

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Insurance
(AC-In)

(Form Updated: 11/20/2008)

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**



COUNTY OF KENOSHA

Dennis R. Schultz, Director
Department of Human Services

September 28, 2005

Representative John F. Townsend
52nd Assembly District
State Capitol, Room 22 West
P.O. Box 8953
Madison, WI 53708-8953

Division of Aging Services
Aging & Disability Resource Center
Job Center / Human Services Building
8600 Sheridan Road, Suite 500
Kenosha, WI 53143-6514
Phone: (262) 605-6646
Fax: (262) 605-6649
adrc@co.kenosha.wi.us

Re: 2005 AB 539

Dear Representative Townsend:

The Elder Abuse/Guardianship Modernization Bill is ambitious and well crafted legislation. While no doubt an improvement on Chapters 46.90, 880 and 55, I would like to point out one serious error in this bill. In section 56, AB 539 proposes to repeal sec. 46.90(5)(g), *Wis Stats*, which states that "an elder person may refuse an (elder abuse) investigation." In my 15 years of APS work, self-determination has been a fundamental principal of social services intervention for adults in this state. Competent citizens, moreover, have a civil right to be free of illegal searches guaranteed by our constitution. These values are also held in social work ethics and have traditionally been incorporated into Wisconsin law.

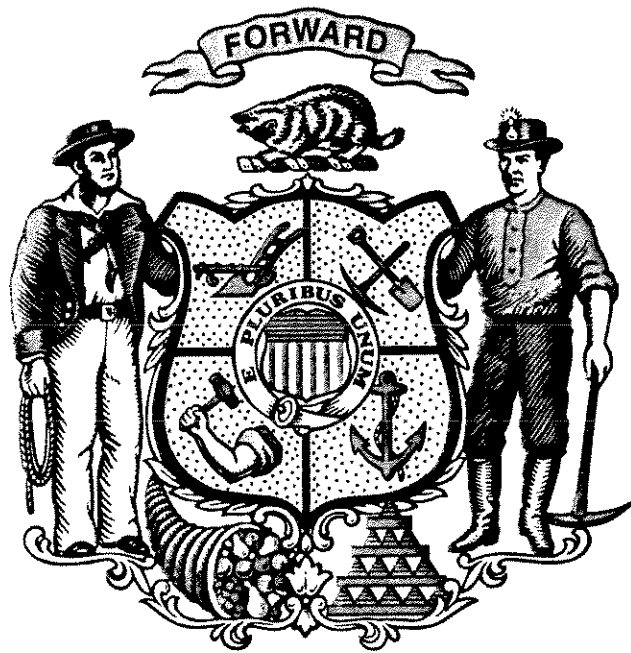
It is my understanding that the framers of this bill feared that some Adult Protection Services workers hid behind this provision thereby not conducting a thorough investigation of adults at risk. Though this may be the case, the problem is not remedied by repealing a subject's right to refuse an investigation, but rather by proscribing rules for a proper investigation and through better monitoring of APS units by the state. Clearly not all referrals for elder abuse and neglect are severe or accurate and warrant an investigation. Even in cases where a competent adult is at risk, the subject should have the right to refuse a government investigator from obtaining information about that individual or from gaining access to their home if assistance is unwanted.

Please consider retaining the civil right to refuse an investigation protected in Section 46.90(5)(g). Thank you for your judicious consideration of this request.

Sincerely,

Christopher Hall, MSW
Adult Protective Services

*Now law remains silent
on this point*



SUE JESKEWITZ

State Representative • 24th Assembly District

Assembly Bill 539 Assembly Committee on Aging and Long-Term Care September 29, 2005

Good afternoon, Chairperson Townsend and Committee members. My name is Pam Matthews, and I am here on behalf of Representative Sue Jeskewitz, who co-chaired the Legislative Council Committee on Chapter 55 along with Senator Bob Wirsch in 2002 to 2004. Representative Jeskewitz is out of the state today and is unable to be here to present this testimony.

The Special Committee on the Recodification of Chapter 55, Placement and Services for Persons With Disabilities, held 11 meetings and numerous working group meetings from 2002 to 2004. Assembly Bill 539, which is before you today, is one of the four proposals developed by this committee.

Scope and Definitions

This bill creates provisions in chapter 55 that are parallel to the system already in place in chapter 46 for elder abuse. This will provide similar protections from abuse and neglect for vulnerable adults who are under age 60 who are not covered by the elder abuse system. In addition, the bill authorizes all counties to assist persons under age 60 who are at risk of experiencing abuse, neglect, or financial exploitation (currently, under chapter 55, only Milwaukee County has this authority). In the bill, elder adults are termed "elder adults-at-risk," and vulnerable adults under the age of 60 are termed "adults-at-risk."

The bill revises definitions of several terms in current law, including the terms abuse, neglect, and self-neglect. The term "material abuse" is redefined as "financial exploitation" and made more precise with regard to what constitutes financial exploitation. All of these new and revised definitions are designed to achieve logical coherence and consistency within the statutes that govern adults of all ages who are at risk of abuse, neglect, and financial exploitation.

Reports

Wisconsin's elder abuse system is based on voluntary reporting of suspected abuse, neglect, and material abuse. This bill retains that voluntary system of reporting for the vast majority of situations of suspected abuse or neglect. However, the bill creates a provision requiring certain categories of persons to file reports in situations where the elder person is facing a serious risk of harm or even death.

These persons are not required to file a report, however, if the person believes that filing the report would not be in the best interest of the elder adult-at-risk or adult-at-risk.

The bill also applies the immunity protections in current law to the new category of required reporters created in the bill. Therefore, a person required to file a report under the bill

may not be discharged or retaliated against for doing so. The person found guilty of retaliating against a reporter is subject to a fine of not more than \$1,000, imprisonment for not more than six months, or both. In addition, a person is immune from civil or criminal liability for filing a report.

Investigation

The bill creates new provisions regarding referral of an investigation to another agency, if the county department, or agency under contract with the county department, determines that there are circumstances that would prevent them from conducting an independent investigation. In that case, the bill permits the DHFS or another county department to conduct the investigation. In addition, additional investigative tools are provided to investigative agencies, including: the ability to interview the elder adult-at-risk or adult-at-risk, with or without the consent of the person's guardian; an interview of the guardian; transporting the person for a medical examination; and a review of the financial records of an elder adult-at-risk or adult-at-risk in cases of suspected financial exploitation. The bill also provides immunity from civil or criminal liability or a finding of unprofessional conduct if any element of an investigation was performed in good faith and under lawful authority.

Offer of Services

Currently, a county agency or investigating agency must determine whether the person who is the subject of the alleged abuse or neglect is in need of services. If the department so determines, the agency must provide the necessary direct services to the person, within the limits of available funds. The bill provides more specificity with regard to what types of services and responses may be made by an agency if a person is found to be the subject of abuse or neglect or financial exploitation.

Confidentiality of Reports and Records

Current law provides for release of reports relating to investigations of suspected abuse, neglect, and material abuse.

The bill creates a distinction between records and reports prepared pursuant to investigations of abuse, neglect, and financial exploitation.

Under the bill, reports may be released under the same circumstances as they may be released under current law, with two additions: to a federal, state, or local government agency of this state or any other state that has a need for a report or record in order to carry out its responsibility to protect elder adults-at-risk or adults-at-risk from abuse, neglect, self-neglect, or financial exploitation; or to a reporter who made the report in his or her professional capacity, regarding action to be taken to protect or provide services to the alleged victim of abuse, neglect, financial exploitation, or self-neglect. The bill also provides the agency with the ability to not release reports in certain cases, such as when the agency determines the release might be contrary to the interests of the victim or might cause harm to the victim, or the release might jeopardize an ongoing criminal or civil investigation.

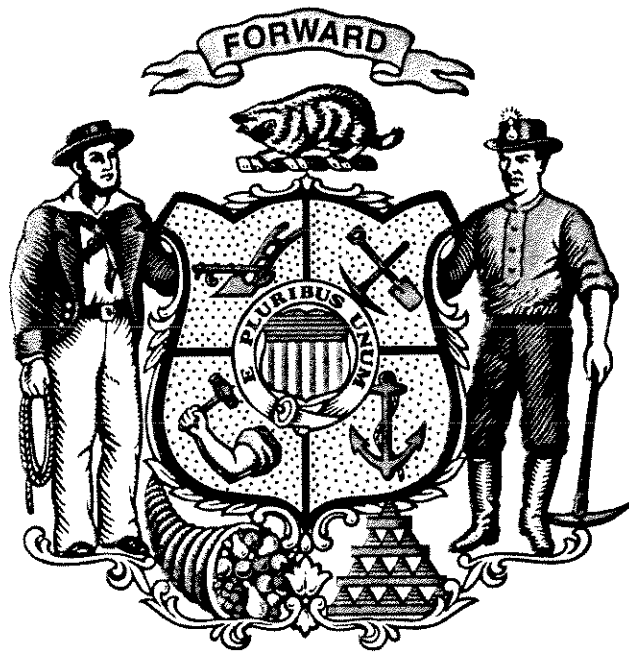
The bill also designates to whom, and under what circumstances, records may be released. The changes in the bill are designed to provide explicit authority for the exchange of investigative information and reports of findings with other relevant agencies.

Revisions to Vulnerable Adult Restraining Order Statutes

Current law provides for a restraining order for a vulnerable adult who is either a developmentally disabled person or has infirmities of aging, mental illness, or other like incapacities and who is: (1) substantially mentally incapable of providing for his or her needs for food, shelter, clothing, or personal or health care; or (2) unable to report cruel maltreatment without assistance.

The bill revises the definitions and terminology in the vulnerable adult restraining order statute to make them conform to the revised definitions created for the elder adult-at-risk and adult-at-risk service system. The bill makes other changes in the restraining order provisions, to provide for greater protections of elder adults-at-risk and adults-at-risk.

Thank you for allowing me to present testimony on behalf of Representative Jeskewitz. Mary Matthias and Laura Rose of the Legislative Council, who staffed the committee, are here to answer any questions you may have on this bill.





UNIFIED COMMUNITY SERVICES
Serving Grant and Iowa Counties

September 29, 2005

Dear Members of the Assembly Committee on Aging and Long Term Care:

I am here to voice opposition to Assembly Bill 539. Although I was a member of the Special Committee on Recodification of Ch. 55, Stats., Placement and Services for Persons with Disabilities, I voted against these provisions and I continue to oppose them as presented in Assembly Bill 539.

My opposition is not based on the merits of this bill, but on legislating another unfunded mandated for human services. According to the Department of Health and Family Services there were 3,937 reports of elder abuse in 2004. The length of staff time required to investigate a specific elder abuse report can vary between 5 hours and several hundred hours per case.

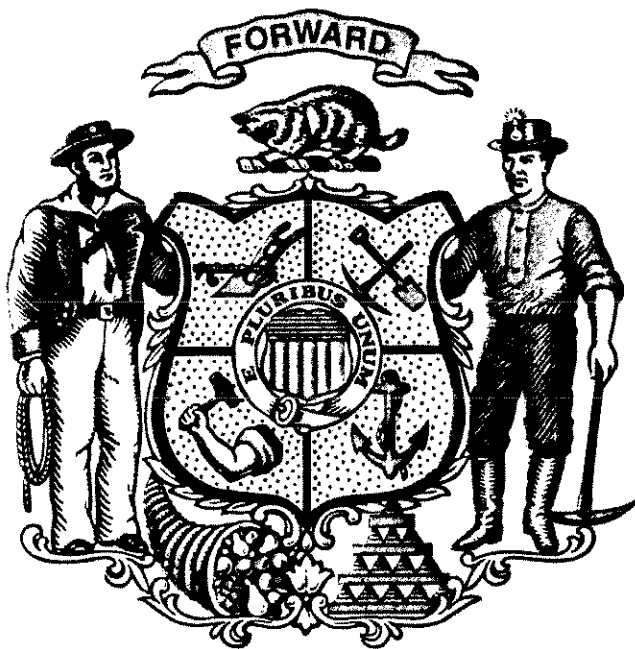
What particularly concerns me is widening the scope of elder abuse to include "elder adult at-risk", defined as "a person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, or financial exploitation." The vagueness of "is at risk" could include any person age 60 or older who is in a nursing home, C.B.R.F., Adult Family Home, or who has a representative payee, an activated power of attorney and the list goes on. In short, as individuals age many are at risk for abuse, neglect or financial exploitation.

My other concern is the language which permits counties to help adult individuals who are at risk due to a physical or mental condition under age 60. By using the word "permit" I believe there is an implied mandate that the counties must assist these adults.


I want to be clear that elder abuse and/or abuse to vulnerable adults is a very important issue. However, Unified Community Services' state financial support is currently \$283,759 below our 1998 level of state support. Human service agencies have recently absorbed new unfunded mandates and if this Bill passes, human services directors need to know what other mandates will be repealed. With growing waiting lists for human service programs and a property tax freeze, I cannot support such a bill unless the legislature appropriates sufficient funding to support this proposed mandate.

Sincerely,

Neal Blackburn, Ph.D.
Unified Community Services
Agency Director



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Testimony in Support of AB 539
Prepared by: Attorney Betsy Abramson, Advisor
Elder Law Section, State Bar of Wisconsin
September 29, 2005
Assembly Aging and Long Term Care Committee

The Elder Law Section of the State Bar of Wisconsin represents over 900 elder law attorneys located in every county of Wisconsin. We are deeply concerned about the needs of elders, with special concerns for those most vulnerable to abuse and neglect – physical, financial, sexual and emotional. We work closely and confidentially with clients to plan for their financial, housing and physical well-being and to avoid being victims of abuse. We help clients access community resources, including county social services, elder abuse agencies and domestic violence programs. Many of us are members of our counties' Elder Abuse Interdisciplinary Teams. Many of us also provide *pro bono* assistance to elders in abusive circumstances who need assistance, for example, revoking a durable power of attorney, securing a temporary restraining order or engaging in financial safety planning. We are in strong support of AB 539 and would like to highlight some of the most important components.

This bill recognizes that the incidence of abuse of elders has grown steadily since Wisconsin's reporting law was first implemented in 1985. These abusive and often criminal acts are being perpetrated by paid caregivers working in both domestic and facility settings, friends, neighbors and family members. The bill recognizes that while Wisconsin already has strong and effective laws requiring counties to establish reporting systems to receive and respond to allegations of abuse and neglect of children and elders, there is no such system for reports of abuse and neglect of vulnerable adults age 18-59. AB 539 will create parallel systems for adults age 18-59 and those 60+. Counties already respond to these cases, but without the authority of law or tools needed.

AB 539 modernizes our laws. Wisconsin's elder abuse (and related) laws work appropriately for circumstances of caregiver stress. However, more recent research consistently concludes that many forms of elder and vulnerable adult abuse are the result of the same "power and control" dynamics present in traditional domestic violence situations. AB 539 expands the range of options (tools) available for workers to ensure an appropriate intervention, including increased connections with law

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enforcement and the criminal justice system, access to financial and other records, additional investigative tools and an improved temporary restraining order for vulnerable adults. These will be critical tools for both social services and law enforcement responses to abuse.

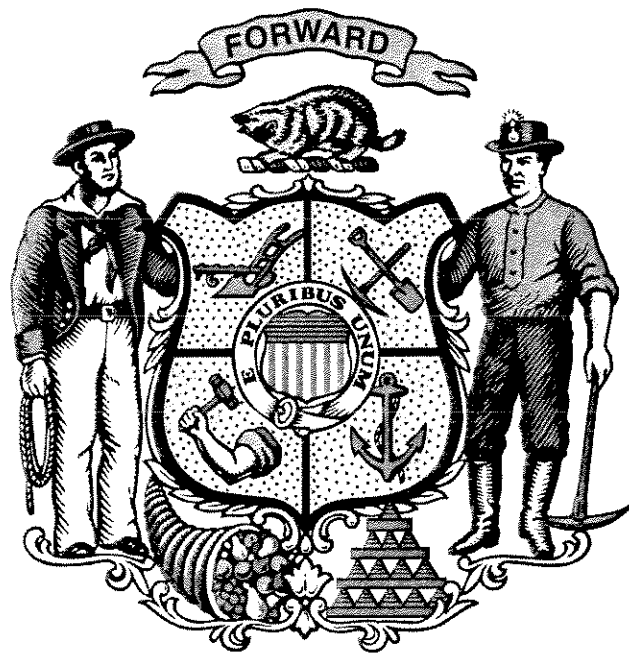
AB 539 standardizes definitions for the term “adults-at-risk,” as well as revised or new definitions for “abuse,” “financial exploitation,” “neglect” and “self-neglect” throughout the civil and criminal laws, to more specifically address the growing incidence of crimes against adults-at-risk including financial exploitation, sexual assault, isolation, harassment and intimidation. AB 539 makes the definitions consistent.

AB 539 requires each county to designate a single access point for all adults-at-risk functions in each county. In our practices, we note that unlike child abuse, most Wisconsin citizens have no idea where or whom to call with any concerns about possible abuse or neglect of any adults-at-risk. AB 539 will result in a single, uniform term along with a single county-selected *access point* for all adults-at-risk functions. Each county will then designate its preferred access point and continue to provide services from any number of agencies, as it deems appropriate.

In sum, this is an important bill that will greatly expand and improve Wisconsin’s ability to respond to the tragically growing number of cases of abuse and neglect of some of Wisconsin’s most vulnerable citizens. We urge support for AB 539.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



BAY AREA AGENCY ON AGING

2900 Curry Lane Suite C

Green Bay, WI 54313

Phone 1-800-991-5578

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920

September 29, 2005

Today we have gathered together for a hearing on Assembly Bill 539, a piece of very important legislation for our vulnerable adults in Wisconsin. This legislation will create uniform guidelines for abuse and exploitation reporting for both adults at risk ages 18 to 59 and the elder adults at risk ages 60 and above. *investigating and*

I have worked with the area of Elder Abuse funding at the Bay Area Agency on Aging for the past several years. As I have attended trainings in those past years, I have become aware that changes needed to be made in the legislation that would clarify the law and reporting. I also became aware that there was a segment of our population that needed the legal guidelines that had been enacted for the elderly. That segment is the group of vulnerable adults age 18-59. Milwaukee County has had legislation for this group in their county for several years.

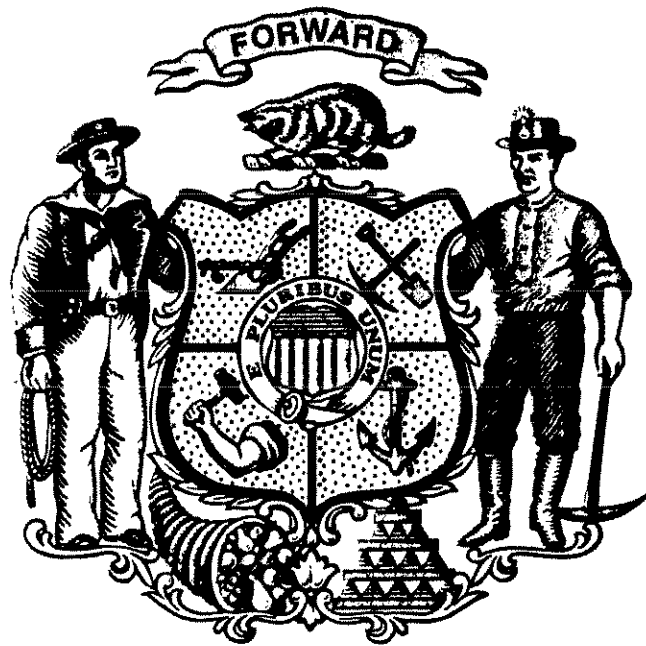
Wisconsin, being a progressive state, needs similar legislation *for the two segments of adults* now, not in the future.

unified
The proposed legislation for adults at risk and elderly adults at risk is practical and common sense for workers in the field and the average citizen in Wisconsin. I would urge passage of Assembly Bill 539.

Alice C. Byrnes

Alice C. Byrnes, Program Specialist
accbyrnes@new.rr.com

*Abuse and exploitation of
vulnerable adults is our
Nation's Greatest Disgrace*



AB 539

**Linda Dawson, Deputy Chief Legal Counsel
Jane Raymond, Advocacy & Protection Systems Developer
Department of Health and Family Services**

Speaking in Support of AB 539

**Assembly Aging and Long-Term Care Committee
September 29, 2005**

I. Introduction

A. If a 59 year old developmentally disabled woman living in her home in Madison was being harmed by a neighbor, who would intervene or provide assistance?

- 1. If she was a child, it would be the Child Protective Services.**
- 2. If she lived in Milwaukee, it would be the County Protective Service Agency.**
- 3. If she was over 60, you'd call the County Elder Abuse Agency.**
- 4. However due to her age, under current law, it is not clear who would or could respond.**

B. Thank you for giving us the opportunity to appear and speak on behalf of the Department of Health and Family Services in support of this critically important legislation. It is a pleasure to be here. This is a moment we have been looking forward to for years.

II. AB 539 is needed legislation that was long in coming.

A. Wisconsin's Adult Protective Services System was created over 30 years ago. Although times have changed, and despite the need to do so, there have been no major modifications to the laws in this area.

B. The initiative to take a close look at the Adult Protection Systems and identify gaps, barriers and ways to improve it began in 2000 under Gov. Thompson and DHFS Secretary Joe Leann. Under Gov. McCallum and Secretary Dubé, the support continued and now, under Gov. Doyle and Secretary Helene Nelson, it has finally become draft legislation.

C. Although the process was lengthy, it involved a careful and thoughtful review in order to identify the areas needing change and the areas of the laws that were not working.

D. The legislation before you is the product of collaboration, communication and coordination among representatives of the Department of Health and Family Services, advocates, care and supportive service providers, law enforcement, county agencies, corporation counsel, the Department of Justice and others.

E. Those representatives worked to address the tensions that the system faces daily in providing services to vulnerable adults and the elderly.

F. The result - this proposed legislation – is a proposal that identifies and establishes systems and solutions to effectively and efficiently protect adults at

risk of harm, ensuring protection for our most vulnerable citizens across the lifespan.

III. The Department of Health and Family Services oversees the Elder Abuse and Adult Protective Services systems. We believe this legislation will give clear authority and direction to county social service agencies and other state and county agencies that respond to situations where adults-at-risk are experiencing harm or are at serious risk of harm.

A. The proposal clarifies definitions and terms about who is affected and why.

1. The harm a vulnerable individual experiences could be the result of self-neglect.

a) Elder Abuse data shows that self-neglect is the category with the highest number of reports (2,047 reported in 2004; 52% of all reports received).

b) Self neglect also includes the highest number of fatalities and life-threatening incidents.

2. Harm that could be caused by others includes, neglect and abuse - physical, sexual, emotional and financial.

3. The proposal provides consistent definitions of abuse, neglect, self-neglect and financial exploitation so individuals and responding agencies know what is reportable.

4. The proposal identifies WHO is reportable – identifying individuals as “adults-at-risk” and “elder adults-at-risk”. (See definitions.)

5. The proposal updates terminology – such as “infirmities of aging” – to use terms and definitions that reflect current knowledge and understanding of conditions affecting the vulnerable and elderly.

B. The proposal provides direction and authority about what can be done when a report is made.

1. Counties are charged with responding to protect vulnerable adults aged 18-59, but (except for Milwaukee County) counties lack clear statutory direction as to how to respond to such reports to determine whether there is a need for protective services.

2. Unlike the child abuse and the elder abuse systems, Ch. 55 –the protective services system that addresses vulnerable adults ages 18-59 - does not currently provide specific criteria under which an investigation can be conducted, what agencies may be engaged in responding to a report, what an investigation includes, who can be

interviewed, what the time frame is for responding to a complaint or report, what records can be obtained, what information can be shared and with whom. It also does not provide protection from liability to good faith reporters.

3. Under current law, Milwaukee County can intervene to assist adults –at-risk under age 60. The statewide Elder Abuse agencies can intervene to assist adults-at-risk who are 60 or older. This proposal creates the authority for counties to investigate and to intervene to assist adults at risk under the age of 60, creating the same provisions statewide and across the lifespan.

C. The proposal modernizes and defines the systems.

1. When ch. 55 was first drafted more than 30 years ago, there was little known about the dynamics of abuse and exploitation in this population. Harm caused was attributed to “stress”. Present in many cases now are the dynamics of “power and control” involving caregivers, family members and neighbors.

2. The protective services system currently responds well in providing supportive services to well-intentioned individuals who are yet unable to provide appropriate care. This law keeps in place and enhances the abilities of the county Elder Abuse or APS agencies to continue to effectively provide those needed services to individuals.

3. The proposal provides additional direction to counties to collaborate and work with law enforcement and other appropriate agencies in responding to abuse and exploitation by perpetrators.

4. The proposal clarifies roles and responsibilities and recognizes that complex cases may require a multiple system response.

D. The proposal expands the tools available for protection.

1. For example, the proposal provides true restraining orders for vulnerable adults, offering protection from further harm.

a) Under current law, the restraining order is a “non interference” order – preventing a person from interfering with services being provided, such as meals or bathing.

b) Proposal permits injunctive relief to prevent contact by a person causing physical, emotional or financial harm to a vulnerable adult.

2. The proposal provides for a restraining order and injunction with an understanding of the needs of this population – e.g., acknowledging

the need to protect service animals, providing the guardian with the ability to seek a restraining order on behalf of a ward.

E. The proposal requires reporting abuse, neglect or self-neglect to county agencies in limited, serious situations.

1. Wisconsin law recognizes and is committed to self-determination.
2. This proposal retains that tradition, but requires certain professionals to report to the county protective service agency certain egregious cases of abuse, neglect and exploitation when the individual asks for help, or when there is reason to believe the person is at imminent risk of serious harm, death, sexual assault or significant property loss and the person is either unable to report (or is unable to make an informed decision about whether to report) or other adults at risk are at such risk.
3. Reporters are given greater protections (immunity) for those who report in good faith.

F. The proposal clarifies which individuals or agencies get what.

1. Currently there are gaps preventing agencies from exchanging information.
2. The proposal clarifies the law to protect privacy and to better coordinate services.

G. The proposal creates a single point of access for reporting harm or suspected harm of adults-at-risk.

1. Most people know where and how to report child abuse or neglect.
2. Most people do not know where or how to report self-neglect, abuse, neglect and financial exploitation involving vulnerable adults or the elderly.
3. The proposal supports the development of a single point of access in each county for reporting harm or suspected harm involving adults-at-risk.
4. It lets each county determine how to provide the services after a report is made, but it gives reporters and other concerned individuals one place to access the protective services system.

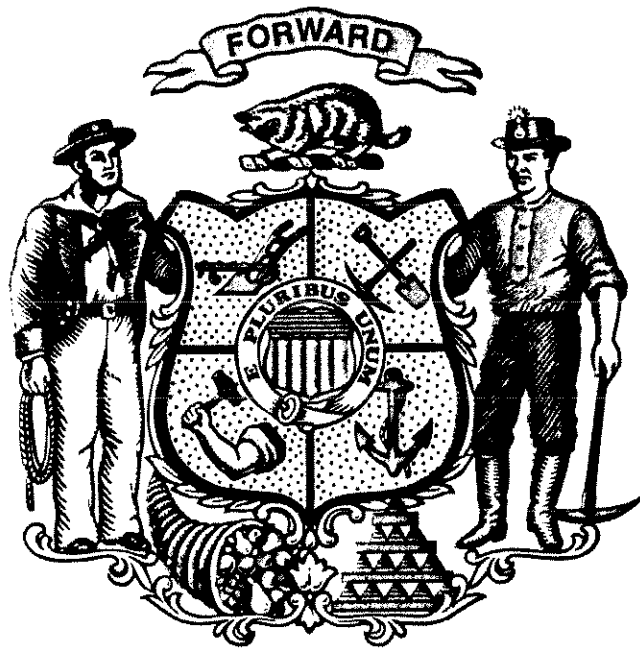
IV. Finally, the proposal creates a unified system of protection to vulnerable individuals across the lifespan and provides county and state agencies and individuals with needed clear direction and authority.

A. Providing clear direction and authority in the statutes will permit earlier intervention and provide needed services before significant harm is caused.

B. It's time.


V. Thank you again for your consideration of this important and needed proposed legislation. We also wish to thank Sen. Wirch and Rep. Jeskewitz for their leadership on the Chapter 55 Special Legislative Committee, the Committee members for supporting the initiative and to Laura Rose, Mary Matthias and Debra Kennedy for their work in drafting the legislation.

VI. We look forward to working with you as it works its way through the process. We are available to assist you at any time.



MEMORANDUM

TO: Honorable Members of the Assembly Committee on Aging and Long-Term Care

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate 

DATE: September 29, 2005

SUBJECT: Assembly Bill 539

The Wisconsin Counties Association (WCA) opposes Assembly Bill 539 relating to adult protective services.

The members of the Special Committee on the Recodification of Chapter 55 met numerous times throughout the 2002 interim session to tackle the tough assignment of revising Chapter 55 regarding the placement of, and services for, people with disabilities. County governments have the statutory responsibility for the care, well-being and treatment of vulnerable populations, meaning we must provide and fund the services necessary. While in theory WCA believes that this legislation represents good public policy, we must follow the lead of the county representatives who served on the committee and oppose Assembly Bill 539 not on its merits but because of the fiscal impact it places on county government.

Counties vehemently disagree with the fiscal note prepared by the Department of Health and Family Services on this legislation. Counties across the state have indicated that additional adult protective services staff will be necessary to implement the provisions included in Assembly Bill 539. In addition, additional funding will be needed for the provision of services.

The bill permits counties to assist persons who are at risk of experiencing abuse, neglect or financial exploitation who are under age 60. In addition, the draft creates parallel provisions in ch.55 to the elder abuse system in chapter 46 to permit abuse investigations and follow-up services to be provided on behalf of these adults-at-risk. The bill also creates a provision requiring certain categories of persons to file reports in situations where the elder person is facing a serious risk of harm or even death. Once a report is made, counties are required to investigate the report and provide services to the

individual if the individual accepts the offer. The bill also provides more specificity with regard to what types of services and responses may be made by an agency if the person is found to be the subject of abuse or neglect or financial exploitation. All of these provisions have the potential to increase county costs.

While expanding the age of "at-risk" to include individuals aged 18 to 59 is not mandated, it certainly creates an expectation in statute that counties will provide the service. This will result in additional investigation, documentation, court referrals, preparation time, as well as potentially significant amounts of additional services being required by individuals in this age range. Counties that do not have the capacity to conduct additional investigations and provide services to individuals aged 18 to 59 will be placed in untenable situations - subjected to criticism, if not lawsuits - for failing to act. In addition, the creation of mandatory reporters of abuse or neglect will create the need for additional investigations and services.

Unfortunately for counties, this bill is about capacity and cost. With counties subjected to levy limits, new funding for the increased services called for in the bill is nonexistent. If this bill is adopted, other populations will see a decrease in their level of services as the only means to fund the new requirements. Staff responsible for at-risk populations is currently stretched thin implementing the mandated ICF-MR downsizing initiative. Many counties are cutting staff to comply with the state-imposed levy limits, as well as reducing funding for important purchased services such as supportive home care for the elderly or eliminating programs altogether. In many ways, this bill is counterproductive as the individuals that seek services for small issues may become the vulnerable adult if counties cannot address their issues.

A good idea that is underfunded will not give the results that are needed in this already neglected area. Given the fact that our elderly population is increasing and county budgets are in crisis, the situation will not improve any time soon. Assembly Bill 539 is a case of good public policy that needs to be funded. Without state funding, this will simply be another unfunded mandate.

WCA respectfully requests that before this bill moves forward, DHFS work with the counties to provide a proper fiscal estimate to the bill. Then, the state must find the funding for implementation.

Thank you for considering our comments.

Chairman Townsend & members of the Committee
Thank you for allowing me to testify to Assembly Amendment 1
re AB 539

I am a third generation Christian Scientist and my twenty and twenty-two year old daughters are also Christian Scientists. We have never had a need to turn to medicine or medical treatment in all of our years. Prayer and spiritual means alone have brought us healings of broken bones, childhood diseases, painful growths, a painful debilitating stomach condition and a heart condition. Prayer also brought my two daughters and me through 2 natural childbirths in my home with a physician on the case by arriving too late for the deliveries.

Financial struggles
even helped me
through
deliveries

This scientific prayer has also been a preventative form of treatment and between us, my daughters and I were absent a total of 3 days of school throughout all of our schooling including college.

Christian Science prayer and treatment have proven very effective in my life or I wouldn't have relied on them. And I'm only asking for you support of this amendment so that other Christian Scientists and I may continue to rely on prayer alone, in lieu of medicine, for our health care without having a civil or criminal charge of abuse or neglect placed on ourselves or our families.



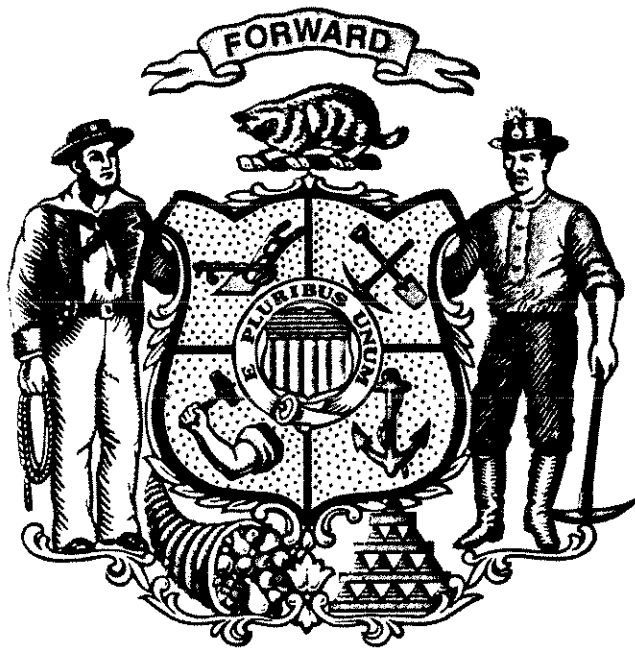
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Testimony
of the Board on Aging and Long Term Care
before the
Assembly Committee on Aging and Long Term Care

Thursday, 29 Sep 2005

Chairman Townsend, members of the committee, good afternoon. I am William Donaldson, Counsel to the Board on Aging and Long Term Care. I appear this morning in support of AB 539, with but a single concern.

AB 539 represents a much needed and long overdue improvement in the structure and effectiveness of Wisconsin's adult protective services system. The bill's recognition of the prevalence of abuse of adults in all age cohorts, its improved ability to address domestic violence, its standardization of definitions within the law, and its strengthened protection of persons who report abuse are all welcomed by our agency and have our full and enthusiastic support. The bill streamlines the processes for elder-at-risk agencies at the county level and it clarifies the rules of confidentiality of client information.

This last point brings me to the issue that is of serious concern to the Board on Aging and Long Term Care. Under both state and federal law, the Board's Long Term Care Ombudsman Program is held to a strict requirement of confidentiality of client information. These laws prohibit the agency from releasing any client-identifiable information unless we have first obtained the consent of the individual or the individual's legal surrogate or have been commanded to do so by an order of a court.

Let me say, at this point, that the Ombudsman program staff are eager to involve the elder-at-risk professionals in all suspected cases of abuse that we are privy to. Ombudsmen will advocate in every case to try to convince the victim of abuse of the importance of reporting and the willingness of this agency and the elder-at-risk professionals to protect the victim from retaliation. From experience, though, it is clear that some people will resist giving consent to report for any number of reasons. If a client remains resolute in her refusal to consent to the release of the information concerning her situation, the Ombudsman's hands are tied.

*Jana Rose
I think this
is an issue*

AB 539, however, at section 28, defines staff of the Board on Aging and Long Term Care as "state officials." Later, at section 44, the bill requires a state official who has been informed of an instance of suspected elder abuse to forward that information to the local elder-at-risk agency. This sets up a structural conflict of the laws. If the Ombudsman who receives such a report is not given permission by the client to forward the information to the elder-at-risk agency, she cannot do so without violating the Ombudsman enabling law. If the Ombudsman does not make the report, she is in violation of the provisions of AB 539. Either way, one law or the other will be violated if AB 539 is enacted without correcting this problem.

It has been the consistent position of this agency that the promise of confidentiality is the cornerstone of an Ombudsman's ability to effectively do the job of advocating for the interests of our clients. Without this promise and assurance, residents are less willing to tell us their problems and entrust us with the duty of trying to resolve them. Candor from our clients is an indispensable factor in doing the Ombudsman's work. That is why both the Wisconsin Legislature and the Congress of the United States found it necessary to include this strong requirement in the Ombudsman Program enabling statutes. The above mentioned sections of AB 539 threaten to undermine that requirement.

The Board on Aging and Long Term Care recommends that an amendment be drafted that will remove the Board from the definition of "state official" in section 28 to eliminate the requirement of reporting. This would not, in any way, interfere with the Ombudsman's goal of convincing the client to avail herself of all possible avenues of assistance. We have already discussed this potential solution with you in a letter, and we have spoken with Rep. Krusick about the possibility of presenting such an amendment before AB 539 comes to executive session. We ask for the full committee's support of this proposal when it is presented.

Again, but for this single concern, the Board on Aging and Long Term Care emphatically states its support for AB 539 and we thank the many people who have labored for so long to draft the bill and bring it this far.

I will be happy to answer any questions that you may have at this time.