



(Soon) (D-Note)

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0485/21 3
TAY:pgt&jlg:lp

RMR CJK

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

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ^{Don't General} ...; 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 other} 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~~
6 ~~has received~~ benefits paid under s. 49.148 (1) (a) or (b) 2. The value of the benefit
7 liable for recovery under this subsection may not exceed the amount that the
8 department paid in wage subsidies with respect to that participant while the
9 participant was ineligible to participate. The department shall promulgate rules
10 establishing policies and procedures for administrating this subsection.

11 **SECTION 2.** 49.161 (2) of the statutes, as affected by 1999 Wisconsin Act 27, is
12 amended to read:

13 49.161 (2) GRANT-PAYING COMMUNITY SERVICE JOBS AND TRANSITIONAL PLACEMENTS
14 OVERPAYMENTS. Except as provided in sub. (3), the department shall recover an
15 overpayment of benefits paid under s. 49.148 (1) (b) 1. ~~and or~~ (c) or 49.19 from an
16 individual who continues to receive benefits under s. 49.148 (1) (b) 1. and (c) by
17 reducing the amount of the individual's benefit payment by no more than 10%.

review following the procedure specified under s. 49.152

or the department

1 SECTION 3. 49.195 (3) of the statutes is amended to read:

2 49.195 (3) A county, tribal governing body, or Wisconsin works agency shall
 3 determine whether an overpayment has been made under s. 49.19, 49.148, 49.155
 4 or 49.157 and, if so, the amount of the overpayment. The county, tribal governing
 5 body or Wisconsin works agency^{or department} shall provide notice of the overpayment to the liable
 6 person and shall give that person an opportunity for a fair hearing on the issue of
 7 liability. Notwithstanding s. 49.96, the department shall promptly recover all
 8 overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already
 9 been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing
 10 policies and procedures to administer this subsection.

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

12 49.195 (3m) (a) 1. If any person fails to pay to the department any amount
 13 determined under sub. (3), no ~~hearing~~^{review} or appeal of that determination is pending and
 14 the time for requesting a ~~hearing~~^{a review} or taking an appeal has expired, the department
 15 may issue a warrant directed to the clerk of circuit court of any county.

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

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

22 4. After issuing a warrant, the department may file an execution with the clerk
 23 of circuit court for filing with the sheriff of the county, commanding the sheriff to levy
 24 upon and sell sufficient real and personal property of the person to pay the amount
 25 stated in the warrant in the same manner as upon an execution against property

1 issued upon the judgment of a court of record, and to return the warrant to the
2 department and pay to it the money collected by virtue of the warrant within 60 days
3 after receipt of the warrant. The execution may not command the sheriff to levy upon
4 or sell any property upon which the parent ^(the father) or his or her spouse or child is dependent
5 for support. *that is exempt from execution under ss. 815.18(3) and 815.20*

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

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

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

22 (e) If the department finds that the interests of the state will not be jeopardized,
23 the department may issue a release of any warrant with respect to any real or
24 personal property upon which the warrant is a lien or cloud upon title. Upon
25 presentation to the clerk and payment of the fee for filing the release, the clerk shall

1 enter the release of record. The release is conclusive that the lien or cloud upon the
2 title of the property covered by the release is extinguished.

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

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

12 **SECTION 5.** 49.195 (3n) of the statutes is created to read:

13 49.195 (3n) (a) In this subsection:

- 14 1. "Debt" means the amount of liability determined under sub. (3).
15 2. "Debtor" means an individual who is liable under sub. (3).
16 3. "Disposable earnings" means that part of the earnings of any debtor after the
17 deduction from those earnings of any amounts required by law to be withheld, any
18 life, health, dental or similar type of insurance premiums, union dues, any amount
19 necessary to comply with a court order to contribute to the support of minor children,
20 and any levy, wage assignment or garnishment executed prior to the date of a levy
21 under this subsection.
22 4. "Federal minimum hourly wage" means that wage prescribed by 29 USC 206
23 (a) (1).
24 5. "Levy" means all powers of distraint and seizure.

1 6. “Property” includes all tangible and intangible personal property and rights
2 to such property, including compensation paid or payable for personal services,
3 whether denominated as wages, salary, commission, bonus or otherwise, periodic
4 payments received pursuant to a pension or retirement program, rents, proceeds of
5 insurance and contract payments.

6 (b) If any debtor neglects or refuses to pay a debt after the department has made
7 demand for payment, the department may collect that debt and the expenses of the
8 levy by levy upon any property belonging to the debtor. Whenever the value of any
9 property that has been levied upon under this section is not sufficient to satisfy the
10 claim of the department, the department may levy upon any additional property of
11 the person until the debt and expenses of the levy are fully paid.

12 (c) Any person in possession of or obligated with respect to property or rights
13 to property that is subject to levy and upon which a levy has been made shall, upon
14 demand of the department, surrender the property or rights or discharge the
15 obligation to the department, except that part of the property or rights which is, at
16 the time of the demand, subject to any prior attachment or execution under any
17 judicial process.

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

21 2. Any 3rd party who fails to surrender any property or rights to property
22 subject to levy, upon demand of the department, is subject to proceedings to enforce
23 the levy. The 3rd party is not liable to the department under this subdivision for more
24 than 25% of the debt. The department shall serve the levy as provided under par.
25 (m) on any 3rd party who fails to surrender property under this subdivision.

1 Proceedings may not be initiated by the department until 5 days after service of the
2 ~~final~~ demand. ✓

3 3. When a 3rd party surrenders the property or rights to the property on
4 demand of the department or discharges the obligation to the department for which
5 the levy is made, the 3rd party is discharged from any obligation or liability to the
6 debtor with respect to the property or rights to the property arising from the
7 surrender or payment to the department.

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

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

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

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

1 (g) 1. The department shall apply all money obtained under this subsection
2 first against the expenses of the proceedings and then against the liability in respect
3 to which the levy was made and any other liability owed to the department by the
4 debtor.

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

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

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

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

19 (L) If no appeal or other proceeding for review permitted by law is pending and
20 the time for taking an appeal or petitioning for review has expired, the department
21 shall make a demand to the debtor for payment of the debt which is subject to levy
22 and give notice that the department may pursue legal action for collection of the debt
23 against the debtor. The department shall make the demand for payment and give
24 the notice at least 10 days prior to the levy, personally or by any type of mail service
25 which requires a signature of acceptance, at the address of the debtor as it appears

1 on the records of the department. The demand for payment and notice shall include
2 a statement of the amount of the debt, including interest and penalties, and the name
3 of the debtor who is liable for the debt. The debtor's refusal or failure to accept or
4 receive the notice does not prevent the department from making the levy. Notice
5 prior to levy is not required for a subsequent levy on any debt of the same debtor
6 within one year of the date of service of the original levy.

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

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

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

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

23 (n) Within 20 days after the service of the levy upon a 3rd party, the 3rd party
24 shall file an answer with the department stating whether the 3rd party is in
25 possession of or obligated with respect to property or rights to property of the debtor,

1 including a description of the property or the rights to property and the nature and
2 dollar amount of any such obligation.

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

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

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

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

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

17 ~~3. Property upon which the debtor or his or her spouse or child is dependent is~~
18 ~~exempt from levy.~~

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

24 (s) Any debtor who is subject to a levy proceeding made by the department has
25 the right to appeal the levy proceeding under ch. 227.44. The appeal is limited to

1 questions of prior payment of the debt that the department is proceeding against,
2 and mistaken identity of the debtor. The levy is not stayed pending an appeal in any
3 case where property is secured through the levy.

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

7 **SECTION 6.** 49.195 (3n) (k) of the statutes, as created by 1999 Wisconsin Act ...
8 (this act), is amended to read:

9 49.195 (3n) (k) 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 subsection with intent to evade or defeat the assessment or collection of
12 any debt may be fined not more than \$5,000 or imprisoned for not more than ~~3 years~~
13 4 years and 6 months or both, and shall be liable to the state for the costs of
14 prosecution.

15 **SECTION 7.** 49.195 (3n) (r) of the statutes, as created by 1999 Wisconsin Act ...
16 (this act), is amended to read:

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

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

24 49.195 (3p) The availability of the remedies under subs. (3m) and (3n) does not
25 abridge the right of the department to pursue other remedies.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0485/3dn

TAY:
Kg

Jennifer Sajna:

As we discussed, I disagree with the department's comments regarding recovery efforts for closed cases. Section 49.195 very clearly allows for recovery from closed cases and there is no reason to repeat that authority in s. 49.161, especially since the authority appears to be repeated only for trial jobs and not for CSJs or transitional placements.

I have deleted the language regarding property upon which a debtor, etc., is dependent for support. This language is found in s. 49.195 (1), which allows a court to refuse to render a judgment or allow a claim "in any case where a parent, spouse or child is dependent upon the property for support." I am not aware of any litigation (certainly not endless litigation) concerning that provision. Nevertheless, I have, in s. 49.195 (3m) (a) 4. referenced property "that is exempt from execution under ss. 815.18 and 815.20" and have deleted the language altogether from s. 49.195 (3n) (q) 3. since it would be redundant to exempt from execution property that is exempt from execution.

Regarding the "final demand" issue, I spoke with Bob Nelson who suggested removing the word "final." We could not determine why the department would need a procedure to make repeated demands, although if the department wishes to make repeated demands before serving the levy, I am fairly certain it could do so even under this draft.

If you have any questions, as always feel free to call me.

Tina A. Yacker
Legislative Attorney
Phone: (608) 261-6927
E-mail: Tina.Yacker@legis.state.wi.us

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

LRB-0485/3dn
TAY:kg:ijs

January 30, 1999

Jennifer Sajna:

As we discussed, I disagree with the department's comments regarding recovery efforts for closed cases. Section 49.195 very clearly allows for recovery from closed cases and there is no reason to repeat that authority in s. 49.161, especially since the authority appears to be repeated only for trial jobs and not for CSJs or transitional placements.

I have deleted the language regarding property upon which a debtor, etc., is dependent for support. This language is found in s. 49.195 (1), which allows a court to refuse to render a judgment or allow a claim "in any case where a parent, spouse or child is dependent upon the property for support". I am not aware of any litigation (certainly not endless litigation) concerning that provision. Nevertheless, I have, in s. 49.195 (3m) (a) 4. referenced property "that is exempt from execution under ss. 815.18 (3) and 815.20", and have deleted the language altogether from s. 49.195 (3n) (q) 3. since it would be redundant to exempt from execution property that is exempt from execution.

Regarding the "final demand" issue, I spoke with Bob Nelson who suggested removing the word "final". We could not determine why the department would need a procedure to make repeated demands, although if the department wishes to make repeated demands before serving the levy, I am fairly certain it could do so even under this draft.

If you have any questions, as always feel free to call me.

Tina A. Yacker
Legislative Attorney
Phone: (608) 261-6927
E-mail: Tina.Yacker@legis.state.wi.us



Edan
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0485/66
TAY:ogt&jlg&kg:ijs
RMR stays

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 certain other property 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~~
6 ~~has received~~ benefits paid under s. 49.148 (1) (a) or (b) 2. The value of the benefit
7 liable for recovery under this subsection may not exceed the amount that the
8 department paid in wage subsidies with respect to that participant while the
9 participant was ineligible to participate. The department shall promulgate rules
10 establishing policies and procedures for administrating this subsection.

11 **SECTION 2.** 49.161 (2) of the statutes, as affected by 1999 Wisconsin Act 27, is
12 amended to read:

13 **49.161 (2) GRANT-PAYING COMMUNITY SERVICE JOBS AND TRANSITIONAL PLACEMENTS**
14 **OVERPAYMENTS.** Except as provided in sub. (3), the department shall recover an
15 overpayment of benefits paid under s. 49.148 (1) (b) 1. ~~and or~~ (c) or 49.19 from an
16 individual who continues to receive benefits under s. 49.148 (1) (b) 1. and (c) by
17 reducing the amount of the individual's benefit payment by no more than 10%.

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

of a hearing under ch. 227

1 49.195 (3) A county, tribal governing body, Wisconsin works agency or the
2 department shall determine whether an overpayment has been made under s. 49.19,
3 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment. The county, tribal
4 governing body, Wisconsin works agency or department shall provide notice of the
5 overpayment to the liable person and shall give that person an opportunity for a
6 review following the procedure specified under s. 49.152. Notwithstanding s. 49.96,
7 the department shall promptly recover all overpayments made under s. 49.19,
8 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19
9 (17) and shall promulgate rules establishing policies and procedures to administer
10 this subsection.

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

12 49.195 (3m) (a) 1. If any person fails to pay to the department any amount
13 determined under sub. (3), no review or appeal of that determination is pending and
14 the time for requesting a review or taking an appeal has expired, the department
15 may issue a warrant directed to the clerk of circuit court of any county.

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

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

22 4. After issuing a warrant, the department may file an execution with the clerk
23 of circuit court for filing with the sheriff of the county, commanding the sheriff to levy
24 upon and sell sufficient real and personal property of the person to pay the amount
25 stated in the warrant in the same manner as upon an execution against property

1 issued upon the judgment of a court of record, and to return the warrant to the
2 department and pay to it the money collected by virtue of the warrant within 60 days
3 after receipt of the warrant. The execution may not command the sheriff to levy upon
4 or sell any property that is exempt from execution under ss. 815.18 (3) and 815.20.

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

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

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

21 (e) If the department finds that the interests of the state will not be jeopardized,
22 the department may issue a release of any warrant with respect to any real or
23 personal property upon which the warrant is a lien or cloud upon title. Upon
24 presentation to the clerk and payment of the fee for filing the release, the clerk shall

1 enter the release of record. The release is conclusive that the lien or cloud upon the
2 title of the property covered by the release is extinguished.

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

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

12 **SECTION 5.** 49.195 (3n) of the statutes is created to read:

13 49.195 (3n) (a) In this subsection:

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

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

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

22 4. "Federal minimum hourly wage" means that wage prescribed by 29 USC 206

23 (a) (1).

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

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

6 (b) If any debtor neglects or refuses to pay a debt after the department has made
7 demand for payment, the department may collect that debt and the expenses of the
8 levy by levy upon any property belonging to the debtor. Whenever the value of any
9 property that has been levied upon under this section is not sufficient to satisfy the
10 claim of the department, the department may levy upon any additional property of
11 the person until the debt and expenses of the levy are fully paid.

12 (c) Any person in possession of or obligated with respect to property or rights
13 to property that is subject to levy and upon which a levy has been made shall, upon
14 demand of the department, surrender the property or rights or discharge the
15 obligation to the department, except that part of the property or rights which is, at
16 the time of the demand, subject to any prior attachment or execution under any
17 judicial process.

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

21 2. Any 3rd party who fails to surrender any property or rights to property
22 subject to levy, upon demand of the department, is subject to proceedings to enforce
23 the levy. The 3rd party is not liable to the department under this subdivision for more
24 than 25% of the debt. The department shall serve the levy as provided under par.
25 (m) on any 3rd party who fails to surrender property under this subdivision.

1 Proceedings may not be initiated by the department until 5 days after service of the
2 demand.

3 3. When a 3rd party surrenders the property or rights to the property on
4 demand of the department or discharges the obligation to the department for which
5 the levy is made, the 3rd party is discharged from any obligation or liability to the
6 debtor with respect to the property or rights to the property arising from the
7 surrender or payment to the department.

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

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

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

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

1 (g) 1. The department shall apply all money obtained under this subsection
2 first against the expenses of the proceedings and then against the liability in respect
3 to which the levy was made and any other liability owed to the department by the
4 debtor.

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

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

11 (i) If the department determines that property has been wrongfully levied
12 upon, the department may return the property at any time, or may return an amount
13 of money equal to the amount of money levied upon.

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

19 (L) If no appeal or other proceeding for review permitted by law is pending and
20 the time for taking an appeal or petitioning for review has expired, the department
21 shall make a demand to the debtor for payment of the debt which is subject to levy
22 and give notice that the department may pursue legal action for collection of the debt
23 against the debtor. The department shall make the demand for payment and give
24 the notice at least 10 days prior to the levy, personally or by any type of mail service
25 which requires a signature of acceptance, at the address of the debtor as it appears

1 on the records of the department. The demand for payment and notice shall include
2 a statement of the amount of the debt, including interest and penalties, and the name
3 of the debtor who is liable for the debt. The debtor's refusal or failure to accept or
4 receive the notice does not prevent the department from making the levy. Notice
5 prior to levy is not required for a subsequent levy on any debt of the same debtor
6 within one year of the date of service of the original levy.

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

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

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

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

23 (n) Within 20 days after the service of the levy upon a 3rd party, the 3rd party
24 shall file an answer with the department stating whether the 3rd party is in
25 possession of or obligated with respect to property or rights to property of the debtor,

1 including a description of the property or the rights to property and the nature and
2 dollar amount of any such obligation.

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

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

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

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

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

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

22 (s) Any debtor who is subject to a levy proceeding made by the department has
23 the right to appeal the levy proceeding under ch. 227.44. The appeal is limited to
24 questions of prior payment of the debt that the department is proceeding against,

1 and mistaken identity of the debtor. The levy is not stayed pending an appeal in any
2 case where property is secured through the levy.

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

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

8 49.195 (3n) (k) Any person who removes, deposits or conceals or aids in
9 removing, depositing or concealing any property upon which a levy is authorized
10 under this subsection with intent to evade or defeat the assessment or collection of
11 any debt may be fined not more than \$5,000 or imprisoned for not more than ~~3 years~~
12 4 years and 6 months or both, and shall be liable to the state for the costs of
13 prosecution.

14 **SECTION 7.** 49.195 (3n) (r) of the statutes, as created by 1999 Wisconsin Act ...
15 (this act), is amended to read:

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

22 **SECTION 8.** 49.195 (3p) of the statutes is created to read:

23 49.195 (3p) The availability of the remedies under subs. (3m) and (3n) does not
24 abridge the right of the department to pursue other remedies.

25 **SECTION 9.** 49.195 (3r) of the statutes is created to read:



(D-NOTE)
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0485/45
TAY:pgt/jlg/kgjf

RMR

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

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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, 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 certain other property 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~~
6 ~~has received~~ benefits paid under s. 49.148 (1) (a) or (b) 2. The value of the benefit
7 liable for recovery under this subsection may not exceed the amount that the
8 department paid in wage subsidies with respect to that participant while the
9 participant was ineligible to participate. The department shall promulgate rules
10 establishing policies and procedures for administrating this subsection.

11 **SECTION 2.** 49.161 (2) of the statutes, as affected by ~~1999~~^{✓ 1997} Wisconsin Act 27, is
12 amended to read:

13 49.161 (2) GRANT-PAYING COMMUNITY SERVICE JOBS AND TRANSITIONAL PLACEMENTS
14 OVERPAYMENTS. Except as provided in sub. (3), the department shall recover an
15 overpayment of benefits paid under s. 49.148 (1) (b) 1. ~~and or~~ (c) or 49.19 from an
16 individual who continues to receive benefits under s. 49.148 (1) (b) 1. and (c) by
17 reducing the amount of the individual's benefit payment by no more than 10%.

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

1 49.195 (3) A county, tribal governing body, Wisconsin works agency or the
2 department shall determine whether an overpayment has been made under s. 49.19,
3 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment. The county, tribal
4 governing body, Wisconsin works agency or department shall provide notice of the
5 overpayment to the liable person and shall give that person an opportunity for a
6 review following the procedure specified under s. 49.152, or for a hearing under ch.
7 227. Notwithstanding s. 49.96, the department shall promptly recover all
8 overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already
9 been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing
10 policies and procedures to administer this subsection.

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

12 49.195 (3m) (a) 1. If any person fails to pay to the department any amount
13 determined under sub. (3), no review or appeal of that determination is pending and
14 the time for requesting a review or taking an appeal has expired, the department
15 may issue a warrant directed to the clerk of circuit court of any county.

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

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

22 4. After issuing a warrant, the department may file an execution with the clerk
23 of circuit court for filing with the sheriff of the county, commanding the sheriff to levy
24 upon and sell sufficient real and personal property of the person to pay the amount
25 stated in the warrant in the same manner as upon an execution against property

1 issued upon the judgment of a court of record, and to return the warrant to the
2 department and pay to it the money collected by virtue of the warrant within 60 days
3 after receipt of the warrant. The execution may not command the sheriff to levy upon
4 or sell any property that is exempt from execution under ss. 815.18 (3) and 815.20.

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

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

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

21 (e) If the department finds that the interests of the state will not be jeopardized,
22 the department may issue a release of any warrant with respect to any real or
23 personal property upon which the warrant is a lien or cloud upon title. Upon
24 presentation to the clerk and payment of the fee for filing the release, the clerk shall

1 enter the release of record. The release is conclusive that the lien or cloud upon the
2 title of the property covered by the release is extinguished.

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

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

12 **SECTION 5.** 49.195 (3n) of the statutes is created to read:

13 49.195 (3n) (a) In this subsection:

- 14 1. "Debt" means the amount of liability determined under sub. (3).
15 2. "Debtor" means an individual who is liable under sub. (3).
16 3. "Disposable earnings" means that part of the earnings of any debtor after the
17 deduction from those earnings of any amounts required by law to be withheld, any
18 life, health, dental or similar type of insurance premiums, union dues, any amount
19 necessary to comply with a court order to contribute to the support of minor children,
20 and any levy, wage assignment or garnishment executed prior to the date of a levy
21 under this subsection.
22 4. "Federal minimum hourly wage" means that wage prescribed by 29 USC 206
23 (a) (1).
24 5. "Levy" means all powers of distraint and seizure.

1 6. “Property” includes all tangible and intangible personal property and rights
2 to such property, including compensation paid or payable for personal services,
3 whether denominated as wages, salary, commission, bonus or otherwise, periodic
4 payments received pursuant to a pension or retirement program, rents, proceeds of
5 insurance and contract payments.

6 (b) If any debtor neglects or refuses to pay a debt after the department has made
7 demand for payment, the department may collect that debt and the expenses of the
8 levy by levy upon any property belonging to the debtor. Whenever the value of any
9 property that has been levied upon under this section is not sufficient to satisfy the
10 claim of the department, the department may levy upon any additional property of
11 the person until the debt and expenses of the levy are fully paid.

12 (c) Any person in possession of or obligated with respect to property or rights
13 to property that is subject to levy and upon which a levy has been made shall, upon
14 demand of the department, surrender the property or rights or discharge the
15 obligation to the department, except that part of the property or rights which is, at
16 the time of the demand, subject to any prior attachment or execution under any
17 judicial process.

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

21 2. Any 3rd party who fails to surrender any property or rights to property
22 subject to levy, upon demand of the department, is subject to proceedings to enforce
23 the levy. The 3rd party is not liable to the department under this subdivision for more
24 than 25% of the debt. The department shall serve the levy as provided under par.
25 (m) on any 3rd party who fails to surrender property under this subdivision.

1 Proceedings may not be initiated by the department until 5 days after service of the
2 demand.

3 3. When a 3rd party surrenders the property or rights to the property on
4 demand of the department or discharges the obligation to the department for which
5 the levy is made, the 3rd party is discharged from any obligation or liability to the
6 debtor with respect to the property or rights to the property arising from the
7 surrender or payment to the department.

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

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

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

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

1 (g) 1. The department shall apply all money obtained under this subsection
2 first against the expenses of the proceedings and then against the liability in respect
3 to which the levy was made and any other liability owed to the department by the
4 debtor.

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

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

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

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

19 (L) If no appeal or other proceeding for review permitted by law is pending and
20 the time for taking an appeal or petitioning for review has expired, the department
21 shall make a demand to the debtor for payment of the debt which is subject to levy
22 and give notice that the department may pursue legal action for collection of the debt
23 against the debtor. The department shall make the demand for payment and give
24 the notice at least 10 days prior to the levy, personally or by any type of mail service
25 which requires a signature of acceptance, at the address of the debtor as it appears

1 on the records of the department. The demand for payment and notice shall include
2 a statement of the amount of the debt, including interest and penalties, and the name
3 of the debtor who is liable for the debt. The debtor's refusal or failure to accept or
4 receive the notice does not prevent the department from making the levy. Notice
5 prior to levy is not required for a subsequent levy on any debt of the same debtor
6 within one year of the date of service of the original levy.

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

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

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

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

23 (n) Within 20 days after the service of the levy upon a 3rd party, the 3rd party
24 shall file an answer with the department stating whether the 3rd party is in
25 possession of or obligated with respect to property or rights to property of the debtor,

1 including a description of the property or the rights to property and the nature and
2 dollar amount of any such obligation.

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

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

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

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

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

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

22 (s) Any debtor who is subject to a levy proceeding made by the department has
23 the right to appeal the levy proceeding under ch. 227.44. The appeal is limited to
24 questions of prior payment of the debt that the department is proceeding against,

1 and mistaken identity of the debtor. The levy is not stayed pending an appeal in any
2 case where property is secured through the levy.

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

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

8 49.195 (3n) (k) Any person who removes, deposits or conceals or aids in
9 removing, depositing or concealing any property upon which a levy is authorized
10 under this subsection with intent to evade or defeat the assessment or collection of
11 any debt may be fined not more than \$5,000 or imprisoned for not more than ~~3 years~~
12 4 years and 6 months or both, and shall be liable to the state for the costs of
13 prosecution.

14 **SECTION 7.** 49.195 (3n) (r) of the statutes, as created by 1999 Wisconsin Act
15 (this act), is amended to read:

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

22 **SECTION 8.** 49.195 (3p) of the statutes is created to read:

23 49.195 (3p) The availability of the remedies under subs. (3m) and (3n) does not
24 abridge the right of the department to pursue other remedies.

25 **SECTION 9.** 49.195 (3r) of the statutes is created to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0485/5dn

TAY.....:....

↑
JY

Jennifer Sajna:

This redraft makes a minor technical correction to an action phrase. No other changes have been made to the draft.

Tina A. Yacker
Legislative Attorney
Phone: (608) 261-6927
E-mail: Tina.Yacker@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0485/5dn
TAY;jlg:hmh

Thursday, February 11, 1999

Jennifer Sajna:

This redraft makes a minor technical correction to an action phrase. No other changes have been made to the draft.

Tina A. Yacker
Legislative Attorney
Phone: (608) 261-6927
E-mail: Tina.Yacker@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0485/5
TAY:pgt/jlg/kg:hmh

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

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 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 certain other property 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~~
6 ~~has received~~ benefits paid under s. 49.148 (1) (a) or (b) 2. The value of the benefit
7 liable for recovery under this subsection may not exceed the amount that the
8 department paid in wage subsidies with respect to that participant while the
9 participant was ineligible to participate. The department shall promulgate rules
10 establishing policies and procedures for administrating this subsection.

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

13 **49.161 (2) GRANT-PAYING COMMUNITY SERVICE JOBS AND TRANSITIONAL PLACEMENTS**
14 **OVERPAYMENTS.** Except as provided in sub. (3), the department shall recover an
15 overpayment of benefits paid under s. 49.148 (1) (b) 1. ~~and or~~ (c) or 49.19 from an
16 individual who continues to receive benefits under s. 49.148 (1) (b) 1. and (c) by
17 reducing the amount of the individual's benefit payment by no more than 10%.

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

1 49.195 (3) A county, tribal governing body, Wisconsin works agency or the
2 department shall determine whether an overpayment has been made under s. 49.19,
3 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment. The county, tribal
4 governing body, Wisconsin works agency or department shall provide notice of the
5 overpayment to the liable person and shall give that person an opportunity for a
6 review following the procedure specified under s. 49.152, or for a hearing under ch.
7 227. Notwithstanding s. 49.96, the department shall promptly recover all
8 overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already
9 been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing
10 policies and procedures to administer this subsection.

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

12 49.195 (3m) (a) 1. If any person fails to pay to the department any amount
13 determined under sub. (3), no review or appeal of that determination is pending and
14 the time for requesting a review or taking an appeal has expired, the department
15 may issue a warrant directed to the clerk of circuit court of any county.

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

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

22 4. After issuing a warrant, the department may file an execution with the clerk
23 of circuit court for filing with the sheriff of the county, commanding the sheriff to levy
24 upon and sell sufficient real and personal property of the person to pay the amount
25 stated in the warrant in the same manner as upon an execution against property

1 issued upon the judgment of a court of record, and to return the warrant to the
2 department and pay to it the money collected by virtue of the warrant within 60 days
3 after receipt of the warrant. The execution may not command the sheriff to levy upon
4 or sell any property that is exempt from execution under ss. 815.18 (3) and 815.20.

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

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

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

21 (e) If the department finds that the interests of the state will not be jeopardized,
22 the department may issue a release of any warrant with respect to any real or
23 personal property upon which the warrant is a lien or cloud upon title. Upon
24 presentation to the clerk and payment of the fee for filing the release, the clerk shall

1 enter the release of record. The release is conclusive that the lien or cloud upon the
2 title of the property covered by the release is extinguished.

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

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

12 **SECTION 5.** 49.195 (3n) of the statutes is created to read:

13 49.195 (3n) (a) In this subsection:

- 14 1. "Debt" means the amount of liability determined under sub. (3).
- 15 2. "Debtor" means an individual who is liable under sub. (3).
- 16 3. "Disposable earnings" means that part of the earnings of any debtor after the
17 deduction from those earnings of any amounts required by law to be withheld, any
18 life, health, dental or similar type of insurance premiums, union dues, any amount
19 necessary to comply with a court order to contribute to the support of minor children,
20 and any levy, wage assignment or garnishment executed prior to the date of a levy
21 under this subsection.
- 22 4. "Federal minimum hourly wage" means that wage prescribed by 29 USC 206
23 (a) (1).
- 24 5. "Levy" means all powers of distraint and seizure.

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

6 (b) If any debtor neglects or refuses to pay a debt after the department has made
7 demand for payment, the department may collect that debt and the expenses of the
8 levy by levy upon any property belonging to the debtor. Whenever the value of any
9 property that has been levied upon under this section is not sufficient to satisfy the
10 claim of the department, the department may levy upon any additional property of
11 the person until the debt and expenses of the levy are fully paid.

12 (c) Any person in possession of or obligated with respect to property or rights
13 to property that is subject to levy and upon which a levy has been made shall, upon
14 demand of the department, surrender the property or rights or discharge the
15 obligation to the department, except that part of the property or rights which is, at
16 the time of the demand, subject to any prior attachment or execution under any
17 judicial process.

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

21 2. Any 3rd party who fails to surrender any property or rights to property
22 subject to levy, upon demand of the department, is subject to proceedings to enforce
23 the levy. The 3rd party is not liable to the department under this subdivision for more
24 than 25% of the debt. The department shall serve the levy as provided under par.
25 (m) on any 3rd party who fails to surrender property under this subdivision.

1 Proceedings may not be initiated by the department until 5 days after service of the
2 demand.

3 3. When a 3rd party surrenders the property or rights to the property on
4 demand of the department or discharges the obligation to the department for which
5 the levy is made, the 3rd party is discharged from any obligation or liability to the
6 debtor with respect to the property or rights to the property arising from the
7 surrender or payment to the department.

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

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

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

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

1 (g) 1. The department shall apply all money obtained under this subsection
2 first against the expenses of the proceedings and then against the liability in respect
3 to which the levy was made and any other liability owed to the department by the
4 debtor.

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

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

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

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

19 (L) If no appeal or other proceeding for review permitted by law is pending and
20 the time for taking an appeal or petitioning for review has expired, the department
21 shall make a demand to the debtor for payment of the debt which is subject to levy
22 and give notice that the department may pursue legal action for collection of the debt
23 against the debtor. The department shall make the demand for payment and give
24 the notice at least 10 days prior to the levy, personally or by any type of mail service
25 which requires a signature of acceptance, at the address of the debtor as it appears

1 on the records of the department. The demand for payment and notice shall include
2 a statement of the amount of the debt, including interest and penalties, and the name
3 of the debtor who is liable for the debt. The debtor's refusal or failure to accept or
4 receive the notice does not prevent the department from making the levy. Notice
5 prior to levy is not required for a subsequent levy on any debt of the same debtor
6 within one year of the date of service of the original levy.

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

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

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

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

23 (n) Within 20 days after the service of the levy upon a 3rd party, the 3rd party
24 shall file an answer with the department stating whether the 3rd party is in
25 possession of or obligated with respect to property or rights to property of the debtor,

1 including a description of the property or the rights to property and the nature and
2 dollar amount of any such obligation.

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

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

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

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

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

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

22 (s) Any debtor who is subject to a levy proceeding made by the department has
23 the right to appeal the levy proceeding under ch. 227.44. The appeal is limited to
24 questions of prior payment of the debt that the department is proceeding against,

1 and mistaken identity of the debtor. The levy is not stayed pending an appeal in any
2 case where property is secured through the levy.

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

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

8 49.195 (3n) (k) Any person who removes, deposits or conceals or aids in
9 removing, depositing or concealing any property upon which a levy is authorized
10 under this subsection with intent to evade or defeat the assessment or collection of
11 any debt may be fined not more than \$5,000 or imprisoned for not more than ~~3 years~~
12 4 years and 6 months or both, and shall be liable to the state for the costs of
13 prosecution.

14 **SECTION 7.** 49.195 (3n) (r) of the statutes, as created by 1999 Wisconsin Act ...
15 (this act), is amended to read:

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

22 **SECTION 8.** 49.195 (3p) of the statutes is created to read:

23 49.195 (3p) The availability of the remedies under subs. (3m) and (3n) does not
24 abridge the right of the department to pursue other remedies.

25 **SECTION 9.** 49.195 (3r) of the statutes is created to read:

