunately, the language in those sections is somewhat arcane and difficult to interpret. I gave this draft to Bob Nelson, who generally drafts in the area of civil procedure and he had nearly as much difficulty understanding the language as I did. He and I both noted, however, that ss. 108.22 and 108.225 seem somewhat redundant, although, as requested, I have included the language of both sections in this draft. Sections 49.195 (1m) and 49.196 created in this draft are therefore redundant. Section 49.195 (1m) like s. 108.22 gives the department the authority to file a warrant and an execution "commanding the sheriff to levy upon and sell sufficient real and ~~person~~ *personal* property of the person to pay the amount stated in the warrant." Section 49.196 gives the department the power to levy. It appears that the difference between ss. 49.195 (1m) and 49.196 is that the department, under s. 49.196, can levy directly (without the use of a sheriff). Is that really going to significantly improve the department's collections efforts? ()
[delete
paren,
add
commas]

2. Section 49.195 uses the word "parent" rather than "individual." Therefore, in creating s. 49.195 (1m) (which is an amalgamation of ~~s.~~ ^{ss.} 108.10 and 108.22) and ~~in~~ s. 49.196, I used the word "parent." Is the liable person necessarily going to be a parent?

3. I had to double-draft s. 49.196 (¹⁰~~11~~) and (¹⁶~~18~~) because 1997 Wisconsin Act 283 ~~which~~ increases all felony penalties, effective December 31, 1999 (see s. 108.225 (11) and (18) in the 1997-98 Wisconsin Statutes).

As always, if you have any questions or would like to discuss this draft, please call me.

Tina A. Yacker
Legislative Attorney
261-6927

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

LRB-0485/P1dn
TAY:pgt&jlg:ijs

December 9, 1998

Jennifer Sajna:

1. The language in this draft is taken almost verbatim from ss. 108.10, 108.22 and 108.225. Unfortunately, the language in those sections is somewhat arcane and difficult to interpret. I gave this draft to Bob Nelson, who generally drafts in the area of civil procedure and he had nearly as much difficulty understanding the language as I did. He and I both noted, however, that ss. 108.22 and 108.225 seem somewhat redundant, although, as requested, I have included the language of both sections in this draft. Sections 49.195 (1m) and 49.196 created in this draft are therefore redundant. Section 49.195 (1m), like s. 108.22, gives the department the authority to file a warrant and an execution "commanding the sheriff to levy upon and sell sufficient real and personal property of the person to pay the amount stated in the warrant." Section 49.196 gives the department the power to levy. It appears that the difference between ss. 49.195 (1m) and 49.196 is that the department, under s. 49.196, can levy directly (without the use of a sheriff). Is that really going to significantly improve the department's collections efforts?

2. Section 49.195 uses the word "parent" rather than "individual." Therefore, in creating s. 49.195 (1m) (which is an amalgamation of ss. 108.10 and 108.22) and s. 49.196, I used the word "parent." Is the liable person necessarily going to be a parent?

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As always, if you have any questions or would like to discuss this draft, please call me.

Tina A. Yacker
Legislative Attorney
261-6927

Yacker, Tina

From: Sajna, Jennifer [jennifer.sajna@doa.state.wi.us]
Sent: Sunday, January 10, 1999 2:29 PM
To: Yacker, Tina
Cc: ZINK, SHERWOOD

The following are comments submitted by DWD on this draft:

1. 0485/1 - Enhanced Collection Methods for Public Assistance Programs.

In answer to question #1, there is a significant difference between Section 108.22 and 108.225. 108.22 gives the department the authority to first of all file a warrant. When filed this warrant places a lien on all real and personal property of a debt. Also, should the department so choose, an execution of warrant can be issued. This execution directs the sheriff to seize and sell property of a debtor sufficient to satisfy the warrant.

Section 108.225 is the provision that allows the department to collect a debt through levy. This is an administrative process, served by certified mail and allows collection of a debt from property in the hands of a third party such as wages or bank accounts. 108.225 is more accurately compared to the garnishment summons and complaint provisions in Wis Stats.

Question #2 asks whether or not the word parent can be used rather than individual. The answer to this is no. The best term would be liable party as this will cover both individuals and groups, corporations, etc.

The narrative states "benefit payments made during that time are considered overpayments" (page 1). This is incorrect. Under the current law, [see cite 49.195(3)] overpayments are recovered under this cite and the federal definition for an overpayment and should carry through to the statute "a financial assistance payment allotment received by or for an assistance group for the payment month which exceeded the amount for which the group was eligible." More simply stated "a benefit that an assistance group was not entitled to receive."

The narrative and amendments only reference AFDC and W-2 services. However we would like this type of collection action to cover all the programs administered under chapter 49 (i.e. Food stamps, child care, medical assistance, job access loans, transportation assistance as well as AFDC and W-2).

Page 1, Line 3. Delete the reference to parent for the liable party, but rather and reference liable party. Change the cite from 49.195(1) to 49.195(3). These collection methods should be used to pursue the overpayments, not necessarily the correctly paid benefits under 49.195

Page 1, Line 9. Change "alternative to" to "in addition to".

Page 4, Lines 1-20. Please strike 49.195(1m) (a) through (d). The local agencies have already determined that an overpayment exists, we do not want an additional process for determination of amount due. No additional hearing is necessary under Chapter 227.44 for the determination of the debt.

Pages 4-6. Beginning with 49.195(1m)(e), which would now be (a), we suggest adding a provision in 49.195(3) to recoup from W-2 benefits all overpayments from previous AFDC, W-2, child care and transportation assistance. In addition, the "preservation of remedies" should be added [as

in s. 108.225(10)]. The availability of the remedies under this section does not abridge the right of the department to pursue other remedies.

Page 7, Line 1. Debt should be defined as liability as determined under ss. 49.19, 49.125, 49.148, 49.155, 49.157 and 49.495.

Page 7, Line 2. Debtor should drop reference to parent and add individual.

Page 11, Line 14. Answered by 3rd party should be changed from 45 days to 20 days.

Page 12, Line 17. Please add a reference to s. 227.44 under the appeal language.

(SOON)

DOA:.....Sajna - Enhanced collection methods for public assistance programs

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

✓
The department of workforce development (DWD) is required to recover ^{benefit} overpayments made under the aid to families with dependent children (AFDC) program and under the Wisconsin works (W-2) program.

do not gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

PUBLIC ASSISTANCE

~~Under current law, if a person acquired property by gift, inheritance, court judgment or settlement or prize while that person was receiving aid to families with dependent children (AFDC) or Wisconsin works (W-2) benefits, a county department of human or of social services or a W-2 agency may sue the person on behalf of the department of workforce development (DWD) to recover that portion of the AFDC or W-2 benefits that does not exceed the value of the property acquired. Benefit payments made during that time are considered overpayments.~~

This bill permits DWD to recover overpaid AFDC or W-2 benefit amounts from former benefit recipients by issuing a warrant directed to the clerk of circuit court. The clerk of circuit court must enter the name of the person mentioned in the warrant and the amount for which the warrant is issued in the judgment and lien docket. Once entered, the warrant is considered a perfected lien upon the person's right, title and interest in all real and personal property. DWD may then file an execution commanding the sheriff of any county in which property of the person is found to collect and sell sufficient property to pay the amount stated in the warrant. The bill provides for a hearing on the issue of liability prior to the issuance of a warrant and

permits DWD to issue a release of the warrant, which would extinguish any lien created by the warrant.

This bill also allows DWD to collect the overpaid AFDC or W-2 benefits by levy upon any property of the person to whom the benefits were paid (debtor). Under the bill, a debtor who refuses to surrender the property is subject to enforcement proceedings. A third party who fails to surrender property that is subject to a levy is liable for up to 25% of the amount the debt. The bill sets forth the process for serving the levy and releasing the levy. The bill also exempts certain wages, the first \$1,000 in a bank account and any property upon which the debtor or his or her spouse or child is dependent from a levy. Finally, under the bill, if DWD has levied upon property any person, except the debtor, who claims an interest in or lien on that property and claims that the property was wrongfully levied upon may bring a suit against the state.

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:

12-501A
2-1

1 **SECTION 1.** 49.195 (1) of the statutes is renumbered 49.195 (1) (a) and amended
2 to read:
3 49.195 (1) (a) If any parent at the time of receiving aid under s. 49.19 or a
4 benefit under s. 49.148, 49.155 or 49.157 or at any time thereafter acquires property
5 by gift, inheritance, sale of assets, court judgment or settlement of any damage claim,
6 or by winning a lottery or prize, the county granting such aid, or the Wisconsin works
7 agency granting such a benefit, may sue the parent on behalf of the department to
8 recover the value of that portion of the aid or of the benefit which does not exceed the
9 amount of the property so acquired. The department may, as an alternative to
10 commencing an action under this paragraph, recover the value of that portion of the
11 aid or of the benefit that does not exceed the amount of the property so acquired using
12 the procedure specified in sub. (1m).
13 (b) The value of the aid or benefit liable for recovery under this section may not
14 include the value of work performed by a member of the family in a community work

1 experience program under s. 46.215 (1) (o), 1991 stats., s. 46.22 (1) (b) 11., 1991 stats.,
 2 or s. 49.50 (7j) (d), 1991 stats., or in a community work experience component under
 3 s. 49.193 (6). During the life of the parent, the 10-year statute of limitations may
 4 be pleaded in defense against any suit for recovery under this section; and if such
 5 property is his or her homestead it shall be exempt from execution on the judgment
 6 of recovery until his or her death or sale of the property, whichever occurs first.

7 (c) Notwithstanding the foregoing restrictions and limitations, where under
 8 par. (b), if the aid or benefit recipient is deceased a claim may be filed against any
 9 property in his or her estate and the statute of limitations specified in s. 859.02 shall
 10 be exclusively applicable.

11 (d) The court may refuse to render judgment or allow the claim in any case
 12 where under this subsection if a parent, spouse or child is dependent on the property
 13 for support, and the court in rendering judgment shall take into account the current
 14 family budget requirement as fixed by the U.S. department of labor for the
 15 community or as fixed by the authorities of the community in charge of public
 16 assistance. The records of aid or benefits paid kept by the county, by the department
 17 or by the Wisconsin works agency are prima facie evidence of the value of the aid or
 18 benefits furnished. Liability under this section shall extend to any parent or
 19 stepparent whose family receives aid under s. 49.19 or benefits under s. 49.148,
 20 49.155 or 49.157 during the period that he or she is a member of the same household,
 21 but his or her liability is limited to such period. This section does not apply to medical
 22 and health assistance payments for which recovery is prohibited or restricted by
 23 federal law or regulation.

✓
 INSERT
 3-23 →

24 SECTION 2. 49.195 (SM) of the statutes is created to read:

3m
3

1 49.195 (1)(a) If the department initiates recovery under this subsection, the
 2 department shall issue an initial determination of the parent's liability consistent
 3 with sub. (1) (d). The department may set aside or amend the determination at any
 4 time prior to a hearing on the determination on the basis of subsequent information
 5 or to correct a mistake, including an error of law. The department shall mail a copy
 6 of each determination to the last-known address of the parent. The parent may
 7 request a hearing as to any matter in that determination within 21 days after the
 8 mailing and in accordance with a procedure prescribed by the department by rule.
 9 The department shall promptly grant a hearing requested under this paragraph.
 10 The department shall render its decision as soon as possible after the hearing and
 11 shall send a certified copy of its decision to the last known address of the parent.

12 (b) The parent may petition the circuit court for review of the department's
 13 hearing decision under par. (a) not later than 30 days after the department's decision
 14 was mailed to the parent's last-known address.

15 (c) Any determination under par. (a) by the department is final unless the
 16 parent files a timely request for a hearing or petition for review under pars. (a) and
 17 (b).

18 (d) The department may settle any determination or decision issued under this
 19 subsection. The department shall promulgate rules setting forth factors to be
 20 considered by the department in settling determinations or decisions.

21 ~~no of~~ 1. If any person fails to pay to the department any amount determined ~~on~~
 22 ~~decide~~ under ~~par (a)~~ ^{Sub. (3)} no hearing or appeal of that determination ~~or decision~~ is
 23 pending and the time for requesting a hearing or taking an appeal has expired, the
 24 department may issue a warrant directed to the clerk of circuit court of any county.

1 2. The clerk of circuit court shall enter in the judgment and lien docket the
2 name of the person mentioned in the warrant, the amount for which the warrant is
3 issued and the date on which the clerk entered that information.

4 3. A warrant entered under subd. 2[✓] shall be considered in all respects as a final
5 judgment constituting a perfected lien upon the person's right, title and interest in
6 all real and personal property located in the county in which the warrant is entered.

7 4. After issuing a warrant, the department may file an execution with the clerk
8 of circuit court for filing with the sheriff of the county, commanding the sheriff to levy
9 upon and sell sufficient real and personal property of the person to pay the amount
10 stated in the warrant in the same manner as upon an execution against property
11 issued upon the judgment of a court of record, and to return the warrant to the
12 department and pay to it the money collected by virtue of the warrant within 60 days
13 after receipt of the warrant. The execution may not command the sheriff to levy upon
14 or sell any property upon which the parent or his or her spouse or child is dependent
15 for support.

16 ^(b)
16 The clerk of circuit court shall accept, file and enter the warrant in the
17 judgment and lien docket without prepayment of any fee, but the clerk of circuit court
18 shall submit a statement of the proper fee semiannually to the department covering
19 the periods from January 1 to June 30 and July 1 to December 31 unless a different
20 billing period is agreed to between the clerk of circuit court and the department. The
21 department shall pay the fees, but shall add the fees provided by s. 814.61 (5) for
22 entering the warrants to the amount of the warrant and shall collect the fees from
23 the person named in the warrant when satisfaction or release is presented for entry.

1 (c) If a warrant that is not satisfied in full is returned, the department may
2 enforce the amount due as if the department had recovered judgment against the
3 person named in the warrant for the same amount.

4 (d) When the amount set forth in a warrant and all costs due the department
5 have been paid to it, the department shall issue a satisfaction of the warrant and file
6 it with the clerk of circuit court. The clerk of circuit court shall immediately enter
7 a satisfaction of the judgment on the judgment and lien docket. The department
8 shall send a copy of the satisfaction to the person named in the warrant.

9 (e) If the department finds that the interests of the state will not be jeopardized,
10 the department may issue a release of any warrant with respect to any real or
11 personal property upon which the warrant is a lien or cloud upon title. Upon
12 presentation to the clerk and payment of the fee for filing the release, the clerk shall
13 enter the release of record. The release is conclusive that the lien or cloud upon the
14 title of the property covered by the release is extinguished.

15 (f) Notwithstanding s. 49.96, at any time after the filing of a warrant, the
16 department may commence and maintain a garnishee action as provided by ch. 812
17 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a
18 judgment. The place of trial of such an action may be either in Dane County or the
19 county where the debtor resides and may not be changed from the county in which
20 that action is commenced, except upon consent of the parties.

21 (g) If the department issues an erroneous warrant, the department shall issue
22 a notice of withdrawal of the warrant to the clerk of circuit court for the county in
23 which the warrant is filed. The clerk shall void the warrant and any resulting liens.

24 SECTION 3. 49.196^x of the statutes is created to read:
25 ~~49.195 (3n) (b)~~ ~~49.196 Levy for benefit overpayments, (1) Department~~ (a) In this section:
SUB ✓

an individual ✓

1 1. (a) "Debt" means the amount of parental liability determined under ~~§ 49-195~~ ^{Sub. (3)}

2 2. (b) "Debtor" means a parent who is liable under ~~§ 49-195~~ ^{Sub. (3)}

3 3. (c) "Disposable earnings" means that part of the earnings of any debtor after
4 the deduction from those earnings of any amounts required by law to be withheld,
5 any life, health, dental or similar type of insurance premiums, union dues, any
6 amount necessary to comply with a court order to contribute to the support of minor
7 children, and any levy, wage assignment or garnishment executed prior to the date
8 of a levy under this ^{sub} section.

9 4. (d) "Federal minimum hourly wage" means that wage prescribed by 29 USC
10 206 (a) (1).

11 5. (e) "Levy" means all powers of distraint and seizure.

12 6. (f) "Property" includes all tangible and intangible personal property and rights
13 to such property, including compensation paid or payable for personal services,
14 whether denominated as wages, salary, commission, bonus or otherwise, periodic
15 payments received pursuant to a pension or retirement program, rents, proceeds of
16 insurance and contract payments.

17 plain (b) ~~POWERS OF LEVY AND DISTRAINT~~ If any debtor neglects or refuses to pay a debt
18 after the department has made demand for payment, the department may collect
19 that debt and the expenses of the levy by levy upon any property belonging to the
20 debtor. Whenever the value of any property that has been levied upon under this
21 section is not sufficient to satisfy the claim of the department, the department may
22 levy upon any additional property of the person until the debt and expenses of the
23 levy are fully paid.

24 plain (3) ~~DUTIES TO SURRENDER~~ Any person in possession of or obligated with respect
25 to property or rights to property that is subject to levy and upon which a levy has been

1 made shall, upon demand of the department, surrender the property or rights or
2 discharge the obligation to the department, except that part of the property or rights
3 which is, at the time of the demand, subject to any prior attachment or execution
4 under any judicial process.

5 ~~FAILURE TO SURRENDER; ENFORCEMENT OF LEVY~~ ^{1.} Any debtor who fails or
6 refuses to surrender any property or rights to property that is subject to levy, upon
7 demand by the department, is subject to proceedings to enforce the amount of the
8 levy.

9 ~~Any 3rd party who fails to surrender any property or rights to property~~
10 subject to levy, upon demand of the department, is subject to proceedings to enforce
11 the levy. The 3rd party is not liable to the department under this ^{Subdivision} paragraph for more
12 than 25% of the debt. The department shall serve the levy as provided under ~~sub~~ ^{part}

13 ~~on any 3rd party who fails to surrender property under this paragraph~~ ^{Subdivision}
14 Proceedings ~~shall~~ ^{may} not be initiated by the department until 5 days after service of the
15 final demand. ~~The department shall issue a determination under s. 49.195(1m)(a)~~
16 ~~to the 3rd party for the amount of the liability.~~

17 ^{3.} When a 3rd party surrenders the property or rights to the property on
18 demand of the department or discharges the obligation to the department for which
19 the levy is made, the 3rd party is discharged from any obligation or liability to the
20 debtor with respect to the property or rights to the property arising from the
21 surrender or payment to the department.

22 ^(c) ~~ACTIONS AGAINST THIS STATE~~ ^{1.} If the department has levied upon property,
23 any person, other than the debtor who is liable to pay the debt out of which the levy
24 arose, who claims an interest in or lien on that property and claims that that property
25 was wrongfully levied upon may bring a civil action against the state in the circuit

1 court for Dane County. That action may be brought whether or not that property has
2 been surrendered to the department. The court may grant only the relief under ~~par~~
3 ~~(a)~~ ^{subd. 2} No other action to question the validity of or restrain or enjoin a levy by the
4 department may be maintained.

5 ~~(b)~~ ^{2.} In an action under ~~par (a)~~ ^{subd. 1.} if a levy would irreparably injure rights to
6 property, the court may enjoin the enforcement of that levy. If the court determines
7 that the property has been wrongfully levied upon, it may grant a judgment for the
8 amount of money obtained by levy.

9 ~~(c)~~ ^{3.} For purposes of an adjudication under this ~~subsection~~ ^{paragraph}, the determination
10 of the debt upon which the interest or lien of the department is based is conclusively
11 presumed to be valid.

12 ~~(d)~~ ^(f) ~~DETERMINATION OF EXPENSES.~~ The department shall determine its costs and
13 expenses to be paid in all cases of levy.

14 ~~(e)~~ ^(g) ~~USE OF PROCEEDS.~~ ^(a) ^{1.} The department shall apply all money obtained under
15 this ^{sub} ~~section~~ first against the expenses of the proceedings and then against the
16 liability in respect to which the levy was made and any other liability owed to the
17 department by the debtor.

18 ~~(f)~~ ^{2.} The department may refund or credit any amount left after the applications
19 under ~~par (a)~~ ^{subd. 1.} upon submission of a claim for that amount and satisfactory proof of
20 the claim, to the person entitled to that amount.

21 ~~(g)~~ ^(h) ~~RELEASE OF LEVY.~~ The department may release the levy upon all or part of
22 property levied upon to facilitate the collection of the liability or to grant relief from
23 a wrongful levy, but that release does not prevent any later levy.

1 ^(j)
2 ~~(9) WRONGFUL LEVY~~ If the department determines that property has been
3 wrongfully levied upon, the department may return the property at any time, or may
4 return an amount of money equal to the amount of money levied upon.

5 ^(k)
6 ~~(10) EVASION~~ Any person who removes, deposits or conceals or aids in
7 removing, depositing or concealing any property upon which a levy is authorized
8 under this ⁵³⁵section with intent to evade or defeat the assessment or collection of any
9 debt may be fined not more than \$5,000 or imprisoned for not more than 3 years or
10 both, and shall be liable to the state for the costs of prosecution.

11 ^(l)
12 ~~(11) NOTICE BEFORE LEVY~~ If no appeal or other proceeding for review permitted
13 by law is pending and the time for taking an appeal or petitioning for review has
14 expired, the department shall make a demand to the debtor for payment of the debt
15 which is subject to levy and give notice that the department may pursue legal action
16 for collection of the debt against the debtor. The department shall make the demand
17 for payment and give the notice at least 10 days prior to the levy, personally or by any
18 type of mail service which requires a signature of acceptance, at the address of the
19 debtor as it appears on the records of the department. The demand for payment and
20 notice shall include a statement of the amount of the debt, including interest and
21 penalties, and the name of the debtor who is liable for the debt. The debtor's refusal
22 or failure to accept or receive the notice does not prevent the department from
23 making the levy. Notice prior to levy is not required for a subsequent levy on any debt
24 of the same debtor within one year of the date of service of the original levy.

25 ^(m)
26 ~~(12) SERVICE OF LEVY~~ ^(a) The department shall serve the levy upon the debtor
27 and 3rd party by personal service or by any type of mail service which requires a
28 signature of acceptance.

1 ~~(B)~~^{2.} Personal service shall be made upon an individual, other than a minor or
2 incapacitated person, by delivering a copy of the levy to the debtor or 3rd party
3 personally; by leaving a copy of the levy at the debtor's dwelling or usual place of
4 abode with some person of suitable age and discretion residing there; by leaving a
5 copy of the levy at the business establishment with an officer or employe of the
6 establishment; or by delivering a copy of the levy to an agent authorized by law to
7 receive service of process.

8 ~~(C)~~^{3.} The department representative who serves the levy shall certify service of
9 process on the notice of levy form and the person served shall acknowledge receipt
10 of the certification by signing and dating it. If service is made by mail, the return
11 receipt is the certificate of service of the levy.

12 ~~(D)~~^{4.} The debtor's or 3rd party's failure to accept or receive service of the levy does
13 not invalidate the levy.

14 ~~(13)~~^(h) ~~ANSWER BY 3RD PARTY~~ Within ~~45~~²⁰ days after the service of the levy upon a
15 3rd party, the 3rd party shall file an answer with the department stating whether
16 the 3rd party is in possession of or obligated with respect to property or rights to
17 property of the debtor, including a description of the property or the rights to property
18 and the nature and dollar amount of any such obligation.

19 ~~(14)~~^(p) ~~DURATION OF LEVY~~ A levy is effective from the date on which the levy is first
20 served on the 3rd party until the liability out of which the levy arose is satisfied, until
21 the levy is released or until one year from the date of service, whichever occurs first.

22 ~~(15)~~^(q) ~~EXEMPTIONS FROM LEVY~~ ~~(a)~~^{1.} The debtor is entitled to an exemption from
23 levy of the greater of the following:

24 a 1. A subsistence allowance of 75% of the debtor's disposable earnings then due
25 and owing.

1 ~~b3~~. An amount equal to 30 times the federal minimum hourly wage for each full
2 week of the debtor's pay period; or, in the case of earnings for a period other than a
3 week, a subsistence allowance computed so that it is equivalent to that amount using
4 a multiple of the federal minimum hourly wage prescribed by the department by
5 rule.

6 2. ~~(A)~~ The first \$1,000 of an account in a depository institution is exempt from any
7 levy to recover a benefit overpayment.

8 3. ~~(A)~~ Property upon which the debtor or his or her spouse or child is dependent
9 is exempt from levy.

10 ~~(16)~~ ^(r) ~~RESTRICTION ON EMPLOYMENT PENALTIES BY REASON OF LEVY.~~ No employer
11 may discharge or otherwise discriminate with respect to the terms and conditions of
12 employment against any employe by reason of the fact that his or her earnings have
13 been subject to levy for any one levy or because of compliance with any provision of
14 this ^{sub} ~~section~~. Any person who violates this ^{paragraph} ~~subsection~~ may be fined not more than
15 \$1,000 or imprisoned for not more than one year or both.

16 ~~(17)~~ ^(s) ~~Any debtor who is subject to a levy proceeding made by the~~
17 department has the right to appeal the levy proceeding. ^{under ch. 227.44} The appeal is limited to
18 questions of prior payment of the debt that the department is proceeding against,
19 and mistaken identity of the debtor. The levy is not stayed pending an appeal in any
20 case where property is secured through the levy.

21 ~~(18)~~ ^(t) ~~COST OF LEVY.~~ Any 3rd party is entitled to a levy fee of \$5 for each levy in
22 any case where property is secured through the levy. The 3rd party shall deduct the
23 fee from the proceeds of the levy.

24 SECTION 4. 49.19~~8~~ ^{(3n)(k)} ~~(10)~~ of the statutes, as created by 1999 Wisconsin Act (this
25 act), is amended to read:

1 ^{49.195 (3n) (k)} ~~49.195 (10)~~ ^(B) EVASION. Any person who removes, deposits or conceals or aids in
 2 removing, depositing or concealing any property upon which a levy is authorized
 3 under this ^(sub) section [✓] with intent to evade or defeat the assessment or collection of any
 4 debt may be fined not more than \$5,000 or imprisoned for not more than ~~3 years~~ 4
 5 years and 6 months [✓] or both, and shall be liable to the state for the costs of prosecution.

6 SECTION 5. ^{49.195 (3n) (r)} ~~49.195 (10)~~ of the statutes, as created by 1999 Wisconsin Act (this
 7 act), is amended to read:

8 ^{49.195 (3n) (r)} ~~49.195 (10)~~ RESTRICTION ON EMPLOYMENT PENALTIES BY REASON OF LEVY. No
 9 employer may discharge or otherwise discriminate with respect to the terms and
 10 conditions of employment against any employe by reason of the fact that his or her
 11 earnings have been subject to levy for any one levy or because of compliance with any
 12 provision of this ^(sub) section [✓]. Any person who violates this ^{paragraph} subsection [✓] may be fined not
 13 more than \$1,000 or imprisoned for not more than ~~one year~~ 2 years or both.

14 SECTION 9457. Effective dates; workforce development.

15 (1) COLLECTION METHODS FOR PUBLIC ASSISTANCE. The amendment of section
 16 ^{49.195 (3n) (k) (r)} ~~49.195 (10)~~ and ~~(10)~~ of the statutes takes effect on December 31, 1999.

17 (END) ✓

SECTION #

ACR; 49.195 (3p) ^X

¶ 49.195 (3p) ^(B) The availability of the remedies under sub. ^S (3m)
 and (3n) [✓] does not abridge the right of the
 department to pursue other remedies.

SECTION #

ACR; 49.195 (3r) ^X

¶ 49.195 (3r) ^(B) INSERT 13-18 ✓

INSERT 2-1

Section #. 49.161 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

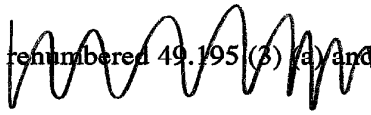
49.161 (1) TRIAL JOBS AND WAGE-PAYING COMMUNITY SERVICE JOBS OVERPAYMENTS. Notwithstanding s. 49.96, the department shall recover an overpayment of benefits paid under s. 49.148 (1) (a) ^{or} and (b) 2. from an individual who receives ~~or has received~~ benefits paid under s. 49.148 (1) (a) or (b) 2. The value of the benefit liable for recovery under this subsection may not exceed the amount that the department paid in wage subsidies with respect to that participant while the participant was ineligible to participate. The department shall promulgate rules establishing policies and procedures for administrating this subsection.

NOTE: Sub. (1) is shown as amended eff. 2-1-99 by 1997 Wis. Act 27. Prior to 2-1-99 it reads:
~~(1) TRIAL JOBS OVERPAYMENTS. Notwithstanding s. 49.96, the department shall recover an overpayment of benefits paid under s. 49.148 (1) (a) from an individual who receives or has received benefits paid under s. 49.148 (1) (a). The value of the benefit liable for recovery under this subsection may not exceed the amount that the department paid in wage subsidies with respect to that participant while the participant was ineligible to participate. The department shall promulgate rules establishing policies and procedures for administrating this subsection.~~

History: 1995 a. 289; 1997 a. 27.

(INSERT 3-23)

Section #. 49.195 (3) ^X of the statutes is renumbered 49.195 (3) (a) and amended to read:



49.195 (3) ^X Notwithstanding s. 49.96, the department shall promptly recover all overpayments ^{that have not already been received under s. 49.161 or 49.19(17) ✓} made under s. 49.19, 49.148, 49.155 or 49.157 and shall promulgate rules establishing policies and procedures to administer this subsection.

History: 1977 c. 29; 1981 c. 93, 317; 1983 a. 27; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 307; 1989 a. 31, 96, 173; 1993 a. 16; 1995 a. 27, 289; 1997 a. 27.

of the overpayment

A county, tribal governing body or Wisconsin works agency shall determine whether an overpayment has been made, and, if so, the amount of the overpayment. The county, tribal governing body or Wisconsin works agency shall provide notice to the liable person and shall give that person an opportunity for a fair hearing on the issue of liability.

under s. [✓]49.19, [✓]49.148, [✓]49.155 or [✓]49.157

INSERT 13-18

49/195 (S)
Section #. 49.22 (7m) of the statutes is amended to read

~~49.22 (7m)~~ From the appropriation under s. 20.445 (3) (L) ✓
The department may contract with or employ a collection agency or other person to enforce ~~and~~ a repayment ✓ person who is found liable under sub. (3) making repayments obligation of a parent who is delinquent in making support payments and ~~may con-~~
~~tract with or employ an attorney to appear in an action in state or federal court to enforce such an~~
~~obligation. To pay for the department's administrative costs of implementing this subsection, the~~
~~department may charge a fee to counties, retain up to 50% of any incentive payment made to this~~
~~state under 42 USC 658 for a collection under this subsection, and retain 30% of this state's share~~
~~of a collection made under this subsection on behalf of a recipient of aid to families with dependent~~
~~children or a recipient of kinship care payments under s. 48.57 (3m) or long-term kinship care pay-~~
~~ments under s. 48.57 (3m).~~

History: 1975 c. 82; 1977 c. 26, 29, 203, 418; 1979 c. 196, 221; 1981 c. 20, 93; 1983 a. 27; 1985 a. 29 ss. 861m to 866, 2390 to 2399; 1987 a. 27; 1987 a. 332 s. 64; 1987 a. 399, 403, 413; 1989 a. 31; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 ss. 2128m to 2134, 9126 (19), 9130 (4); 1995 a. 77, 187, 201, 225, 289; 1995 a. 404 ss. 39 to 43, 45, 46, 48, 173, 174; Stats. 1995 s. 49.22; 1997 a. 27, 105, 191, 237; s. 13.93 (2) (c).

Yacker, Tina

From: Sajna, Jennifer
Sent: Monday, January 25, 1999 5:20 PM
To: Yacker, Tina
Subject: Enhanced collections methods

Please modify to allow AFDC overpayments to be recouped from W-2 benefits. Thanks



(Soon)
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-048542

TAY:pgt&jlg:jf

RMR

DOA:.....Sajna - Enhanced collection methods for public assistance programs

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1

don't gen. cat.
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

PUBLIC ASSISTANCE

Under current law, the department of workforce development (DWD) is required to recover benefit overpayments made under the aid to families with dependent children (AFDC) program and under the Wisconsin works (W-2) program.

This bill permits DWD to recover overpaid AFDC or W-2 benefit amounts from former benefit recipients by issuing a warrant directed to the clerk of circuit court. The clerk of circuit court must enter the name of the person mentioned in the warrant and the amount for which the warrant is issued in the judgment and lien docket. Once entered, the warrant is considered a perfected lien upon the person's right, title and interest in all real and personal property. DWD may then file an execution commanding the sheriff of any county in which property of the person is found to collect and sell sufficient property to pay the amount stated in the warrant.

This bill also allows DWD to collect the overpaid AFDC or W-2 benefits by levy upon any property of the person to whom the benefits were paid (debtor). Under the bill, a debtor who refuses to surrender the property is subject to enforcement proceedings. A third party who fails to surrender property that is subject to a levy

is liable for up to 25% of the amount the debt. The bill sets forth the process for serving the levy and releasing the levy. The bill also exempts certain wages, the first \$1,000 in a bank account and any property upon which the debtor or his or her spouse or child is dependent from a levy. Finally, under the bill, if DWD has levied upon property any person, except the debtor, who claims an interest in or lien on that property and claims that the property was wrongfully levied upon may bring a suit against the state.

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.** 49.161 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is
2 amended to read:

3 49.161 (1) TRIAL JOBS AND WAGE-PAYING COMMUNITY SERVICE JOBS OVERPAYMENTS.
4 Notwithstanding s. 49.96, the department shall recover an overpayment of benefits
5 paid under s. 49.148 (1) (a) ~~and~~ or (b) 2. ^{or 49.19 ✓} from an individual who receives ~~or has~~
6 ~~received~~ benefits paid under s. 49.148 (1) (a) or (b) 2. The value of the benefit liable
7 for recovery under this subsection may not exceed the amount that the department
8 paid in wage subsidies with respect to that participant while the participant was
9 ineligible to participate. The department shall promulgate rules establishing
10 policies and procedures for administrating this subsection.

11 **SECTION 2.** 49.195 (3) of the statutes is amended to read:

12 49.195 (3) A county, tribal governing body or Wisconsin works agency shall
13 determine whether an overpayment has been made under s. 49.19, 49.148, 49.155
14 or 49.157 and, if so, the amount of the overpayment. The county, tribal governing
15 body or Wisconsin works agency shall provide notice of the overpayment to the liable
16 person and shall give that person an opportunity for a fair hearing on the issue of
17 liability. Notwithstanding s. 49.96, the department shall promptly recover all

✓✓
NS EXT
-10

1 overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already
2 been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing
3 policies and procedures to administer this subsection.

4 **SECTION 3.** 49.195 (3m) of the statutes is created to read:

5 49.195 (3m) (a) 1. If any person fails to pay to the department any amount
6 determined under sub. (3), no hearing or appeal of that determination is pending and
7 the time for requesting a hearing or taking an appeal has expired, the department
8 may issue a warrant directed to the clerk of circuit court of any county.

9 2. The clerk of circuit court shall enter in the judgment and lien docket the
10 name of the person mentioned in the warrant, the amount for which the warrant is
11 issued and the date on which the clerk entered that information.

12 3. A warrant entered under subd. 2. shall be considered in all respects as a final
13 judgment constituting a perfected lien upon the person's right, title and interest in
14 all real and personal property located in the county in which the warrant is entered.

15 4. After issuing a warrant, the department may file an execution with the clerk
16 of circuit court for filing with the sheriff of the county, commanding the sheriff to levy
17 upon and sell sufficient real and personal property of the person to pay the amount
18 stated in the warrant in the same manner as upon an execution against property
19 issued upon the judgment of a court of record, and to return the warrant to the
20 department and pay to it the money collected by virtue of the warrant within 60 days
21 after receipt of the warrant. The execution may not command the sheriff to levy upon
22 or sell any property upon which the parent or his or her spouse or child is dependent
23 for support.

24 (b) The clerk of circuit court shall accept, file and enter the warrant in the
25 judgment and lien docket without prepayment of any fee, but the clerk of circuit court

1 shall submit a statement of the proper fee semiannually to the department covering
2 the periods from January 1 to June 30 and July 1 to December 31 unless a different
3 billing period is agreed to between the clerk of circuit court and the department. The
4 department shall pay the fees, but shall add the fees provided by s. 814.61 (5) for
5 entering the warrants to the amount of the warrant and shall collect the fees from
6 the person named in the warrant when satisfaction or release is presented for entry.

7 (c) If a warrant that is not satisfied in full is returned, the department may
8 enforce the amount due as if the department had recovered judgment against the
9 person named in the warrant for the same amount.

10 (d) When the amount set forth in a warrant and all costs due the department
11 have been paid to it, the department shall issue a satisfaction of the warrant and file
12 it with the clerk of circuit court. The clerk of circuit court shall immediately enter
13 a satisfaction of the judgment on the judgment and lien docket. The department
14 shall send a copy of the satisfaction to the person named in the warrant.

15 (e) If the department finds that the interests of the state will not be jeopardized,
16 the department may issue a release of any warrant with respect to any real or
17 personal property upon which the warrant is a lien or cloud upon title. Upon
18 presentation to the clerk and payment of the fee for filing the release, the clerk shall
19 enter the release of record. The release is conclusive that the lien or cloud upon the
20 title of the property covered by the release is extinguished.

21 (f) Notwithstanding s. 49.96, at any time after the filing of a warrant, the
22 department may commence and maintain a garnishee action as provided by ch. 812
23 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a
24 judgment. The place of trial of such an action may be either in Dane County or the

1 county where the debtor resides and may not be changed from the county in which
2 that action is commenced, except upon consent of the parties.

3 (g) If the department issues an erroneous warrant, the department shall issue
4 a notice of withdrawal of the warrant to the clerk of circuit court for the county in
5 which the warrant is filed. The clerk shall void the warrant and any resulting liens.

6 **SECTION 4.** 49.195 (3n) of the statutes is created to read:

7 49.195 (3n) (a) In this subsection:

8 1. "Debt" means the amount of liability determined under sub. (3).

9 2. "Debtor" means an individual who is liable under sub. (3).

10 3. "Disposable earnings" means that part of the earnings of any debtor after the
11 deduction from those earnings of any amounts required by law to be withheld, any
12 life, health, dental or similar type of insurance premiums, union dues, any amount
13 necessary to comply with a court order to contribute to the support of minor children,
14 and any levy, wage assignment or garnishment executed prior to the date of a levy
15 under this subsection.

16 4. "Federal minimum hourly wage" means that wage prescribed by 29 USC 206
17 (a) (1).

18 5. "Levy" means all powers of distraint and seizure.

19 6. "Property" includes all tangible and intangible personal property and rights
20 to such property, including compensation paid or payable for personal services,
21 whether denominated as wages, salary, commission, bonus or otherwise, periodic
22 payments received pursuant to a pension or retirement program, rents, proceeds of
23 insurance and contract payments.

24 (b) If any debtor neglects or refuses to pay a debt after the department has made
25 demand for payment, the department may collect that debt and the expenses of the

1 levy by levy upon any property belonging to the debtor. Whenever the value of any
2 property that has been levied upon under this section is not sufficient to satisfy the
3 claim of the department, the department may levy upon any additional property of
4 the person until the debt and expenses of the levy are fully paid.

5 (c) Any person in possession of or obligated with respect to property or rights
6 to property that is subject to levy and upon which a levy has been made shall, upon
7 demand of the department, surrender the property or rights or discharge the
8 obligation to the department, except that part of the property or rights which is, at
9 the time of the demand, subject to any prior attachment or execution under any
10 judicial process.

11 (d) 1. Any debtor who fails or refuses to surrender any property or rights to
12 property that is subject to levy, upon demand by the department, is subject to
13 proceedings to enforce the amount of the levy.

14 2. Any 3rd party who fails to surrender any property or rights to property
15 subject to levy, upon demand of the department, is subject to proceedings to enforce
16 the levy. The 3rd party is not liable to the department under this subdivision for more
17 than 25% of the debt. The department shall serve the levy as provided under par.
18 (m) on any 3rd party who fails to surrender property under this subdivision.
19 Proceedings may not be initiated by the department until 5 days after service of the
20 final demand.

21 3. When a 3rd party surrenders the property or rights to the property on
22 demand of the department or discharges the obligation to the department for which
23 the levy is made, the 3rd party is discharged from any obligation or liability to the
24 debtor with respect to the property or rights to the property arising from the
25 surrender or payment to the department.

1 (e) 1. If the department has levied upon property, any person, other than the
2 debtor who is liable to pay the debt out of which the levy arose, who claims an interest
3 in or lien on that property and claims that that property was wrongfully levied upon
4 may bring a civil action against the state in the circuit court for Dane County. That
5 action may be brought whether or not that property has been surrendered to the
6 department. The court may grant only the relief under subd. 2. No other action to
7 question the validity of or restrain or enjoin a levy by the department may be
8 maintained.

9 2. In an action under subd. 1., if a levy would irreparably injure rights to
10 property, the court may enjoin the enforcement of that levy. If the court determines
11 that the property has been wrongfully levied upon, it may grant a judgment for the
12 amount of money obtained by levy.

13 3. For purposes of an adjudication under this paragraph, the determination of
14 the debt upon which the interest or lien of the department is based is conclusively
15 presumed to be valid.

16 (f) The department shall determine its costs and expenses to be paid in all cases
17 of levy.

18 (g) 1. The department shall apply all money obtained under this ^{subsection} ~~section~~ first
19 against the expenses of the proceedings and then against the liability in respect to
20 which the levy was made and any other liability owed to the department by the
21 debtor.

22 2. The department may refund or credit any amount left after the applications
23 under subd. 1., upon submission of a claim for that amount and satisfactory proof of
24 the claim, to the person entitled to that amount.

1 (h) The department may release the levy upon all or part of property levied
2 upon to facilitate the collection of the liability or to grant relief from a wrongful levy,
3 but that release does not prevent any later levy.

4 (j) If the department determines that property has been wrongfully levied
5 upon, the department may return the property at any time, or may return an amount
6 of money equal to the amount of money levied upon.

7 (k) Any person who removes, deposits or conceals or aids in removing,
8 depositing or concealing any property upon which a levy is authorized under this
9 subsection with intent to evade or defeat the assessment or collection of any debt may
10 be fined not more than \$5,000 or imprisoned for not more than 3 years or both, and
11 shall be liable to the state for the costs of prosecution.

12 (L) If no appeal or other proceeding for review permitted by law is pending and
13 the time for taking an appeal or petitioning for review has expired, the department
14 shall make a demand to the debtor for payment of the debt which is subject to levy
15 and give notice that the department may pursue legal action for collection of the debt
16 against the debtor. The department shall make the demand for payment and give
17 the notice at least 10 days prior to the levy, personally or by any type of mail service
18 which requires a signature of acceptance, at the address of the debtor as it appears
19 on the records of the department. The demand for payment and notice shall include
20 a statement of the amount of the debt, including interest and penalties, and the name
21 of the debtor who is liable for the debt. The debtor's refusal or failure to accept or
22 receive the notice does not prevent the department from making the levy. Notice
23 prior to levy is not required for a subsequent levy on any debt of the same debtor
24 within one year of the date of service of the original levy.

1 (m) 1. The department shall serve the levy upon the debtor and 3rd party by
2 personal service or by any type of mail service which requires a signature of
3 acceptance.

4 2. Personal service shall be made upon an individual, other than a minor or
5 incapacitated person, by delivering a copy of the levy to the debtor or 3rd party
6 personally; by leaving a copy of the levy at the debtor's dwelling or usual place of
7 abode with some person of suitable age and discretion residing there; by leaving a
8 copy of the levy at the business establishment with an officer or employe of the
9 establishment; or by delivering a copy of the levy to an agent authorized by law to
10 receive service of process.

11 3. The department representative who serves the levy shall certify service of
12 process on the notice of levy form and the person served shall acknowledge receipt
13 of the certification by signing and dating it. If service is made by mail, the return
14 receipt is the certificate of service of the levy.

15 4. The debtor's or 3rd party's failure to accept or receive service of the levy does
16 not invalidate the levy.

17 (n) Within 20 days after the service of the levy upon a 3rd party, the 3rd party
18 shall file an answer with the department stating whether the 3rd party is in
19 possession of or obligated with respect to property or rights to property of the debtor,
20 including a description of the property or the rights to property and the nature and
21 dollar amount of any such obligation.

22 (p) A levy is effective from the date on which the levy is first served on the 3rd
23 party until the liability out of which the levy arose is satisfied, until the levy is
24 released or until one year from the date of service, whichever occurs first.

1 (q) 1. The debtor is entitled to an exemption from levy of the greater of the
2 following:

3 a. A subsistence allowance of 75% of the debtor's disposable earnings then due
4 and owing.

5 b. An amount equal to 30 times the federal minimum hourly wage for each full
6 week of the debtor's pay period; or, in the case of earnings for a period other than a
7 week, a subsistence allowance computed so that it is equivalent to that amount using
8 a multiple of the federal minimum hourly wage prescribed by the department by
9 rule.

10 2. The first \$1,000 of an account in a depository institution is exempt from any
11 levy to recover a benefit overpayment.

12 3. Property upon which the debtor or his or her spouse or child is dependent is
13 exempt from levy.

14 (r) No employer may discharge or otherwise discriminate with respect to the
15 terms and conditions of employment against any employe by reason of the fact that
16 his or her earnings have been subject to levy for any one levy or because of compliance
17 with any provision of this subsection. Any person who violates this paragraph may
18 be fined not more than \$1,000 or imprisoned for not more than one year or both.

19 (s) Any debtor who is subject to a levy proceeding made by the department has
20 the right to appeal the levy proceeding under ch. 227.44. The appeal is limited to
21 questions of prior payment of the debt that the department is proceeding against,
22 and mistaken identity of the debtor. The levy is not stayed pending an appeal in any
23 case where property is secured through the levy.

1 (t) Any 3rd party is entitled to a levy fee of \$5 for each levy in any case where
2 property is secured through the levy. The 3rd party shall deduct the fee from the
3 proceeds of the levy.

4 SECTION 5. 49.195 (3n) (k) of the statutes, as created by 1999 Wisconsin Act ...
5 (this act), is amended to read:

6 49.195 (3n) (k) Any person who removes, deposits or conceals or aids in
7 removing, depositing or concealing any property upon which a levy is authorized
8 under this subsection with intent to evade or defeat the assessment or collection of
9 any debt may be fined not more than \$5,000 or imprisoned for not more than ~~3~~
10 4 years and 6 months or both, and shall be liable to the state for the costs of
11 prosecution.

12 SECTION 6. 49.195 (3n) (r) of the statutes, as created by 1999 Wisconsin Act ...
13 (this act), is amended to read:

14 49.195 (3n) (r) No employer may discharge or otherwise discriminate with
15 respect to the terms and conditions of employment against any employe by reason
16 of the fact that his or her earnings have been subject to levy for any one levy or
17 because of compliance with any provision of this subsection. Any person who violates
18 this paragraph may be fined not more than \$1,000 or imprisoned for not more than
19 ~~one year~~ 2 years or both.

20 SECTION 7. 49.195 (3p) of the statutes is created to read:

21 49.195 (3p) The availability of the remedies under subs. (3m) and (3n) does not
22 abridge the right of the department to pursue other remedies.

23 SECTION 8. 49.195 (3r) of the statutes is created to read:

24 49.195 (3r) From the appropriation under s. 20.445 (3) (L) the department may
25 contract with or employ a collection agency or other person to enforce a repayment

1 obligation of a person who is found liable under sub. (3) who is delinquent in making
2 repayments.

3 **SECTION 9457. Effective dates; workforce development.**

4 (1) COLLECTION METHODS FOR PUBLIC ASSISTANCE. The amendment of section
5 49.195 (3n) (k) and (r) of the statutes takes effect on December 31, 1999.

6 (END)

Section #. 49.161 (2) of the statutes, as affected by 1999 Wisconsin Act 27, is amended to read:

49.161 (2) GRANT-PAYING COMMUNITY SERVICE JOBS AND TRANSITIONAL PLACEMENTS OVERPAYMENTS. Except as provided in sub. (3), the department shall recover an overpayment of benefits paid under s. 49.148 (1) (b) 1. ^{or} ~~and (c)~~ ^{✓ 49.19 ✓} from an individual who continues to receive benefits under s. 49.148 (1) (b) 1. and (c) by reducing the amount of the individual's benefit payment by no more than 10%.

NOTE: Sub. (2) is shown as amended eff. 2-1-99 by 1997 Wis. Act 27. Prior to 2-1-99 it reads:

(2) COMMUNITY SERVICE JOBS AND TRANSITIONAL PLACEMENTS OVERPAYMENTS. Except as provided in sub. (3), the department shall recover an overpayment of benefits paid under s. 49.148 (1) (b) and (c) from an individual who continues to receive benefits under s. 49.148 (1) (b) and (c) by reducing the amount of the individual's benefit payment by no more than 10%.

History: 1995 a. 289; 1997 a. 27.

Suggestion on re-write:

⇒ 49.195(3) A county, tribal governing body, Wisconsin Works agency, the Department or its agent shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155, or 49.157 and, if so, the amount of the overpayment. A county, tribal governing body, Wisconsin Works agency, the Department or its agent shall provide notice of the overpayment to the liable person and shall give that person an opportunity for review on the issue pursuant to the applicable provisions in 49.152 and Chapter 227.

49.152
to incl.
review of
overpayment
recovery

Remove
ref. to
"on issue of
liability"

Page 2, line 17
Delete the reference to Liability.

⇒ This appears to limit the due process of the individual. It may not be the liability that is in question here. There are several reasons individuals file for assistance in resolving the overpayment, i.e. reason for overpayment, time period of overpayment, amount of overpayment, and those liable for overpayment. Recommend ending sentence at issue or as indicated in the above proposed rewrite.

✓ **Page 3, Line 1-2**
Delete the proposed amendments.

NO -
it wouldn't

⇒ By adding the proposed changes, this would create problems in recovery efforts for closed caseloads. TANF law allows up to six years to identify and calculate overpayments. This would put the Administrative Rules and the statutes in conflict.

✓ **Page 3, lines 21 - 23.**
Delete these lines.

- ⇒ This creates a new and separate set of exemptions.
- ⇒ There is no provision for debtor's responsibility to initiate the process and debtor's burden of proof.
- ⇒ Legal council advises this language is ambiguous and would generate endless litigation without these provisions included.
- ⇒ Normal lien exemption provisions as stated in Section 815, Wis. Stats apply and could be referenced here if felt necessary.
- ⇒ Language contains no provision for dealing with litigation of these issues.

Page 6, lines 16-18

Add language to allow the department to issue a determination making final demand for surrender of property to the third party that fails to comply with the levy.

Talk
to
Bob

The current language as written allows the Department to serve a levy on a third party who fails to comply and allows the department to initiate proceedings 5 days after service of a final demand but does not provide a provision for making the final demand.

Page 10, lines 12 and 13

Delete these lines.

- ⇒ This creates a new and separate set of exemptions.
- ⇒ There is no provision for dealing with this issues i.e., debtor's responsibility to initiate the process and debtor's responsibility for burden on proof.
- ⇒ Legal council provided advises this language is ambiguous and would generate endless litigation without these provisions.
- ⇒ If additional exemptions are desired, consider exemptions as is in current garnishment provisions (Chapter 812).
- ⇒ Language contains no provision for dealing with litigation of these issues.

Jennifer, the following are the Department's comments for LRB-0485/1.

Page 2, Line 5-6

Delete the proposed amendments.

By adding the proposed changes, this would create problems in recovery efforts for closed caseloads. TANF law allows up to six years to identify and calculate overpayments. This would put the Administrative Rules and the statutes in conflict. We need to make it clear that collection is not limited to overpayments established for current recipients but rather to both current and prior program recipients.

- why doesn't 49.195 (3) cover these?

Page 2, Line 12

Add the "Department or its agent".

- ⇒ This allows the Department flexibility for assisting local agencies with this activity. This will also provide for a direct link in 49.85 and 49.195 recovery efforts.

Page 2, Line 14-15

Add the "Department or its agent".

- ⇒ This allows for consistency and parallels the above.

Page 2, Line 15-17

Delete the reference to Fair Hearing.

- ⇒ Due Process Provision is already incorporated in the Ch 49, or you may cross reference Ch 227.
- ⇒ Benefits paid under 49.148, 49.155 and 49.157, review of agency decisions are available under 49.152. Benefits under 49.19, have a right to a fair hearing.
- ⇒ Due process provisions are already incorporated in Chapter 49, or you may cross reference chapter 227. There is no need to duplicate the references here but if it is so desired, be sure to repeat the same statutory reference rather than saying fair hearing when "dispute resolution" is the language used in some of these provisions.
- ⇒ The proposed language appears to grant exceptions for W-2 recipients if a fair hearing is granted for overpayment issues. Any suggestion of a second opportunity for a hearing creates excessive workload issues and conflicts between the W-2 Dispute Resolution process and the current fair hearing process under Ch 227.

Check for use of dispute res.

Not the E same as these are for denials or modification. Not recoupment