

2. Has committed a new crime, act or offense and is no longer eligible for regulatory approval or employment at, contracting with or residency as a nonclient at an entity under s. HFS 12.10 (2).

3. Knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that would have or could have affected the review panel's decision under sub. (3) (d) to approve the person's rehabilitation.

(c) Review. 1. The approving agency or department-designated tribe shall consider whether the new information received is valid and represents a risk of harm to the client and, if so, shall rescind rehabilitation approval, thereby reimposing the person's bar to regulatory approval or to employment or contracting with an entity or residency at an entity.

Note: If the new information does not represent a risk of harm to a client, the agency or tribe should work in concert with the entity and consider, as necessary, any measures to ameliorate or mitigate the situation such as a change in job function or position or a change in regulatory status of the entity regulated.

2. As applicable, an agency, entity or tribe that believes the new information on a person under subd. 1., represents a risk of harm to a client shall immediately take appropriate measures for the protection of clients. These measures may include a repeal of a regulatory approval, employment or contract termination, temporarily reassigning the person away from direct client duties, placing the person on leave or imposing a temporary regulatory condition limiting the person from having access to clients until any appeal filed under par. (d) is exhausted.

(d) Appeal rights. Any person who has had his or her rehabilitation approval withdrawn under par. (b) 1. or 3. may file an appeal of this decision as provided under sub. (3) (d) 3.

(e) Reporting. Any rehabilitation approval withdrawn by the approving agency or tribe which results in a bar under s. HFS 12.10 (2) shall be immediately reported to the subunit of the department responsible for collecting this information.

Note: Send reports of withdrawal of rehabilitation approval to: Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53701-7850.

(5) SCOPE OF AGENCY OR DEPARTMENT-DESIGNATED TRIBE REHABILITATION APPROVAL. (a) Approval limit. 1. a. An agency may only grant rehabilitation approval within the scope of its regulatory authority and, unless specified otherwise by the agency in the form of limitations or conditions expressed in the written rehabilitation approval decision, the approval may apply to all types of entities, job activities or functions which come under that agency's regulatory authority.

b. A department-designated tribe may only grant rehabilitation approval within the scope of its own employment or contracting authority. A department-designated tribe does not have the authority to transfer rehabilitation approval outside of its employment or contracting authority.

c. An agency or tribe may accept upon review the rehabilitation approval granted to a person by another agency or tribe if the receiving agency or tribe determines that the crime, act or offense is not substantially related to the new job, functions or activities of the person and any limitations or conditions as may be imposed in the rehabilitation approval are able to be met.

2. An entity may, within the scope of a rehabilitation approval, accept for employment or contracting a person who received rehabilitation approval from an agency or department-designated tribe and whose crimes, act or offenses are not substantially related to the person's new job, functions or activities and any limitations or conditions as may have been imposed in the rehabilitation approval are able to be met. An entity that receives a person with a rehabilitation approval shall keep a current copy of the approval on file.

Note: Examples of the above may include but are not limited to: A rehabilitation approval received from a county or child-placing agency to be a foster parent is not transferrable to another county or child-placing agency unless approved by the other county or child-placing agency. An approval by the department for a person to work as a shipping clerk in a hospital or nursing home would be transferable to another entity or job function or activity regulated under ch. 50, Stats., as long as no limitations or conditions were included in the department's rehabilitation approval. A rehabilitation approval for employment at a children's day care or a child-caring institution is not transferable to a hospital or nursing home, or vice versa. A rehabilitation approval is not transferable from a group day care center to a family day care center if there are limits or conditions in the department's rehabilitation approval, but a rehabilitation approval is transferable from one department-regulated child care residential setting to another as long as no limitations or conditions are placed in the department's rehabilitation approval.

(b) Applicant request to transfer rehabilitation approval. 1. Upon receiving notification on the department's background information form that an applicant for regulatory approval, employment or a contract or a prospective nonclient resident has had a rehabilitation review under sub. (3), the agency, entity or tribe shall request from the rehabilitation review agency or designated tribe a copy of the rehabilitation decision. If the decision of the rehabilitation review agency was to issue a rehabilitation approval, the agency, entity or tribe shall determine whether the approval is acceptable for transferring the rehabilitation approval to a new or different regulatory approval, job function or activity or nonclient residency for which the applicant is now applying.

2. Before transferring a rehabilitation approval under subd. 1., an agency, entity or tribe shall verify with the department or tribe whether a prospective entity, job or contract applicant or prospective nonclient resident has ever had a rehabilitation review and, if so, the date and status of that review and shall establish whether any new reason exists under sub. (2) (a) to request a rehabilitation review.

3. If the decision of the rehabilitation review agency or department-designated tribe was to deny rehabilitation transfer approval under subd. 1., the agency, entity or tribe shall determine whether the applicant for regulatory approval, a job or a contract or the prospective nonclient resident is eligible under sub. (2) (a) to seek another rehabilitation review and shall so inform the applicant or nonclient resident.

SECTION 12. HFS 12.20 (1) (b) (intro.) and (2) (a) 1., 2.a. and 3., as created by emergency order effective October 1, 1998, are amended to read:

HFS 12.20 (1) (b) (intro.) Each entity shall have on file, except as otherwise provided under s. HFS 12.21 (1) (b) 3. and for subd. 2. as provided under sub. (2) (b) 1., a completed background information form ~~and on file~~ and ~~an~~ one updated ~~one~~ every 4 years for the following:

(2) (a) 1. Background information evaluation. 1. An agency or an entity upon review of the information provided on the department's background information form, shall comply as applicable with the provisions under s. HFS 12.10 (1) (a) and (b) and s. HFS 12.11 (1), ~~and~~ (2), ~~and~~ (3) and (5).

2. a. If upon review of a person's completed background information form and any other information that may be available, an entity, except as otherwise provided under s. HFS 12.21 (1) (b) 3., finds that none of the items under s. HFS 12.10 (2) apply, the person has not committed a crime, act or offense identified under s. HFS 12.11 (1) and (2) or as otherwise may be applied under sub. (3), an entity may employ or contract with a person, or a child-placing agency as provided for under subpar. d., may license a person as a foster home or treatment foster home provider or make a preadoptive placement of a child for not more than 60 days pending receipt and review of the information required under s. HFS 12.21 (1) (b) 1. a., and as applicable, information obtained either by the department or a school board for a day care program under s. HFS 12.21 (1) (a) 3. in order to determine compliance with s. HFS 12.10 (2) and s. HFS 12.11 (1) and (2) and, as may apply, under s. HFS 12.11 (3).

3. Where ~~less serious~~ crimes, acts or offenses of lesser significance under s. HFS 12.11 (5) are indicated on the person's background information form ~~under s. HFS 12.11 (5)~~, the agency or entity shall ensure that appropriate ~~that~~ precautionary measures are taken to protect clients.

SECTION 13. HFS 12.21 (1) (a) 1. (intro.), as created by emergency order effective October 1, 1998, is amended to read:

HFS 12.21 (1) INFORMATION GATHERING. (a) Agency responsibilities.
1. (intro.) Subject to subds. 2. and 3. and par. (c), the department, a county department, a child-placing agency or a school board shall obtain all of the following information with respect to a person specified under s. HFS 12.10 (1) (a) and a nonclient resident or prospective nonclient resident specified under s. HFS 12.10 (1) (b):

SECTION 14. HFS 12.21 (1) (b) 3. is created to read:

HFS 12.21 (1) (b) 3. a. An entity may enter into, and shall retain on file, an agreement or contract with any temporary employment agency identified under subd. 2. a. or with any college or university, including any vocational or technical college or school, to have the temporary employment agency, college, university or school retain background information forms under s. HFS 12.20 (1) (b) completed by students and background checks completed under sub. (1) (a) on students who, as part of their curriculum, must participate in clinical or practicum experiences at the entity.

b. The entity must have from the temporary employment agency or from the university, college or technical school or college and retain on file, a letter from the agency or school indicating the name or names as applicable of the temporary employees or students and stating that these individuals have been screened and have no backgrounds which would bar them from the entity in accordance with the provisions of this chapter.

SECTION 15. HFS 12.21 (1) (e), as created by emergency order effective October 1, 1998, is amended to read:

HFS 12.21 (1) (e)) Armed forces records search. If a person who is the subject of a search under par. (a) 1. or par. (b) 1. a. was in a branch of the U.S. armed forces, including any reserve component, within the last 3 years, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is ~~dishonorable or a general discharge~~ other than honorable, information on the nature and circumstances of the discharge shall be obtained.

SECTION 16. Appendix A of chapter HFS 12, as repealed and recreated by emergency order effective December 12, 1998, is repealed and recreated to read:

**APPENDIX A
CRIMES LIST
February 1999**

This document contains a list of Wisconsin crimes current as of Sept. 16, 1998. **THE LIST IS NOT EXHAUSTIVE.** The statute numbers have been provided on this table for ease in identifying crimes. Unless otherwise indicated, the crimes listed have been determined by the Department of Health and Family Services to be "substantially related" to positions covered by the Caregiver Law, secs. 48.685 and 50.065, Stats.

Crimes also charged under Ch. 939, Wis. Stats., are to be treated as provided for the companion crime, unless otherwise indicated. For example, secs. 939.05, 943.10(2) (Party to the crime, Burglary while armed) would be in the "bar with rehab" category because the list provides that "Burglary while Armed" is in that category. However, secs. 939.32, 940.01 (Attempted 1st Degree Intentional Homicide) would be in the "bar with rehab" category rather than in the "permanent bar" category because there is a special condition or comment that so indicates.

If a person has been convicted of a crime in another state or jurisdiction, the entity or regulatory agency must locate on the table below the Wisconsin crime which is identical or most similar to the crime for which the person was convicted and apply the consequence identified. This instruction also applies if the person was convicted in Wisconsin, but the statute number or crime title has been changed or amended.

Notwithstanding sec. 111.335, Wis. Stats., secs. 48.685(5m) and 50.065(5m), Wis. Stats., permit a regulatory agency to deny regulatory approval or an entity to refuse to, employ, contract with, or permit to reside at the entity a person whom the regulatory agency or entity determines has been convicted of a crime that is "substantially related" to the care of a client. The agency or entity may review a conviction to make that determination when: (a) The person has been convicted in Wisconsin or another state or jurisdiction of any crime that is not listed in this appendix; or (b) The person has been convicted of a crime that is listed in this appendix as being in the "substantially related" category.

Under the Caregiver Law, other acts or offenses may carry regulatory or employment consequences. Persons with findings by a governmental agency of neglect or abuse of a client, or misappropriation of a client's property; persons with findings by a governmental agency of child abuse or neglect; and persons with current limitations on their professional credentials must demonstrate to the regulatory agency that they are rehabilitated.

KEY:

(F)	=	Applies if Felony
(M)	=	Applies if Misdemeanor
sp	=	Spouse was the victim in the offense
5 yrs	=	5 year ban from time crime committed, then must show rehabilitation
F	=	Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
Shaded cell	=	Bar or limitation applies to all programs (unless otherwise indicated)
*	=	Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	

CRIMES LIST AS APPLIED TO EMTs

Emergency medical technicians (EMTs) are covered as follows:

- "Permanent bar" crimes apply to licensed EMTs.
- An EMT must demonstrate rehabilitation (see, s. HFS 12.12, Wisconsin Administrative Code) when there has been a finding by a governmental agency of abuse or neglect of a client or child, or misappropriation of a client's property.
- All other criminal convictions are subject to the "substantially related" analysis by the licensing agency and the employer.

CRIMES LIST AS APPLIED TO ALL OTHER ENTITIES/COVERED PERSONS

**Chapter 346
Rules of the Road**

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
346.63	OWI (F)				*Bar w/ rehab if duties of position involve transporting clients and if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
	• (F) If w/ passenger < 16		*		
	• (F) If 3rd or greater offense		*		
346.62(4)	Reckless Driving – cause great bodily harm. (F)	F			

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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
346.67	Hit & Run - causing great bodily harm or death. (F)		*		*Bar w/ rehab if duties of position involve transporting clients and if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
346.67	Hit & Run - bodily harm or property damage. (M)		*		*Bar w/ rehab if duties of position involve transporting clients and if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

**Chapter 940
Crimes Against Life and Bodily Security**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
940.01	1st° Intentional homicide		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
940.02	1st° Reckless Homicide	F			
940.03	Felony Murder	F			
940.05	2nd° Intentional homicide	F			
940.06	2nd° Reckless Homicide	F			
940.07	Homicide by negligent control of a vicious animal.				
940.08	Homicide by negligent handling of dangerous weapon, explosives or fire.	F			
940.09	Homicide by intoxicated use of vehicle or firearm.				
940.12	Assisting suicide.				

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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
940.19 (1)	Battery. (M)		*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.19 (2) - (6)	Battery. (F)	F- sp / 5yrs			
940.195	Battery to an unborn child.		*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.20	Battery – Special Circumstances.	F - sp	*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.201	Battery or threat to witnesses.		*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.203	Battery or threat to judge.	F – 5 years	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.205	Battery or threat to a Dept. of Revenue Employee.	F – 5 years	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.207	Battery or threat to a Dept. of Commerce or DIHLR employee.	F – 5 years	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
940.21	Mayhem	F	*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
940.22(2)	Sexual exploitation by therapist – sexual contact.				
940.22(3)	Sexual exploitation by therapist – duty to report.				
940.225(1)	1st° sexual assault		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
940.225(2)	2nd° sexual assault	F			
940.225(3)	3rd° sexual assault	F			
940.225 (3m)	4th° sexual assault				
940.23	Reckless Injury	F	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.25	Injury by intoxicated use of a vehicle		*		*Bar w Rehab if duties of job involve transporting clients and if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.285 (2)(b)1 or 2	Abuse of vulnerable adults (F)		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
940.285 (2)(b)3, 4, or 5	Abuse of vulnerable adults (F or M)				
940.29	Abuse of residents of a penal facility.				
940.291	Law enforcement officer – failure to render aid. (M)		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category..

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- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
940.295	Abuse/neglect of patients & residents. (F)				*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
940.295	Abuse/neglect of patients & residents. (M)				
940.30	False imprisonment.		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
940.305	Taking hostages.	F			
940.31	Kidnapping.	F			
940.32	Stalking.				
940.43	Intimidation of witnesses		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.45	Intimidation of victims (F or M)		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

**Chapter 941
Crimes Against Public Health and Safety**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
941.20(1)	Endangering safety - dangerous weapon. (M)		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is with 5 years of request for review; otherwise offense is in the "substantially related" category.

KEY:

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- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
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- Shaded cell** = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
941.20(2) or (3)	Endangers safety –dangerous weapon	F	*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 5 years of request for review; entity does all others.
941.21	Disarming a peace officer.	F			
941.30	Recklessly endangering safety.		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; entity does all others
941.32	Administering dangerous or stupefying drug.		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
941.38	Criminal gang member solicitation and contact		*		*"Bar w/ rehab" if job duties include contact with children; otherwise offense is in the "substantially related" category.

**Chapter 942
Crimes Against Reputation and Civil Liberty**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
942.08	Invasion of privacy		*		*Reg. Agency reviews conviction if occurred within 5 years of request for review; otherwise offense is in the "substantially related" category.

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- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	

**Chapter 943
Crimes Against Property**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
943.10 (1)	Burglary		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category..
943.10 (2)	Burglary while armed.	F	*		*Reg. Agency reviews if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
943.20	Theft		*		*"Bar w/ rehab" if the person's duties bring person into contact with a client's property or fund or if date of conviction is within 5 years of the request for review; otherwise offense is in the "substantially related" category.
943.201	Misappropriation of personal identifying information or documents.		*		*"Bar w/ rehab" category if the person's duties bring person into contact with a client's property or funds or if date of conviction is within 5 years of the request for review; otherwise offense is in the "substantially related" category.
943.23(1g), (1m) or (1r)	OMVWOC	F	*		*Reg. Agency to review if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.

KEY:

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- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
943.32 (1)	Robbery (F)		*		*Reg. Agency to review if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
943.32 (2)	Robbery w/ dangerous weapon.	F	*		*Reg. Agency to review if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
943.50	Retail theft		*		*"Bar w/ rehab" if the person's duties bring person into contact with a client's property or funds and if date of conviction is within 5 years of the request for review; otherwise offense is in the "substantially related" category.

**Chapter 944
Crimes Against Sexual Morality**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
944.20	Lewd & lascivious behavior		*		*Reg. Agency reviews if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
944.205	Photographs, motion pictures, videotapes, or other visual representations showing nudity.		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

KEY:

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- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	

**Chapter 946
Crimes Against Government and Its Administration**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
946.43	Assaults by prisoners		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
946.74(1)	Aiding escape from mental institution. (M)		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
946.74(2)	Aid escape from mental institution (F)		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

**Chapter 947
Crimes Against Public Peace, Order and Other Interests**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
947.013	Harassment (M or F).		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

KEY:

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- sp = Spouse was the victim in the offense
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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	

**Chapter 948
Crimes Against Children**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
948.02(1)	1st° sexual assault of a child.		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
948.02(2)	2nd° sexual assault of a child.	F			
	<ul style="list-style-type: none"> if person was, at the time of assault, more than 4 years older than the child. 		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
948.02(3)	Sexual Assault of a Child - Failure to Act	F			
948.02(3m)	Sexual Assault of a Child - Penalty enhancement; sexual assault by certain persons	F			
948.025	Repeated acts of sexual assault of same child.	F			
	<ul style="list-style-type: none"> if child has not attained the age of 13 		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
	<ul style="list-style-type: none"> if child was over 13 but under 16 and the person was more than 4 years older. 		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
948.03 (2)(a)	Physical Abuse of a child – Intentional - Cause Great Bodily Harm		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
948.03 (2)(b) or (c)	Physical Abuse of a child – Intentional - Cause Bodily Harm	F			
948.03(3)	Physical abuse of a child – reckless	F			
948.03(4)	Physical abuse of a child – failure to act.	F			

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
948.04	Causing mental harm to a child	F			
948.05	Sexual exploitation of a child.	F	*		**"Bar w/ rehab" except if Foster Care or unless person has access to children served by entity.
948.055	Causing a child to view or listen to sexual activity.	F	*		*"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.06	Incest with a child.	F	*		**"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.07	Child enticement	F	*		**"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.08	Soliciting a child for prostitution.	F	*		**"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.09	Sexual intercourse with a child age 16 or older.		*		*Reg. Agency reviews if date of conviction is within 10 years of request for review or if person has access to children served by the entity; otherwise offense is in the "substantially related" category.
948.095	Sexual assault of student by school staff.	F	*		*Reg. Agency reviews if date of conviction is within 10 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.10	Exposing genitals or pubic area.				
948.11 (2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations. (F).	F	*		**"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.11 (2)(b)	Exposing child to harmful material or harmful descriptions or narrations. (M)		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell** = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
948.12	Possession of child pornography.	F	*		*"Bar w/ rehab" except Foster Care or unless person has access to children served by entity. Reg. Agency reviews if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
948.13	Child sex offender working with children.	F	*		*"Bar w/ rehab" except Foster Care or unless person has access to children served by entity. Reg. Agency reviews if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
948.20	Abandonment of a child.	F	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
948.21(1)	Neglect a child – result in death. (F)	F			
948.21(1)	Neglecting a child. (M)				
948.22	Failure to support. (F)	F			
948.23	Concealing death of child.	F			
948.24	Unauthorized placement for adoption.	F			
948.30	Abduction of another's child; constructive custody.	F	*		*"Bar w/ rehab" category for all but Foster Care or unless person has access to children served by entity.
948.31	Interference with custody by parent or others.	F			

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
948.35	Solicitation of a child to commit a felony.	F	*		**"Bar w/ rehab" for all but Foster Care. Reg. Agency reviews if conviction is within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.36	Use of a child to commit a class A felony.	F	*		*Reg. Agency reviews if conviction occurs within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category..
948.40	Contributing to the delinquency of a minor. (F)	F	*		*Reg. Agency reviews if conviction occurs within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.40	Contributing to the delinquency of a minor. (M)		*		*Reg. Agency reviews if conviction occurs within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.51	Hazing (F)	F	*		*Reg. Agency reviews if conviction occurs within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.60	Possession of a dangerous weapon by a person under 18. (F)	F			
948.605(3)	Gun-free school zones; Discharge of firearm in a school zone. (F)	F			
948.61	Dangerous weapons other than firearms on school premises. (F).	F			
948.62	Receiving stolen property from a child. (F)	F			

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	

All other ch. 948 Crimes that are felonies	F				All ch. 948 crimes that are felonies are "permanent bar" offenses for Foster Care.
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**Chapter 961
Uniform Controlled Substances Act
(Previously Chapter 161)**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
941.41(1)	Manufacture, distribution or delivery. (F)	F- 5yrs			
941.41 (1m)	Possession with intent to manufacture, distribute, or deliver. (F)	F- 5yrs			
941.41 (3g)	Possession (F)	F- 5yrs			
961.43 (1)(a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, or forgery, deception, or subterfuge. (F)	F- 5yrs			
961.43 (1)(b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance. (F)	F- 5yrs			
961.455	Using a child for illegal drug distribution or manufacturing purposes. (F)	F- 5yrs	*		**"Bar w/ rehab" if person has access to children served by entity; for all other situations, offense is in "substantially related" category.
961.46	Distribution to persons under 18. (F)	F- 5yrs	*		**"Bar w/ rehab" if person has access to children served by entity; for all other situations, offense is in "substantially related" category.

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
961.46	Distribution to persons under 18. (M)		*		*"Bar w/ rehab" if person has access to children served by entity; for all other situations, offense is in "substantially related" category.
961.465	Distribution to prisoners.	F- 5yrs			
961.49	Distribution of or possession with intent to deliver at or near certain places.	F- 5yrs			
961.492	Distribution of or possession with intent to deliver on public transit. (F)	F- 5yrs			
961.575	Delivery of drug paraphernalia to a minor. (M)		*		*"Bar w/ rehab" if person has access to children served by entity; for all other situations, offense is in "substantially related" category.
All other 961 offenses that are Felonies		F- 5 yrs			

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

SECTION 17. HFS 13.03 (1), as created by emergency order effective October 1, 1998, is repealed and recreated to read:

HFS 13.03 (1) (a) "Abuse" includes neglect and mistreatment and means any of the following when contrary to the entity's policies and procedures or when not a part of the client's treatment plan:

1. An act, or repeated acts, an omission or a course of conduct by a caregiver or nonclient resident, including but not limited to restraint, isolation or confinement, that, when done intentionally, does any of the following:

a. Causes or could reasonably be expected to cause pain or injury to a client or the death of a client.

b. Substantially disregards a client's rights under either ch. 50 or 51, Stats., or a caregiver's duties and obligations to a client.

c. Causes or could reasonably be expected to cause mental or emotional damage to a client, including harm to the client's psychological or intellectual functioning that is exhibited by anxiety, depression, withdrawal, regression, outward aggressive behavior, agitation, fear of harm or death, or a combination of these behaviors. This subdivision paragraph does not apply to permissible restraint, isolation or confinement implemented by order of a court or other lawful authority.

d. Causes or could reasonably be expected to cause harm to the physical or mental health of a client through substantial carelessness or negligence.

2. An act or acts of sexual intercourse or sexual contact under s. 940.225, Stats., by a caregiver and involving a client.

3. The forcible administration of medication to or the performance of psychosurgery, electroconvulsive therapy or experimental research on a client with the knowledge that no lawful authority exists for the administration or performance.

4. A course of conduct or repeated acts by a caregiver which serve no legitimate purpose and which, when done with intent to harass, intimidate, humiliate, threaten or frighten a client, causes or could reasonably be expected to cause the client to be harassed, intimidated, threatened or frightened.

5. An act that does not constitute self-defense as defined in s. 939.48, Stats.

(b) "Abuse" does not include acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

SECTION 18. HFS 13.03 (2), as created by emergency order effective October 1, 1998, is repealed.

SECTION 19. HFS 13.03 (2) is created to read:

HFS 13.03 (2) "Access," when used in reference to a person's access to clients, means that in the course of performing the person's expected duties for or functions with the entity, or as a nonclient resident of the entity, the person has or may have direct, regular contact with clients served by the entity.

SECTION 20. HFS 13.03 (3), as created by emergency order effective October 1, 1998, is repealed and recreated to read:

HFS 13.03 (3) (a) "Caregiver" means a person who is all of the following:

1. A person who has received regulatory approval from an agency or is employed by or under contract with an entity.

2. A person who has access to the entity's clients.

3. A person who is under the entity's control.

(b) "Caregiver" does not include any of the following:

1. A person who performs solely clerical, administrative, maintenance or other support functions for the entity and is not expected to have regular, direct contact with clients or the personal property of clients.

2. A person who is employed by or under contract with an entity to provide infrequent or occasional services, such as delivering items to the facility, equipment maintenance, groundskeeping, construction or other similar services not directly related to the care of a client.

SECTION 21. HFS 13.03 (6m) is created to read:

HFS 13.03 (6m) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

SECTION 22. HFS 13.03 (11), as created by emergency order effective October 1, 1998, is repealed.

SECTION 23. HFS 13.03 (12) and (13), as created by emergency order effective October 1, 1998, are renumbered 13.03 (11) and (12).

SECTION 24. HFS 13.03 (13) is created to read:

HFS 13.03 (13) "Nonclient resident" means a person 12 years of age or older who is not a client of an entity but who resides at the entity and is expected to have access to entity clients.

SECTION 25. HFS 13.03 (14), as created by emergency order effective October 1, 1998, is repealed.

SECTION 26. HFS 13.03 (17), as created by emergency order effective October 1, 1998, is repealed and recreated to read:

HFS 13.03 (17) "Under the entity's control" means a person employed by or under contract with the entity for whom the entity does 2 or more of the following:

- (a) Determines whether the person may provide care, treatment, support or similar services to clients served by the entity.
- (b) Directs the policies or procedures the person must follow in performing his or her duties as a caregiver.
- (c) Directs the conditions under which the person performs his or her duties as a caregiver.
- (d) Directs the work assignments or tasks performed by the caregiver.
- (e) Determines the person's work schedule.
- (f) Supervises or evaluates the person's work or job performance, including imposing discipline or awarding performance awards.
- (g) Determines the compensation the person received for performing his or her duties as a caregiver.

SECTION 27. HFS 13.05 (1) (f), as created by emergency order effective October 1, 1998, is amended to read:

HFS 13.05 (1) (f) "Subject of the report" means the person against whom an allegation of misconduct is made or, ~~if notice of appearance in the matter has been filed by an attorney~~ when an attorney files a written notice of appearance in the matter, the attorney representing the person ~~against whom an allegation of misconduct has been made.~~

SECTION 28. HFS 13.05 (6) (b) 3. d. is created to read:

HFS 13.05 (6) (b) 3. d. A statement that the subject of the report may have a representative of his or her choice present when there is any contact with the department's investigators during the course of the investigation.

SECTION 29. HFS 13.05 (6) (c) 1. and 2. (intro.), as created by emergency order effective October 1, 1998, are amended to read:

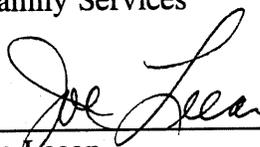
1. 'No reasonable cause to substantiate the allegation.' If the department determines that there is no reasonable cause to substantiate the allegation, the department's written decision shall be provided to the subject of the report, the involved entity or staffing agency, if known, ~~and~~ the reporter and to other agencies as appropriate. The decision shall contain a brief description of the allegation and the investigation conducted by the department, with enumeration of the findings and conclusions. If an additional allegation was discovered during the investigation, the department's decision may include information about the additional allegation and of the department's decision regarding the additional allegation, or the department may separately inform the subject of the report of the additional allegation and of the department's decision regarding the additional allegation.

2. 'Reasonable cause to substantiate the allegation.' If the department determines there is reasonable cause to substantiate the allegation, the department's written decision shall be provided to the subject of the report, to the involved entity or staffing agency, if known, and to the reporter and to other agencies as appropriate. The decision shall contain all of the following:

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health
and Family Services

Dated: February 23, 1999

By: 

Joe Leean
Secretary

SEAL:

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING AND RECREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 includes an appendix which consists of a list of crimes. Some of the listed crimes **permanently bar** a person who was ever convicted of the crime from receiving regulatory approval from the Department to provide care or treatment to vulnerable people; from being licensed by a county human service or social service department or by a private child-placing agency to operate a foster home for children; from contracting with a school board to provide a day care program; from being employed by or under contract to a service provider to provide care or treatment to the service provider's clients; and from residing as a nonclient at the service-providing entity. Others of the listed crimes **temporarily bar** a person convicted of the crime from doing any of those things, pending demonstration that the individual has been rehabilitated. While the remaining few crimes in the Crimes List, called "less serious crimes," do not bar a person with a conviction from providing care or treatment to others, they do require the regulatory agency or employer to impose **special precautionary measures** to ensure the protection of persons receiving care or treatment.

This order modifies the Crimes List published on October 1, 1998 as Appendix A to ch. HFS 12.

The original Crimes List consists of 159 crimes listed by statute number, 45 of which are permanent bar crimes for all programs. Some 105 crimes are rehabilitation review-eligible crimes (bar with rehab crimes), and 3 are less serious crimes (crimes of lesser significance than serious crimes). As for unlisted crimes, a regulatory agency, employer or contractor is supposed to consider whether conviction for any unlisted crime is substantially related to caregiving and, if so, can treat it as a permanent bar crime or a crime of lesser significance, and take action accordingly.

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status. The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11 (5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts, Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 48.685 (5) and (7) (a) and 50.065 (5) and (7) (a), Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and s. 227.11 (2), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and s. 120.13 (14), Stats., as amended by 1997 Wisconsin Act 27, as follows:

SECTION 1. HFS 12.11 (5) (title) and (a), as created by emergency order effective October 1, 1998, are repealed and recreated to read:

HFS 12.11 (5) (title) CRIMES OF LESSER SIGNIFICANCE REQUIRING SPECIAL PRECAUTIONARY MEASURES. (a) Crimes of lesser significance.

1. An agency or entity shall impose, where warranted, less stringent measures than a bar on regulatory approval by an agency, a bar on entering into a contract for a day care program by a school board under s. 120.13 (14), Stats., or a bar of a person by an entity from employment by or contracting with an entity or permitting residency as a nonclient at an entity, if the person has been convicted of a crime of lesser significance than a serious crime and that is substantially related to the care of clients.

2. In determining whether conviction for a crime of lesser significance than a serious crime is substantially related to the care of clients, an agency or entity shall apply the criteria under sub. (3) (b).

3. Crimes of lesser significance include the following:

- a. Section 940.19 (1) - Battery to other than spouse, misdemeanor only.
- b. Section 943.01 (1) - Damage to property, misdemeanor only.
- c. Section 943.20 (3) (a) - Theft where value of property does not exceed \$1000.
- d. Section 943.50 (4) (a) - Retail theft where value of property does not exceed \$1000.
- e. Section 947.013 - Harassment, misdemeanor only.
- f. Section 951.02 - Mistreating animals, misdemeanor only.

SECTION 2. Appendix A of chapter HFS 12, as created by emergency order effective October 1, 1998, is repealed and recreated to read:

APPENDIX A

CRIMES LIST

(See s. HFS 12.11 (1) and (2))

This Appendix to ch. HFS 12 contains a list of Wisconsin crimes current as of September 16, 1998. THE LIST IS NOT EXHAUSTIVE OF THE CRIMES THAT MUST BE TAKEN INTO CONSIDERATION BY A REGULATORY AGENCY OR EMPLOYER.
If a person has a conviction for any crime not listed here or in s. HFS 12.11 (5) (a) or for a crime in another state or jurisdiction, the regulatory agency or employer must determine whether the crime is substantially related to the duties of the position (see s. HFS 12.11 (3)) and, if so, may refuse to give regulatory approval to the person, employ or contract with the person or give approval for a nonclient to reside at an entity or, for a crime of lesser significance than a serious crime, may impose less stringent measures than a bar.

Key:

Permanent bar - conviction means permanently barred from all programs.

Foster care permanent bar - conviction means permanently barred only from foster home and treatment foster home programs.

Bar w/rehab - conviction means barred from all programs unless rehabilitation has been demonstrated.

Spouse - spouse of person convicted was victim of the crime.

5 years - conviction means barred for 5 years from time crime is committed, then must demonstrate has been rehabilitated.

(F) - program sanction is for a felony conviction only.

(M) - program sanction is for a misdemeanor conviction.

Wis. Stats. Crime (F = Felony; M = Misdemeanor) Program Sanction

Chapter 49 - Public Assistance

49.49 Medicaid fraud (F or M) Bar w/rehab

Chapter 346 - Rules of the Road

343.63 Operating vehicle while intoxicated (OWI) (F)
• with passenger under age 16 Bar w/rehab
• 3rd or greater offense Bar w/rehab

346.62(4) Reckless driving, causing great bodily harm (F) Foster care permanent bar

346.67 Hit and run: failure to perform duty upon striking a person or attended vehicle (F or M) Bar w/rehab

Chapter 940 - Crimes Against Life and Bodily Security

940.01 1st degree intentional homicide (F) Permanent bar

940.02	1 st degree reckless homicide (F)	Foster care permanent bar; other, bar w/rehab
940.03	Felony murder (F)	Foster care permanent bar; other, bar w/rehab
940.05	2 nd degree intentional homicide (F)	Bar w/rehab
940.06	2 nd degree reckless homicide (F)	Foster care permanent bar; other, bar w/rehab
940.07	Homicide by negligent control of vicious animal (F)	Bar w/rehab
940.08	Homicide by negligent handling of dangerous weapon, explosives or fire. (F)	Foster care permanent bar; other bar w/rehab
940.09	Homicide by intoxicated use of vehicle or firearm (F)	Bar w/rehab
940.12	Assisting suicide (F)	Bar w/rehab
940.19(1)	Battery (M –domestic)	Bar w/rehab
940.19(2)-(6)	Battery (F)	Foster care bar for 5 years if spouse; other, bar w/rehab
940.195	Battery to an unborn child (F or M)	Bar w/rehab
940.20	Battery – special circumstances (F)	Foster care permanent bar if spouse; other, bar w/rehab
940.203	Battery or threat to a judge (F)	Foster care bar for 5 years; other, bar w/rehab
940.205	Battery or threat to Department of Revenue employe (F)	Foster care bar for 5 years; other, bar w/rehab
940.207	Battery or threat to Department of Commerce employe (F)	Foster care bar for 5 years; other, bar w/rehab
940.21	Mayhem (F)	Bar w/rehab
940.22(2)	Sexual exploitation by therapist – sexual contact (F)	Bar w/rehab
940.22(3)	Sexual exploitation by therapist – duty to report (F)	Bar w/rehab
940.225(1)	1 st degree sexual assault (F)	Permanent bar
940.225(2)	2 nd degree sexual assault (F)	Permanent bar
940.225(3)	3 rd degree sexual assault (F)	Permanent bar
940.225 (3m)	4 th degree sexual assault (M)	Bar w/rehab
940.23	Reckless injury (F)	Foster care permanent bar; other, bar w/rehab

940.285 (2)(b)1 or 2	Abuse of vulnerable adults (F)	Permanent bar
940.285 (2)(b)3, 4, or 5	Abuse of vulnerable adults (F or M)	Bar w/rehab
940.29	Abuse of residents of a penal facility (F)	Permanent bar
940.291	Law enforcement officer – failure to render aid (M)	Bar w/rehab
940.295	Abuse/neglect of a patient or resident (F)	Permanent bar
940.295	Abuse/neglect of a patient or resident (M)	Bar w/rehab
940.30	False imprisonment (F)	Bar w/rehab
940.305	Taking hostages (F)	Bar w/rehab
940.31	Kidnapping (F)	Bar w/rehab
940.32	Stalking (F or M)	Bar w/rehab
940.43	Intimidation of witnesses (F or M)	Bar w/rehab
940.45	Intimidation of victims (F or M)	Bar w/rehab

Chapter 941 – Crimes Against Public Health and Safety

941.20	Endangering safety - dangerous weapon (M)	Bar w/rehab
941.20(2)	Endangers safety – dangerous weapon, discharge weapon into vehicle/building (F)	Foster care permanent bar; other, bar w/rehab
941.20(3)	Endangers safety – dangerous weapon, discharge weapon from vehicle (F)	Foster care permanent bar; other, bar w/rehab
941.21	Disarming a peace officer (F)	Foster care permanent bar
941.235	Carrying a firearm in public building (M)	Bar w/rehab
941.26	Sale, possession, use or transport of machine guns or certain other weapons (F)	Bar w/rehab
941.28	Possession of short barreled shotgun/rifle (F)	Bar w/rehab
941.29	Possession of firearm (F)	Bar w/rehab
941.296	Use or possession of a handgun and armor-piercing bullet during crime (F)	Bar w/rehab
941.298	Sale, delivery or possession of firearm silencer (F)	Bar w/rehab
941.30	Recklessly endangering safety (F)	Bar w/rehab

941.31	Possession of explosives (F)	Bar w/rehab
941.315	Possession, distribution or delivery of nitrous oxide (F)	Bar w/rehab
941.32	Administering dangerous or stupefying drug (F)	Bar w/rehab
941.327	Tampering with household product (F)	Bar w/rehab
941.38 (2)	Criminal gang member, solicit child (F)	Bar w/rehab
941.38 (3)	Criminal gang member solicitation and contact (F)	Bar w/rehab

Chapter 942 – Crimes Against Reputation and Civil Liberty

942.08	Invasion of privacy (M)	Bar w/rehab
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Chapter 943 – Crimes Against Property

943.01	Damage to property (F)	Bar w/rehab
943.011	Damage or threat to property of witness (F)	Bar w/rehab
943.02	Arson of a building or damage of any property by explosives (F)	Bar w/rehab
943.03	Arson of property other than a building (F)	Bar w/rehab
943.04	Arson with intent to defraud (F)	Bar w/rehab
943.06	Molotov cocktails (F)	Bar w/rehab
943.10 (1)	Burglary (F)	Bar w/rehab
943.10 (2)	Burglary while armed (F)	Foster care permanent bar; other, bar w/rehab
943.12	Possession of burglarious tools (F)	Bar w/rehab
943.20	Theft (F)	Bar w/rehab
943.201	Misappropriation of personal identifying information or documents (F)	Bar w/rehab
943.23	Operating motor vehicle without owner's consent – w/weapon & force (F)	Bar w/rehab
943.30	Threat to injure or accuse of crime (blackmail) (F)	Bar w/rehab
943.31	Threat to communicate derogatory information (F)	Bar w/rehab
943.32 (1)	Robbery (F)	Bar w/rehab
943.32 (2)	Robbery w/dangerous weapon (F)	Bar w/rehab

943.50 Retail theft (F) Bar w/rehab

Chapter 944 – Crimes Against Sexual Morality

944.17 Sexual gratification (M) Bar w/rehab

944.20 Lewd and lascivious behavior (M) Bar w/rehab

944.205 Photos or other representations showing nudity (F) Bar w/rehab

944.21 Obscene material or performance (F or M) Bar w/rehab

944.23 Making lewd, obscene or indecent drawings (M) Bar w/rehab

944.30 Prostitution (M) Bar w/rehab

944.32 Soliciting prostitutes (F) Bar w/rehab

944.33 Pandering (F or M) Bar w/rehab

944.34 Keeping place of prostitution (F) Bar w/rehab

Chapter 946 – Crimes Against Government and Its Administration

946.415 Failure to comply w/officer's attempt to take person into custody (F) Bar w/rehab

946.42 Escape from custody (F) Bar w/rehab

946.43 Assault by prisoner – confine or threaten to harm (F) Bar w/rehab

946.44 Assisting/permitting escape (F) Bar w/rehab

946.47 Harboring a felon (F) Bar w/rehab

946.50 Absconding – juvenile (F) Bar w/rehab

946.70 Impersonating peace officer to commit crime (F) Bar w/rehab

946.74(1) Aiding escape from mental institution (M) Bar w/rehab

946.74(2) Aiding escape from mental institution to commit sex crime (F) Permanent bar

946.80 – Racketeering (organized crime, RICO) (F) Bar w/rehab
946.88

Chapter 947 – Crimes Against Public Peace, Order and Other Interests

947.013 Harassment (F) Bar w/rehab

Chapter 948 – Crimes Against Children

948.02 (1) 1st degree sexual assault of a child (F) Permanent bar

948.02 (2)	2 nd degree sexual assault of a child (F)	Bar w/rehab
	<ul style="list-style-type: none"> if person was, at the time of assault, more than 4 years older than the child 	Permanent bar
948.02(3)	Sexual assault of a child – failure to act (F)	Permanent bar
948.025	Repeated acts of sexual assault of same child (F)	
	<ul style="list-style-type: none"> if child was under the age of 13 	Permanent bar
	<ul style="list-style-type: none"> if child was age 13, 14 or 15 and person was, at the time, more than 4 years older than the child 	Foster care permanent bar; other, bar w/rehab
	<ul style="list-style-type: none"> other 	Foster care permanent bar; other, bar w/rehab
948.03 (2)(a)	Physical abuse of a child – intentionally causes great bodily harm (F)	Permanent bar
948.03(2)(b) or (c)	Physical abuse of a child-intentionally causes bodily harm (F)	Foster care permanent bar, other, bar w/rehab
948.03 (3)	Physical abuse of a child – recklessly causes bodily harm (F)	Foster care permanent bar; other, bar w/rehab
948.03 (4)(a)	Physical abuse of a child involving great bodily harm – failure to act (F)	Permanent bar
948.03(4)(b)	Physical abuse of a child involving bodily harm – failure to act (F)	Foster care permanent bar; other, bar w/rehab
948.04	Causing mental harm to a child (F)	Permanent bar
948.05	Sexual exploitation of a child (F)	Permanent bar
948.055	Causing a child to view or listen to sexual activity (F)	Permanent bar
948.06	Incest with a child (F)	Permanent bar
948.07	Child enticement (F)	Permanent bar
948.08	Soliciting a child for prostitution (F)	Permanent bar
948.09	Sexual intercourse with a child age 16 or older (M)	Bar w/rehab
948.095	Sexual assault of student by a school staff person (F)	Foster care permanent bar; other, bar w/rehab
948.10	Exposing genitals or pubic area (M)	Bar w/rehab
948.11	Exposing child to harmful material or harmful descriptions or narrations (F)	Permanent bar

948.11	Exposing child to harmful material or harmful descriptions or narrations (M)	Bar w/rehab
948.12	Possession of child pornography (F)	Permanent bar
948.13	Child sex offender working with children (F)	Permanent bar
948.20	Abandonment of a child (F)	Foster care permanent bar; other, bar w/rehab
948.21	Neglecting a child – intentional, resulting in death (F)	Permanent bar
948.21	Neglecting a child – intentional (M)	Bar w/rehab
948.22	Failure to support (F)	Foster care permanent bar
948.23	Concealing death of a child (F)	Foster care permanent bar; other, bar w/rehab
948.24	Unauthorized placement for adoption (F)	Foster care permanent bar; other, bar w/ rehab
948.30	Abduction or detention of another's child (F)	Permanent bar
948.31	Interference with custody by parent or others (F)	Foster care permanent bar; other, bar w/rehab
948.35	Solicitation of a child to commit a felony (F)	Foster care permanent bar; other, bar w/rehab
948.36	Use of a child to commit a class A felony (F)	Permanent bar
948.40	Contributing to the delinquency of a minor (F)	Foster care permanent bar; other, bar w/rehab
948.51	Hazing (F)	Foster care permanent bar; other, bar w/rehab
948.55	Leaving or storing a loaded firearm within the reach or easy access of a child (M)	Bar w/rehab
948.60	Possess dangerous weapon by a person under 18 (F)	Foster care permanent bar; other, bar w/rehab
948.605 (3)	Discharge of firearm in a school zone (F)	Foster care permanent bar; other, bar w/rehab
948.61	Possess dangerous weapon other than firearm on school premises (F)	Foster care permanent bar; other, bar w/rehab
948.62	Receiving stolen property from a child (F)	Foster care permanent bar
948.--	All other ch. 948 felonies	Foster care permanent bar

Chapter 951 – Crimes Against Animals

951.02 Mistreating animals (F) Bar w/rehab

Chapter 961 – Controlled Substances (Formerly ch. 161 crimes)

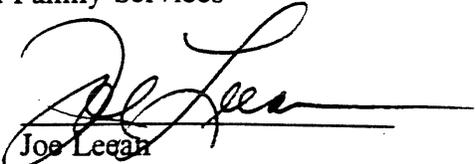
961.38	Practitioner “self-prescribing” (M)	Bar w/rehab
961.--	Manufacture, distribution or delivery of controlled substances (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of controlled substances w/intent to manufacture, distribute or deliver (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of a Schedule I or II controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of a controlled substance other than a Schedule I or II controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
961.41 (3g) (c)	Possession or attempted possession of cocaine (M)	Bar w/rehab
961.42	Keep/maintain any store, warehouse, building, etc. for use manufacture or delivery of controlled substances (M)	Bar w/rehab
961.43 (1) (a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, forgery, deception or subterfuge (F)	Foster care bar for 5 years; other, bar w/rehab
961.43 (1) (b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
961.455	Using a child for illegal drug distribution or manufacturing purposes (F)	Foster care bar for 5 years; other, bar w/rehab
961.46	Distribution to persons under 18 (F)	Foster care bar for 5 years; other, bar w/rehab
961.46	Distribution to persons under 18 (M)	Bar w/rehab
961.465	Distribution to prisoners (F or M)	Foster care bar for 5 years; other, bar w/rehab
961.49	Distribution of or possession with intent to deliver at or near certain places (F)	Foster care bar for 5 years; other, bar w/rehab
961.492	Distribution of or possession with intent to deliver on public transit (F)	Foster care bar for 5 years; other, bar w/rehab
961.575	Delivery of drug paraphernalia to a minor (M)	Bar w/rehab

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health
and Family Services

Dated: December 4, 1998

By:


Joe Leah
Secretary

SEAL:

LRB or Bill No./Adm. Rule No.
HFS 12.11(5)(a) & Appendix A
 Amendment No. if Applicable

FISCAL ESTIMATE

DOA-2048 N(R10/96)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

CAREGIVER BACKGROUND CHECKS: AMENDMENTS TO CRIMES LIST

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This order amends ch. HFS 12, emergency rules published on October 1, 1998 that implement the caregiver background check requirements in ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27. The rules apply to the Department in its functions of licensing, certifying, registering and approving facilities, agencies and programs to provide care or treatment to persons who need it, to county human services and social services departments that license foster homes for children and conduct home studies for adoptive placements, to private child-placing agencies that do the same, to school boards that establish or contract for day care programs, and to regulated facilities, agencies and programs, called "entities," that hire or contract for staff to provide care or treatment to clients.

Chapter HFS 12 includes an appendix which consists of a list of crimes. The significance of the Crimes List for carrying out the caregiver background check requirements is that every crime listed has a program sanction connected with conviction for the crime. A person who was convicted of a permanent bar crime may not receive regulatory approval from an agency (the Department, a county department, a private child-placing agency or a school board), be approved by the Department to reside at a regulated entity or be employed by or be under contract to a regulated entity to provide care or treatment to clients. Similarly, a person convicted of a bar with rehabilitation crime may not be approved for any of these without demonstrating to the appropriate agency that he or she has been rehabilitated, and a person convicted of a less serious crime will have special precautionary conditions imposed on any approval or hiring.

This order amends the Crimes List attached to ch. HFS 12 to correct and clarify it, to change the format so that it is easier to use, to move the few less serious crimes (crimes of lesser significance than serious crimes) from the Crimes List to s. HFS 12.11(5)(a), and to move some specific crimes from a greater to a lesser program sanction category, in particular from being permanent bar crimes to being bar with rehab crimes.

The movement of some crimes from the permanent bar category to the bar with rehab category may result in additional requests to agencies by individuals seeking to demonstrate that they have been rehabilitated than would be the case under the rules published on October 1. If so, the changes in the Crimes List could mean additional workload for DHFS and the other agencies. The number of additional requests for rehabilitation review that would be generated is unknown. However, any workload for the Department, county departments and school boards in implementing the new uniform background check requirements is ultimately the result of the legislation included in Acts 27 and 237.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
 H&FS/Paul Menge, 266-5602

Authorized Signature/Telephone No.
 Richard Lorang, 266-9622

Date

12-7-99



Tommy G. Thompson
Governor

Joe Leean
Secretary

State of Wisconsin
Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET
P.O. BOX 7850
MADISON WI 53707-7850

PHONE: (608) 266-8428

March 9, 1999

The Honorable Fred Risser, President
Wisconsin State Senate
1 East Main, Suite 402
Madison, WI 53702

MAR 9 REC'D

MAR 9 REC'D

The Honorable Scott Jensen, Speaker
Wisconsin State Assembly
1 East Main, Suite 402
Madison, WI 53702

Re: Clearinghouse Rule 98-191
HFS 12, relating to uniform procedures for checking caregiver backgrounds.

Gentlemen:

In accordance with the provisions of s. 227.19(2), Stats., you are hereby notified that the above-mentioned rule is in final draft form. This notice and the report required by s. 227.19(3), Stats., are submitted herewith in triplicate.

The rule was submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rule, please contact Linda Dawson at 266-0355.

Sincerely,

Paul E. Menge
Administrative Rules Manager

cc Gary Poulson, Deputy Revisor of Statutes
✓ Senator Judy Robson, JCRAR
Representative Glenn Grothman, JCRAR
Linda Dawson, Office of Legal Counsel
Don Dorn, Division of Children and Family Services
Kevin Lewis, Secretary's Office

PROPOSED ADMINISTRATIVE RULES - HFS 12
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.

Need for Rules

These rules, ch. HFS 12, are to implement ss. 48.685 and 50.065, Stats. They are replacement permanent rules for similar emergency rules that have been in effect since October 1, 1998, the same date the statutes were effective. The emergency rules were amended on December 12, 1998, and again on February 27, 1999.

Sections 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, apply to the **Department** in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to **county social service and human service departments** that license foster homes and treatment foster homes for children and carry out requested adoption home studies; to **private child-placing agencies** licensed to do the same; and to school boards that contract for day care programs under s. 120.13 (14), Stats. Sections 48.685 and 50.065, Stats., apply also to the **regulated entities**, that is, to the entities that are licensed, registered, certified or approved, as they hire persons to be employes, enter into contracts with persons to provide services to clients or permit nonclients to reside at the facilities.

The new statutes prohibit a regulatory agency from licensing, certifying, registering or approving a person to be a service provider or to reside as a nonclient at an entity if the agency knows or should know that the person has been convicted of, or has a pending charge for, a serious crime; is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but is not credentialed or the credential is not current or is so limited as to prevent the provision of adequate client care. Similarly, regulated entities planning to hire or contract with a person expected to have access to clients may not hire or contract with the person if the entity knows or should know of the existence of a prohibited criminal conviction or charge, or a finding, or the absence or inadequacy of a required credential.

An agency or entity is expected to know of a person's prohibited criminal conviction or charge or a finding or the absence or inadequacy of a required credential by (1) having the person complete a Department-developed background information disclosure form, and (2) conducting a search for information about any prohibited conviction, charge or finding against the person or any credential inadequacy.

The new statutes directed the Department and the other regulatory agencies to require, beginning October 1, 1998, that all persons applying for a license, certification, registration or approval, or for approval to reside as nonclients at an

entity, complete the **background information disclosure form** and return it to the agency and, by October 1, 1999, that all persons who were licensed, certified, registered or approved prior to October 1, 1998, or who were given permission to reside at an entity as nonclients prior to October 1, 1998, are to have completed and returned that form to the agency. Beginning October 1, 1998, all regulated entities were to have applicants for employment who will be in contact with clients complete and return the same form as well as all persons who propose to enter into a contract with an entity to provide services to the entity's clients. By October 1, 1999, this is to be done by all persons who were hired by or under contract to the entity before October 1, 1998.

The Department is expected to have any person who applies for renewal or continuation of a license, certification, approval or registration to update the background information form at that time, and an entity is to require this every 4 years for a person employed by or under contract to the entity who has access to clients and any nonclient who lives at the entity.

The new statutes direct a regulatory agency, on receipt of an application for regulatory approval or for approval of a nonclient to reside at an entity, to also undertake a **search** for any of the following information relating to the applicant's background: any criminal history information, from records maintained by the Department of Justice; any substantiated allegations of abuse or neglect of a client or misappropriation of a client's property, from the Department's caregiver misconduct registry under ch. HFS 13; any information maintained by the Department about substantiated reports of child abuse or neglect against the person; any information maintained by the Department of Regulation and Licensing regarding the status of the person's required credentials; and any information maintained by the Department about a previous denial to the applicant of regulatory approval, residence at an entity, employment by an entity or a contract with an entity. Entities are to undertake **the same search** for background information about applicants for employment and persons who propose to provide services under contract to the entity's clients.

At least every 4 years the Department is to undertake repeat searches, in the same manner as before, for background information on persons holding regulatory approvals from the Department and on persons who are nonclient residents of entities, and at least every 4 years an entity is to undertake repeat searches, in the same manner as before, for background information on persons employed by or under contract to the entity and having access to clients.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the new statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for **rehabilitation review**, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These rules for administration of ss. 48.685 and 50.065, Stats., repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime," "under the entity's control," "access," "caregiver" and other pertinent definitions and add a crimes list as Appendix A which specifies 114 crimes, 9 of which are permanent bar crimes for all programs, that is, a conviction for the crime or commission of the offense means that the individual is permanently barred from receiving approval to operate an entity or to be hired by or have a contract with an entity, with access to clients, or reside at an entity.

Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse on the proposed rules were accepted, except the following:

2.a. Comment: The section and paragraph titles in the rule should be modified to conform with s. 1.05 (2), Manual.

Response: No change. For rules in process Clearinghouse Director has advised this agency that there is no need to change form of titles to meet the new requirement. These rules have been in process for a long time. Also, the same form for titles should be kept as was used in original emergency rules published October 1, 1998. All new proposed rules of the Department use the new form for titles.

4.c. Comment: Day care programs licensed under s. 48.65, Stats., are mentioned in HFS 12.03 (10). However, day care certified under s. 48.651, Stats., is not mentioned there or in other appropriate places in the rule, even though several provisions in s. 48.685, Stats., refer also to certified day care. Should certified day care also be mentioned in these rules.

Response: No. Certified day care is the responsibility of the Department of Workforce Development (DWD). DWD has similar emergency rules in effect and proposed rules in the rulemaking process that apply to certified day care providers and prospective certified day care providers.

4.d. Comment: In HFS 12.11 (1) (b), should special rules regarding permanent bar crimes for foster homes and treatment foster homes be referenced, as they are in s. 48.685 (5) (bm), Stats.?

Response: No change. These are in the Crimes List in Appendix A. The statutory references are only to the statute numbers. In the Crimes List the name of the crime is added.

5.b. Comment: In HFS 12,03 (3), “background information form” should be renamed “background information disclosure form” since that is its official name. Also in this subsection, insert “criminal” between “person’s” and “background.”

Response: No change. “Background information form” is adequate. No more words than necessary should be used. This subsection includes the form number, so there should be no question about what form this is. It is not only the person’s “criminal” background that is relevant, so insertion of that term would be inappropriate.

5.e. Comment: In the definition of “state agency” in HFS 12.03 the word “officer” should be changed to “office.”

Response: No. The definition of “state agency” in s. 16.61 (2) (d), Stats., which is referenced in s. 48.685 (2) (ag) 3., Stats., has “officer.”

5.h. Comment: In HFS 12.11 (5) (a) 1.[now, HFS 12.11 (5) (b)], should “shall” be replaced by “may”?

Response: No. For a crime of lesser significance than a serious crime, an agency is expected to impose, where warranted, a less stringent measure than a bar.

5.n. Comment: Delete “this” on the first line of HFS 12.20 (2) (a) 2. c.[now, the second line of d.].

Response: No change. “This” is used in the phrase “this subd. 2. a. and c.” That phrase is an internal cross-reference to other parts of the same subdivision, and is the proper form for that internal cross-reference. See 1.05 (2) (Table) of Manual.

Public Hearings

The Department held 3 public hearings in January 1999 on the proposed permanent rules and on the emergency rules that went into effect on October 1, 1998, and were amended on December 12, 1999. The hearings were in Wausau, Milwaukee and Madison. A total of 241 persons attended, and 120 of them testified on the rules. Eighty-two persons, including 2 who submitted petitions, one with 1220 signatures and another with 25 signatures, submitted written comments on the proposed and emergency rules during the public review period that ended in early February 1999.

In response to comments received during public review of proposed ch. HFS 12 and the emergency rules, the Department did all of the following:

- Modified the Crimes List in Appendix A to remove several crimes from the list, move several other crimes from “permanent bar” status to “bar with rehabilitation”

status and place 5 or 10 year limits on some listed crimes so that a person convicted of committing the crime longer ago than the 5 or 10 years would not have to demonstrate rehabilitation. These changes mean that fewer people than under the emergency rules before they were amended on February 27, 1999, will be permanently barred from receiving regulatory approval from an agency or from obtaining or retaining employment with an entity, being under contract with an entity to serve clients or living at an entity with access to clients. Also, fewer will be barred pending demonstration of rehabilitation.

-Added definitions for "access" and "department-designated Indian tribe."

-Significantly revised definitions for "caregiver" and "under the entity's control." These revised definitions and the added definition for "access" serve to better delineate the persons covered by the uniform background check requirements.

-Provided for federally recognized American Indian tribes to be designated by the Department to conduct rehabilitation reviews for bar with rehabilitation crimes.

-Corrected and clarified rule language at several places in proposed ch. HFS 12, especially in regard to the working of the rehabilitation review process under s. HFS 12.12.

Final Regulatory Flexibility Analysis

These rules apply to the following "agencies:"

-the Department;

-county social services and human services departments that license foster homes for children or carry out adoption home studies;

-private child-placing agencies that license foster homes for children or carry out adoption home studies; and

-school boards that contract for a day care program.

These rules also apply to the following licensed, certified, registered or approved "entities:"

-certified community mental health programs;

-certified community alcohol and other drug abuse (AODA) prevention and treatment programs;

-family day care centers for children;

-group day care centers for children;

-day camps for children

- foster homes and treatment foster homes for children;
- group homes for children;
- shelter care facilities for children;
- child-caring institutions;
- child-placing agencies;
- ambulance service providers;
- adult family homes certified or licensed by the Department;
- residential care apartment complexes (formerly called assisted living facilities);
- community-based residential facilities (CBRFs);
- nursing homes and facilities for the developmentally disabled;
- hospice programs;
- home health agencies;
- rural medical centers; and
- hospitals.

Many of the entities are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. This includes about 1/3 of the community mental health and AODA programs; nearly all of the 2665 family day care centers; nearly 1/3 of the 2269 group day care centers; 12 of the 80 private child-placing agencies; most of the 2800 foster homes and 10% of 140 group homes; 25 of 450 ambulance service providers; 7 of 45 residential care apartment complexes; 600 of 1120 CBRFs; 96 of 472 nursing homes; most of the hospice programs; and 115 of 191 home health agencies.

The rules require entities to have prospective employees, contractors and nonclient residents, beginning October 1, 1998, complete a standard Background Information Form developed by the Department, to have current employees, contractors and nonclient residents fill out that form by October 1, 1999, and to have employees, contractors and nonclient residents fill out that form every 4 years after the first time. The rules also require an entity to undertake searches from several specified sources for background information about applicants for employment and any person who proposes to provide services under contract to the entity's clients. Finally, the rules prohibit an entity from hiring or contracting with a person or allowing a nonclient to reside at the entity, or retaining the person, if that person has a conviction or charge for a serious crime, has been found to have abused or neglected a client or child or misappropriated a client's property or does not have the proper professional credential. However, for specified crimes and other acts and offenses, which would otherwise bar a person from residence or employment, a person is permitted to ask an agency for a waiver of the bar based on evidence of rehabilitation.

The requirements found in the rules are either taken from the statutes that the rules are implementing, ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, or those statutes direct the Department to specify the requirements.

Both the statutes being implemented and the implementing rules are directed at helping protect vulnerable persons being cared for by others in specified state-regulated facilities and programs or by specified state-regulated agencies from being harmed.

No new professional skills are necessary for entities to comply with ch. HFS 12.

In response to comments received during public review of the proposed permanent rules, the Department, within the scope of the authority given it by statute to add crimes to the statutory list of crimes which permanently or temporarily bar persons with convictions from receiving regulatory approval or being hired or contracted with to provide care to clients or to reside at an entity with access to clients, moved a number of the listed crimes off of the Crimes List, moved several others from “permanent bar status” to “bar with rehabilitation” status and, for other crimes, placed time limits on need for a person with a conviction to demonstrate rehabilitation. This modification of the Crimes List and addition of or change in certain definitions, also in response to public hearing comments, should reduce the burden on some employers, including small business employers, in implementing the new uniform background check legislation.

**SUMMARY OF PUBLIC HEARINGS ON PROPOSED CHAPTER HFS 12
CAREGIVER BACKGROUND CHECKS**

PERSONS WHO ATTENDED A HEARING OR SUBMITTED WRITTEN COMMENTS

Public Hearing in Wausau on January 12, 1999

1. Jean Burgener, Administrator, Colonial Manor Medical and Rehab Center, Wausau
2. Phil Salamone, AFSME – Council 40, AFL-CIO, Schofield
3. David Sier, Appleton Memorial Hospital and Wisconsin Hospital Association (commented on HFS 12)
4. Mike Kunesch, Prof. Firefighters Union (commented on HFS 12)
5. Lorna Soulier, Bad River Chippewa Health Dept. (commented on HFS 12)
6. Anna Pegs – Green Bay Fire Dept. (commented on HFS 12)
7. Lowell Stan Latender, Oneida Chippewa Tribe (commented on HFS 12)
8. Rand Weborg, WAODA (commented on HFS 12)
9. Steve Solomon, Community Health Care (commented on HFS 12)
10. Kathleen Hasenohr, Assoc. Dean, Health Concerns, Midstate Technical College (MSTC), Marshfield (commented on HFS 12)
11. George Kamps, Oneida Tribal Social Services – Mental Health Services (commented on HFS 12)
12. Jerome LaBarge, Lac Du Flambeau Tribe (commented on HFS 12)
13. Carol Ahles – Taylor County Hospital (commented on HFS 12)
14. Curt Oberholtzer, St. Joseph Hospital, Marshfield (commented on HFS 12)
15. Mark Stroschl, WI Assoc. of AODA (commented on HFS 12)
16. Christopher Lien, St. Joseph Hospital, Marshfield (commented on HFS 12)
17. Robert Bouley, Bad River T.R.A.L.S. (commented on HFS 12)
18. Peggy Jones, R.N., Wausau Manor Nursing Home (commented on HFS 12)
19. Susan Gillig, St. Joseph Hospital, Chippewa Falls (commented on HFS 12)
20. Thomas Finley, Corp. Counsel, Marathon County (commented on HFS 12)
21. Caralie Fox, Marathon County DSS (commented on HFS 12)
22. Andrea Maulson, Self (commented on HFS 12)
23. Leah Malecha, Wood County Unified Services (commented on HFS 12)
24. Thomas Lehmkuhl, Self (commented on HFS 12)
25. Liz Zehms, United Cerebral Palsy (commented on HFS 12)
26. William McCulley, Portage County H&HSD (commented on HFS 12)
27. Thomas J. McCarrier, Midstate Technical College (MSTC), Wisconsin Rapids (commented on HFS 12)
28. Earlene Ronk, Administrator, Brown County HSD (commented on HFS 12)
29. Marianne Missfeldt, Rhinelander
30. Wanda Hose, Eastview Med & Rehab., Antigo
31. Sherry Bastle, Eastview Med & Rehab, Antigo
32. Gail Chapman, DHFS, Rhinelander
33. Glen Grady, Administrator, Memorial Medical Center, Neillsville
34. Tom Leslie, Wausau Fire Dept.

35. Joe Strohi, Prof. Firefighters of Wisconsin
 36. Michael Drury, Prof. Firefighters of Wisconsin, Local #847
 37. Lucille Carley, Lac Courte Oreilles Tribe
 38. Renee Boswell, Lac Courte Oreilles Kinship Care Program
 39. Kris Glodowski, Kennedy Park Med. & Rehab. Center, Schofield
 40. Chris Hartlep, Howard Young Medical Center, Woodruff
 41. Tim Hartin, Wisconsin Health & Hospital Association
 42. Donna Simek, Lincoln County DSS, Merrill
 43. Joann Benedict, Lincoln County DSS, Merrill
 44. Andrea Hoffman-Vosburgh, Lincoln County DSS, Merrill
 45. Cheryl Smith, Sokaogon Chippewa Community, Mole Lake
- Public Hearing in Milwaukee on January 20, 1999**
46. Bill Bazan, Wisconsin Health & Hospital Association, Milwaukee (commented on HFS 12)
 47. Lisa M. Turba, Hartford Memorial Hospital (commented on HFS 12)
 48. Christine D. Carlson, MWC & IFPI, Milwaukee
 49. Mary Jo Ochalla, Valley Health Services, Menasha
 50. Margo Neimon, Wisconsin Correctional Service, Milwaukee
 51. Sandra Trimberger, All Saints Healthcare System, Racine
 52. Jeanette M. Krimmer, All Saint's Healthcare System, Racine
 53. Fannie LeFlore, UMOS, Inc., Milwaukee (commented on HFS 12)
 54. Lee M. Fifer, S.A.F.E. Groups Services, Inc. Milwaukee
 55. Yvonne Makowski, Milw County Mental Health Div, Human Resource
 56. Michelle Krebsbach, Douglas Memorial Center, Inc., Elkhorn
 57. Kathy Tews, Lakeland Medical Center, Elkhorn (commented on HFS 12)
 58. Kim Castillo, Curative Rehab Services, Milwaukee
 59. John Zubican, West Allis Memorial Hospital (commented on HFS 12)
 60. Amy Rislov, Sinai Samaritan Medical Center, Milwaukee (commented on HFS 12)
 61. Frances Wahmhoff, Milwaukee Health Service Systems
 62. Joyce R. Kazmierczak, Lindengrove, Inc., New Berlin
 63. Anna Dixon Reid, Milwaukee Health Service System
 64. Michael Cummings, Aurora Health Care, Milwaukee (commented on HFS 12)
 65. Julie Bischoff, St. Aemilian, Lake Side, Inc., Milwaukee
 66. Eileen Eversen, St. Aemilian-Lake Side Inc., Milwaukee
 67. Joe Spolowicz, Wisconsin Correctional Service, Milwaukee (commented on HFS 12)
 68. Sally Cezenza, Memorial Hospital of Burlington (commented on HFS 12)
 69. Susan Childs, Self, South Milwaukee (commented on HFS 12)
 70. Gene D. Jurczyk, Self, Oshkosh (commented on HFS 12)
 71. Linda Mansfield & Shirley Fox, St. Vincent Hospital, Green Bay (commented on HFS 12)
 72. Robin Stachula, Hales Corners Care Center

73. Jennifer Healy, Open Gate, Inc., Milwaukee
74. Lynne Munie, Allis Care Center, West Allis (commented on HFS 12)
75. Debra Carter, Self, Milwaukee (commented on HFS 12)
76. Dave Rohlfing, Self, Milwaukee (commented on HFS 12)
77. David Wenzel, Member of Professional Firefighters of WI, Muskego (commented on HFS 12)
78. Gregory M. Gollner, Greenfield Professional Firefighters IAFF (commented on HFS 12)
79. Karla Renee Bronaugh, St. Luke's Medical Center, Milwaukee (commented on HFS 12)
80. Sam Marjanov, Matt Tricot Recovery LTC, Shorewood
81. Roy G. Mercer, SPHR, Northwest General Hospital, Milwaukee
82. Elaine Lukas, Self, Brookfield (commented on HFS 12)
83. Al Castro, United Community Center, Milwaukee (commented on HFS 12)
84. Peggy Krusick, Self, Madison
85. Tina Resch, Professional Services Group, Kenosha
86. Jamie A. Watkins, Professional Service Group, Kenosha
87. Nancy A. Heiser, Froedtert Memorial Lutheran Hospital, Milwaukee
88. Prentiss J. Davis, Wisconsin Correctional Service, Oak Creek
89. Kristen M. Christopherson, Krukowski & Costello, SC, Milwaukee (commented on HFS 12)
90. Bob Weiss, Covenant Healthcare System, Inc., Brookfield (commented on HFS 12)
91. Paula Fisher, Self, Milwaukee (commented on HFS 12)
92. John Wells, DOC/DCC Region, West Bend
93. Pam Loveless, St. Camillus Campus, Wauwatosa (commented on HFS 12)
94. Stephen B. Swigart, Wisconsin Correctional Services, Milwaukee (commented on HFS 12)
95. Michael St. John, Community Memorial Hospital, Menomonee Falls (commented on HFS 12)
96. John Turk, Cove, Inc., Cudahy
97. Ann M. Moore, PhD., Milwaukee County Mental Health Division
98. Jesse Cranz, Vision Linda, Inc. & State Diversity Committee, Milw.
99. Catherine M. Hackney, NRH, Beverly Health Care, Erin, WI (commented on HFS 12)
100. James Fields, Kilbourn Care Center, Milwaukee
101. Gary Trulson, Oshkosh Fire Department (commented on HFS 12)
102. Gary L. Vokovitch, Wauwatosa Professional Firefighters L-1923 (commented on HFS 12)
103. Paul Peshek, NHA, Lincoln Lutheran Care Center, Racine (commented on HFS 12)
104. Virginia R. Finn, Michael, Best & Friedrich, Milwaukee (commented on HFS 12)
105. Brenda Mendolla-Buckley, Oneida Tribe of Wisconsin, Oneida
106. Kristinn Armann, Lincoln Lutheran of Racine
107. Lynda A. Crucius, Self, Pewaukee (commented on HFS 12)
108. Tim Harkin, Wisconsin Health & Hospital Association, Madison
109. Jacqueline S. Stock, Dennis Hill Haven Red. Center, Milwaukee
110. Mary E. Smith, Transitional Living Services, Milwaukee (commented on HFS 12)
111. Anthony L. Garfield, Self, Milwaukee
112. Alice Wilde, Community Care Org., Inc., Milwaukee
113. Cynthia S. Christenson, Children's Health System, Waukesha

114. Lori Plotkin, Human Services Triangle, Milwaukee
115. M. J. Jenkins, Ph.D., Bureau of Substance Abuse Services, Milwaukee
116. Linda Cooper, Islamic Family & Social Services, Milwaukee
117. Dr. Larry D. Lee, Islamic Family & Social Services, Milwaukee
118. William Baker, Racine Firefighters L-32 (commented on HFS 12)
119. David H. Bosanko, Professional Firefighters of Wisconsin, Racine (commented on HFS 12)
120. Amy D. Katarinic, Michael Best & Friedrich, Milwaukee (commented on HFS 12)
121. Jean Trimble, BOALTC, Milwaukee
122. John B. Kiel, Self, Kenosha (commented on HFS 12)
123. Curtis Brzezinski, Milwaukee County (commented on HFS 12)
124. Stormy M. Walker, Milwaukee Womens Center
125. Donna Kahl, W2 Program, Milwaukee
126. Michael Kunes, Professional Firefighters of Wisconsin, Manitowoc (commented on HFS 12)
127. Ralph Kramer, Genesis Behavioral Services, Inc., Greendale (commented on HFS 12)
128. Carey Tradwell, Self, Milwaukee Women's Center (commented on HFS 12)
129. Sandra Reynolds, Self, Kenosha
130. Ann Robinson, Lincoln Lutheran of Racine
131. Amy Walker, Genesis Behavioral Services, Inc. West Allis
132. Larry Noszowski, Ph.D., Self, Wauwatosa
133. Mary Kay Strachota, Administrator, Cedar Lake Health Care Center, West Bend (commented on HFS 12)
134. Kathleen Walker, Administrator, Woodstock Health and Rehab Center, Kenosha (commented on HFS 12)
135. Alison Neuman, Human Resources Coordinator, Columbia-St. Mary's Hospital, Milwaukee (commented on HFS 12)
136. James Williams, Dir. of Retirement Housing, Cedar Bay Residential Facility, West Bend (commented on HFS 12)

Public Hearing in Madison on January 26, 1999

137. Jeff Peary, Wisconsin Certification Board, Wauwatosa (commented on HFS 12)
138. Mark Howard, AFSCME L-1942, Madison (commented on HFS 12)
139. JoAnna Dela Pena, Ho Chunk Nation, Wisconsin Dells (commented on HFS 12)
140. Karen Rude-Pierce, Local 1901 AFSCME, Oneida (commented on HFS 12)
141. Audrie Bernard, Nenemial Community Development Corp., Madison (commented on HFS 12)
142. Shirley Christian, SEIU Local 150, Madison
143. Leroy Mayberry, SEIU Local 150, Madison
144. Don Willett, SEIU, Local 150, Milwaukee
141. Allen Highman, Wis. State Employees Union, Madison
145. Linda DeLeon, AFSCME 1258 Rock County Healthcare Center, Janesville
146. David Carrig, University Hospital, Madison
147. Diane Holcomb, Council 40, Monticello
148. Julie Hintzman, American Family Institute, Monona
149. Bob Anderson, Legal Action of Wisconsin, Madison
150. Brian Purtell, Wis. Health Care Assoc., Madison

151. David Steele, Lutheran Social Services, Appleton (commented on HFS 12)
152. Rodney Muenster, Villa Hope, Inc., Appleton (commented on HFS 12)
153. Kathy Million, Brookside Care Center, Pleasant Prairie
154. Yvonne Klemm, Brookside Care Center, Kenosha
155. Laurel Miller, Local 1901, Green Bay
156. Ralph Williams, Self, Janesville (commented on HFS 12)
157. Cathy L. Hinds, Local 1258 AFSCME, Janesville (commented on HFS 12)
158. Charles L. Suggs, Sr, Self, Madison (commented on HFS 12)
159. Rodney J. Muenster, Villa Hope, Inc., Appleton
160. Greg Spring, Wisconsin Council 40, Madison (commented on HFS 12)
161. Jennifer Lea Bronsdon, Family Works, Inc. Madison
162. Amy Stear, Federation of Nurses & Health Professionals, Milwaukee
163. Melanie G. Ramey, Hospice Organization of Wisconsin, Madison
164. Christy Brown LeFlore, Lutheran Social Services, Milwaukee (commented on HFS 12)
165. Tequila Nash, Nehemiah CDC & Tellurian, Madison (commented on HFS 12)
166. Steven Tope, Gundersen Lutheran, LaCrosse (commented on HFS 12)
167. Ric Schwichtenberg, Self, Madison (commented on HFS 12)
168. Mary Evans, Meriter Health Services, Madison (commented on HFS 12)
169. Lucy Dupree Wagner, Sauk Prairie Memorial Hospital and Clinics (commented on HFS 12)
170. Carla J. Gorski, Rural Wisconsin Health Cooperative, Sauk City
171. Michael J. Grassy, Self, Madison
172. Donna J. Baranowski, Madison Health Services
173. Philip McCants, Self, Madison
174. Richard Shold, Madison Area Technical College
175. Melissa McRae, DVR Consumers, Fond du Lac
176. Peggy Morse, Self, Poynette
177. Mary A. Fischbeck, Self, Portage
178. Kay Ann Rotaczak, Self, Pardeeville
179. Tanya E. Westmoreland, AODA & DD Caregivers, Madison (commented on HFS 12)
180. William E. Hayes, Self, Madison
181. Shana M. Wuebben, Meriter Health Services, Madison (commented on HFS 12)
182. Kitty Hause, St. Clair Hospital & Health Services, Baraboo
183. Steven K. Ruff, Wis. Social Services Assoc. Prairie du Sac
184. Tracey Simpson, Franciscan Skemp Healthcare, LaCrosse (commented on HFS 12)
185. Kathleen Anderson, Franciscan Skemp Healthcare, LaCrosse (commented on HFS 12)
186. Robert Ivory, Self, Madison
187. Nancy Moberg, Self, Madison
188. Lawrence Lautenschlager, WSEU Local 48, WMHI, Oshkosh (commented on HFS 12)
189. Peggy O'Brien, Local 48, WSEU, WMHI, Oshkosh
190. Kathleen Eastman, WSEU Local 48, WMHI, Oshkosh
191. David A. Beyer, Self, Berlin