



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0693/P2
EAW:kjf

DOA:.....Rice, BB0071 - Child care background check modifications

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

d-nac

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

1. Background checks for child care programs

This bill makes various definitional changes, changes who can conduct a rehabilitation review, and changes the timeline for an appeal of a decision of DCF in the context of the background check requirements for people who work or reside at a child care program.

Under current law, DCF is required to run a background check on caregivers and nonclient residents who work or reside at a child care program. This bill changes the definition of "caregiver" and adds the term "noncaregiver employee," to describe an employee or a contractor of a child care program who is not a caregiver, but whose work provides opportunities for unrestricted access to children in care. The bill also changes the term "nonclient resident" to "household member." Under the bill, DCF is required to run a background check on all caregivers, noncaregiver employees, and household members of a child care program.

Under current law, if a person has been convicted or adjudicated delinquent of a serious crime, that individual may not be a caregiver or nonclient resident of a child care program. This bill adds arson, patronizing a child, chronic or repeated neglect, and leaving a child unattended in a child care vehicle to the definition of "serious crime."

Under current law, certain offenses are only considered serious crimes if the person who is subject to the background check completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by DOC less than five years before the date of the background check. Under current law, a person may demonstrate his or her rehabilitation with respect to these serious crimes if he or she completed his or her sentence or was discharged by DOC less than five years before the date of the background check. If a person successfully demonstrates his or her rehabilitation under current law, he or she may be allowed to be a caregiver or nonclient resident of a child care program. Under the bill, these offenses are always considered a serious crime, no matter how long ago a person completed his or her sentence or was discharged by DOC, but a person may demonstrate rehabilitation if he or she has completed his or her sentence or was discharged by DOC more than five years ago. Under the bill, if a person successfully demonstrates his or her rehabilitation, he or she may be allowed to be a caregiver, noncaregiver employee, or household member of a child care program.

Under current law, DCF, the county department of human services or social services (county department), the agency under contract with the county department, or the school board that issued a license, certification, or contract to a child care program may conduct a rehabilitation review for the purpose of background checks. This bill removes the ability of county departments, agencies under contract with a county department, and school boards to conduct rehabilitation reviews.

Under current law, a person who is the subject of DCF's report on the results of a background check may appeal DCF's decision on whether the person is eligible to work or reside at the child care program. An appeal must be submitted within 60 days of the decision, unless DCF grants an extension. This bill changes the time to appeal the decision to ten days, unless DCF grants an extension.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:


1 **SECTION 1.** 48.651 (3) (a) of the statutes is amended to read:

2 48.651 (3) (a) If a ~~child care provider certified under sub. (1) is convicted of a~~
3 ~~serious crime, as defined in s. 48.686 (1) (c), or if a caregiver specified in s. 48.686 (1)~~
4 ~~(ag) 1. or a nonclient resident, as defined in s. 48.686 (1) (bm), of the person subject~~
5 ~~to a background check under s. 48.686 (2) who operates, works at, or resides at a child~~
6 ~~care provider certified under sub. (1) is convicted or adjudicated delinquent for~~
7 ~~committing a serious crime, as defined in s. 48.686 (1) (c), on or after his or her 10th~~

1 birthday, or if the department provides written notice of a decision under s. 48.686
2 (4p) that the ~~child care provider, caregiver, or nonclient resident person~~ is ineligible
3 ~~for certification, employment, or residence to operate, work at, or reside~~ at the child
4 care provider, the department in a county having a population of 750,000 or more,
5 a county department, or an agency contracted with under sub. (2) shall revoke the
6 certification of the child care provider immediately upon providing written notice of
7 revocation and the grounds for revocation and an explanation of the process for
8 appealing the revocation.

9 SECTION 2. 48.651 (3) (b) of the statutes is amended to read:

10 48.651 (3) (b) If a ~~child care provider certified under sub. (1) is the subject of~~
11 ~~a pending criminal charge alleging that the person has committed a serious crime,~~
12 ~~as defined in s. 48.686 (1) (c), or if a caregiver specified in s. 48.686 (1) (ag) 1. or a~~
13 ~~nonclient resident, as defined in s. 48.686 (1) (bm), of the person subject to a~~
14 background check under s. 48.686 (2) who operates, works at, or resides at a child
15 care provider certified under sub. (1) is the subject of a pending criminal charge or
16 delinquency petition alleging that the person has committed a serious crime on or
17 after his or her 10th birthday, the department in a county having a population of
18 750,000 or more, a county department, or an agency contracted with under sub. (2)
19 shall immediately suspend the certification of the child care provider until the
20 department, county department, or agency obtains information regarding the final
21 disposition of the charge or delinquency petition indicating that the person is not
22 ineligible to be certified under sub. (1) operate, work at, or reside at the child care
23 provider.

24 SECTION 3. 48.685 (1) (c) 2. of the statutes is amended to read: 

1 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
2 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,
3 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05,
4 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am),
5 948.12, 948.13, 948.21 (2), 948.215, 948.30, or 948.53.

6 SECTION 4. 48.685 (4m) (a) 1. of the statutes is amended to read:

7 48.685 (4m) (a) 1. That the person has been convicted of a serious crime or
8 adjudicated delinquent ~~on or after his or her 10th birthday~~ for committing a serious
9 crime or that the person is the subject of a pending criminal charge or delinquency
10 petition alleging that the person has committed a serious crime ~~on or after his or her~~
11 ~~10th birthday~~.

12 SECTION 5. 48.685 (4m) (b) 1. of the statutes is amended to read:

13 48.685 (4m) (b) 1. That the person has been convicted of a serious crime or
14 adjudicated delinquent ~~on or after his or her 10th birthday~~ for committing a serious
15 crime or that the person is the subject of a pending criminal charge or delinquency
16 petition alleging that the person has committed a serious crime ~~on or after his or her~~
17 ~~10th birthday~~.

18 SECTION 6. 48.686 (1) (ac) of the statutes is created to read:

19 48.686 (1) (ac) "Approval" means a child care center license under s. 48.65, a
20 child care provider certification under s. 48.651, or a contract with a child care
21 provider under s. 120.13 (14).

22 SECTION 7. 48.686 (1) (ag) 1. (intro.) of the statutes is repealed.

23 SECTION 8. 48.686 (1) (ag) 1. a. of the statutes is renumbered 48.686 (1) (ag) 1.
24 and amended to read:

1 48.686 (1) (ag) 1. An employee or independent contractor of a child care
2 program who is involved in the care or supervision of clients.

3 **SECTION 9.** 48.686 (1) (ag) 1. b. of the statutes is renumbered 48.686 (1) (ag) 1m.
4 and amended to read:

5 48.686 (1) (ag) 1m. ~~Involved in the care or supervision of clients of a child care~~
6 ~~program or~~ A person who has direct contact and unsupervised access to clients of a
7 child care program.

8 **SECTION 10.** 48.686 (1) (ar) of the statutes is repealed.

9 **SECTION 11.** 48.686 (1) (bm) of the statutes is amended to read:

10 48.686 (1) (bm) ~~“Nonclient resident”~~ “Household member” means a person who
11 is age 10 or older, who resides, or is expected to reside, at a child care program, and
12 who is not a client of the child care program or caregiver.

13 **SECTION 12.** 48.686 (1) (bo) of the statutes is created to read:

14 48.686 (1) (bo) “Licensing entity” means all of the following:

- 15 1. The department when licensing a child care center under s. 48.65.
- 16 2. The department in a county with a population of 750,000 or more, a county
17 department, or an agency or Indian tribe contracted with under s. 48.651 (2) when
18 certifying a child care provider under s. 48.651.
- 19 3. A school board when contracting with a child care provider under s. 120.13
20 (14).

21 **SECTION 13.** 48.686 (1) (bp) of the statutes is created to read:

22 48.686 (1) (bp) “Noncaregiver employee” means a person who provides services
23 to a child care program as an employee or a contractor and is not a caregiver, but
24 whose work at the child care program provides the ability to move freely throughout

1 the premises and opportunities for interactions with clients of the child care
2 program.

3 **SECTION 14.** 48.686 (1) (c) 5. of the statutes is amended to read:

4 48.686 (1) (c) 5. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21,
5 940.225 (1), (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.02,
6 943.03, 943.04, 943.10 (2), 943.32 (2), or 948.081, 948.21 (1) (a), 948.215, or 948.53
7 (2) (b) 1.

8 **SECTION 15.** 48.686 (1) (c) 9. of the statutes is amended to read:

9 48.686 (1) (c) 9. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b),
10 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205,
11 940.207, 940.25, or 943.23 (1g), ~~a violation of s. 948.51 (2) that is a felony under s.~~
12 ~~948.51 (3) (b) or (e), a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under~~
13 ~~s. 346.65 (2) (am) 4., 5., 6., or 7. or (f), (2j) (d), or (3m), or an offense under ch. 961 that~~
14 ~~is a felony, if the person completed his or her sentence, including any probation,~~
15 ~~parole, or extended supervision, or was discharged by the department of corrections,~~
16 ~~less than 5 years before the date of the investigation under sub. (2) (am).~~

17 **SECTION 16.** 48.686 (1) (c) 10. of the statutes is amended to read:

18 48.686 (1) (c) 10. A violation of s. 948.22 (2), ~~if the person completed his or her~~
19 ~~sentence, including any probation, parole, or extended supervision, or was~~
20 ~~discharged by the department of corrections, less than 5 years before the date of the~~
21 ~~investigation under sub. (2) (am), unless the person has paid all arrearages due and~~
22 ~~is meeting his or her current support obligations.~~

23 **SECTION 17.** 48.686 (2) (a) of the statutes is amended to read:

24 48.686 (2) (a) ~~The department~~ A licensing entity shall require any person who
25 ~~applies for issuance of an initial license~~ approval to operate a child care center under

1 ~~s. 48.65, a school board shall require any person who proposes an initial contract with~~
2 ~~the school board under s. 120.13 (14), and the department in a county having a~~
3 ~~population of 750,000 or more, a county department, or an agency contracted with~~
4 ~~under s. 48.651 (2) shall require any child care provider who applies for initial~~
5 ~~certification under s. 48.651 program to submit the information required for a~~
6 ~~background check request under par. (ag). ~~A~~ If the licensing entity is a school board,~~
7 ~~county department, or contracted agency or tribe, the licensing entity shall submit~~
8 ~~the completed background information request to the department.~~

9 SECTION 18. 48.686 (2) (ab) of the statutes is amended to read:

10 48.686 (2) (ab) Each child care program shall submit a request to the
11 department for a ~~eriminal~~ background check for each potential caregiver,
12 noncaregiver employee, and potential nonclient resident household member prior to
13 the date on which an individual becomes a caregiver, noncaregiver employee, or
14 nonclient resident household member, and at least once during every 5-year period
15 for each existing caregiver, noncaregiver employee, or nonclient resident household
16 member, except if all of the following apply to the individual:

17 1. The caregiver, ~~potential caregiver, nonclient resident, or potential nonclient~~
18 ~~resident individual~~ has received a background check as described in par. (am) while
19 employed working or seeking employment by work with another child care program
20 within the state within the last 5 years.

21 2. The department provided to the child care program under subd. 1. a
22 qualifying background check result for the caregiver, ~~potential caregiver, nonclient~~
23 ~~resident, or potential nonclient resident individual.~~

24 3. The caregiver, ~~potential caregiver, nonclient resident, or potential nonclient~~
25 ~~resident is employed by individual works~~ or resides at a child care program within

1 the state or has been separated from employment work or residence at a child care
2 program within the state for a period of not more than 180 consecutive days.

3 **SECTION 19.** 48.686 (2) (ag) 1. b. of the statutes is amended to read:

4 48.686 (2) (ag) 1. b. Any additional information that the department deems
5 necessary to perform the ~~eriminal~~ background check.

6 **SECTION 20.** 48.686 (2) (ag) 2. of the statutes is amended to read:

7 48.686 (2) (ag) 2. A request for a ~~eriminal~~ background check is considered
8 submitted on the day that the department receives all of the information required
9 under subd. 1.

10 **SECTION 21.** 48.686 (2) (ag) 3. of the statutes is amended to read:

11 48.686 (2) (ag) 3. The requester of a background check under this paragraph
12 shall submit all fees required by the department pursuant to the instructions
13 provided by the department, not to exceed the actual cost of conducting the ~~eriminal~~
14 background check.

15 **SECTION 22.** 48.686 (2) (am) (intro.) of the statutes is amended to read:

16 48.686 (2) (am) (intro.) Upon receipt of a request submitted under par. (a) or
17 (ab), the department shall obtain all of the following with respect to ~~a caregiver or~~
18 ~~a nonclient resident who is not under 10 years of age~~ the individual who is the subject
19 of the request:

20 **SECTION 23.** 48.686 (2) (am) 1. of the statutes is amended to read:

21 48.686 (2) (am) 1. A fingerprint-based or name-based criminal history search
22 from the records maintained by the department of justice.

23 **SECTION 24.** 48.686 (2) (am) 10. of the statutes is amended to read:

24 48.686 (2) (am) 10. A search of the department's ~~eriminal~~ background check
25 records.

1 **SECTION 25.** 48.686 (2) (ar) of the statutes is amended to read:

2 48.686 (2) (ar) After receiving a request under par. (a) or (ab), the department
3 shall conduct the ~~eriminal~~ background check as expeditiously as possible and shall
4 make a good faith effort to complete all components of the ~~eriminal~~ background check
5 no later than 45 days after the date on which the request was submitted.

6 **SECTION 26.** 48.686 (2) (bd) of the statutes is amended to read:

7 48.686 (2) (bd) Notwithstanding par. (am), the department is not required to
8 obtain the information specified in par. (am) 1. to 10., with respect to a ~~person~~
9 household member under 18 years of age whose background check request under par.
10 (ag) indicates that the ~~person~~ household member is not ineligible to be permitted to
11 reside at a child care program for a reason specified in sub. (4m) (a) 1. to 8. and with
12 respect to whom the department otherwise has no reason to believe that the person
13 is ineligible to be permitted to reside at the child care program for any of those
14 reasons. This paragraph does not preclude the department from obtaining, at its
15 discretion, the information specified in par. (am) 1. to 10. with respect to a ~~person~~
16 household member described in this paragraph ~~who is a nonclient resident or a~~
17 ~~potential nonclient resident of a child care program.~~

18 **SECTION 27.** 48.686 (3) (am) of the statutes is amended to read:

19 48.686 (3) (am) Every year or at any time that the department considers
20 appropriate, the department may request the information specified in sub. (2) (am)
21 1. to 5. for all caregivers under sub. (1) (ag) 2., ~~nonclient residents of such a caregiver,~~
22 ~~and caregivers under sub. (1) (ag) 1. who have direct contact with clients.~~ For the
23 purposes of this paragraph, “direct contact” means ~~face-to-face physical proximity~~
24 ~~to a client that affords the opportunity to commit abuse or neglect of a client or to~~

1 ~~misappropriate the property of a client, noncaregiver employees, and household~~
2 ~~members.~~

3 **SECTION 28.** 48.686 (4m) (a) (intro.) of the statutes is amended to read:

4 48.686 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
5 par. (ad) and sub. (5), ~~the department~~ a licensing entity may not license, or continue
6 or renew the license of, a person to operate a child care center under s. 48.65, ~~the~~
7 ~~department in a county having a population of 750,000 or more, a county~~
8 ~~department, or an agency contracted with under s. 48.651 (2)~~ may not certify a child
9 care provider under s. 48.651, a school board may not contract with a person under
10 s. 120.13 (14) issue an approval to operate a child care program to a person, and a
11 child care program may not employ or contract with a caregiver specified in sub. (1)
12 ~~(ag) 1. or noncaregiver employee or permit a household member to reside at the child~~
13 ~~care program~~ if the ~~department, county department, contracted agency, school~~
14 ~~board, licensing entity~~ or child care program knows or should have known any of the
15 following:

16 **SECTION 29.** 48.686 (4m) (a) 1. of the statutes is amended to read:

17 48.686 (4m) (a) 1. That the person has been convicted of a serious crime or
18 adjudicated delinquent ~~on or after his or her 10th birthday~~ for committing a serious
19 crime or that the person is the subject of a pending criminal charge or delinquency
20 petition alleging that the person has committed a serious crime ~~on or after his or her~~
21 ~~10th birthday.~~

22 **SECTION 30.** 48.686 (4m) (a) 2. of the statutes is created to read:

23 48.686 (4m) (a) 2. That the person is registered or is required to be registered
24 on a state sex offender registry or repository or the national sex offender registry.

25 **SECTION 31.** 48.686 (4m) (a) 5. of the statutes is amended to read:

1 48.686 (4m) (a) 5. That the department has determined the person ineligible
2 to be licensed receive an approval to operate a child care center under s. 48.65, to be
3 certified to operate a child care provider under s. 48.651, to contract with a school
4 board under s. 120.13 (14) program, to be employed as a caregiver at by a child care
5 program, or to be a ~~nonclient resident at~~ household member of a child care program.

6 **SECTION 32.** 48.686 (4m) (a) 6. of the statutes is amended to read:

7 48.686 (4m) (a) 6. That the person has refused to provide information under
8 sub. (2) (ag), or that the person refused to participate in, cooperate with, or submit
9 required information for the ~~eriminal~~ background check described in sub. (2) (am),
10 including fingerprints.

11 **SECTION 33.** 48.686 (4m) (a) 7. of the statutes is amended to read:

12 48.686 (4m) (a) 7. That the person knowingly made a materially false
13 statement in connection with the person's ~~eriminal~~ background check described in
14 sub. (2).

15 **SECTION 34.** 48.686 (4m) (a) 8. of the statutes is amended to read:

16 48.686 (4m) (a) 8. That the person knowingly omitted material information
17 requested in connection with the person's ~~eriminal~~ background check conducted
18 under sub. (2).

19 **SECTION 35.** 48.686 (4m) (ad) of the statutes is amended to read:

20 48.686 (4m) (ad) ~~The department~~ A licensing entity may ~~license~~ issue an
21 approval to operate a child care center under s. 48.65; ~~the department in a county~~
22 ~~having a population of 750,000 or more, a county department, or an agency~~
23 ~~contracted with under s. 48.651 (2) may certify a child care provider under s. 48.651;~~
24 ~~and a school board may contract with a person under s. 120.13 (14),~~ program to a
25 person conditioned on the receipt of the information specified in sub. (4p) (a)

1 indicating that the person is not ineligible to be so licensed, certified, or contracted
2 with for a reason specified in par. (a) 1. to 8.

3 **SECTION 36.** 48.686 (4m) (c) of the statutes is amended to read:

4 48.686 (4m) (c) A child care program may employ or contract with a potential
5 caregiver or noncaregiver employee or permit a potential ~~nonclient resident~~
6 household member to reside at the child care program for up to 45 days from the date
7 a background check request is submitted to the department pending the completion
8 of the department's report under sub. (4p) (a) if the department provides a
9 preliminary report under sub. (4p) (c) to the child care program indicating that the
10 ~~potential caregiver or nonclient resident~~ individual is not ineligible to work or reside
11 at a child care program. At all times that ~~children in care~~ clients of a child care
12 program are present, an individual who received a qualifying result on a background
13 check described in sub. (2) (am) within the past 5 years must supervise a potential
14 ~~employee caregiver, noncaregiver employee, or nonclient resident~~ household
15 member permitted to work or reside at the child care program under this paragraph.

16 **SECTION 37.** 48.686 (4p) (a) of the statutes is amended to read:

17 48.686 (4p) (a) The department shall provide the results of the ~~criminal~~
18 background check to the child care program in a written report that indicates only
19 that the individual on whom the background check was conducted is eligible or
20 ineligible for employment or to reside at the child care program, without revealing
21 any disqualifying ~~crime~~ offense or other information regarding the individual.

22 **SECTION 38.** 48.686 (4p) (b) of the statutes is amended to read:

23 48.686 (4p) (b) The department shall provide the results of the ~~criminal~~
24 background check to the individual on whom the background check was conducted
25 in a written report that indicates whether the individual is eligible or ineligible for

1 employment or to reside at the child care program. If the individual is ineligible for
2 employment or to reside at the child care program, the department's report shall
3 include information on each disqualifying ~~crime~~ offense and information on the right
4 to appeal.

5 **SECTION 39.** 48.686 (4p) (c) of the statutes is amended to read:

6 48.686 (4p) (c) Before the department completes its report under par. (a), a
7 caregiver under sub. (1) (ag) 2. may submit a written request to the department for
8 a preliminary report indicating whether a potential caregiver, noncaregiver
9 employee, or ~~nonclient resident~~ household member is eligible to work or reside at a
10 child care program under sub. (4m) (c). If the department receives such a request,
11 it shall provide a written preliminary report to that caregiver indicating whether the
12 individual is barred from ~~employment as a caregiver~~ working or ~~residence as a~~
13 ~~nonclient resident~~ residing at a child care program on the basis of a background
14 check under sub. (2) (am) 1. or 7. If the individual is ineligible ~~for employment or~~
15 ~~residence~~ to work or reside at a child care program based on the results of the
16 preliminary report, the department shall also provide a preliminary report to the
17 individual containing information related to each disqualifying ~~crime~~ offense.

18 **SECTION 40.** 48.686 (4p) (d) of the statutes is amended to read:

19 48.686 (4p) (d) The results of a report under par. (c) may not be appealed by
20 the individual until receipt of the department's report under par. (b) following
21 completion of all components of the ~~criminal~~ background check.

22 **SECTION 41.** 48.686 (4s) (a) of the statutes is amended to read:

23 48.686 (4s) (a) An individual who is the subject of the department's report on
24 the results of a ~~criminal~~ background check may appeal the department's decision.
25 Only the person who is the subject of the department's report may appeal the

1 department's decision. Neither the child care program nor any other person may
2 appeal the department's decision.

3 **SECTION 42.** 48.686 (4s) (b) of the statutes is amended to read:

4 48.686 (4s) (b) An appeal request shall be submitted to the department at the
5 address, e-mail address, or fax number identified in the statement of appeal rights
6 no later than ~~60~~ 10 days after the date of the department's decision, unless the
7 appellant requests, and the department grants, an extension for a specific amount
8 of time prior to expiration of the ~~60~~ 10 day appeal period. Extensions may be granted
9 for good cause shown.

10 **SECTION 43.** 48.686 (4s) (f) of the statutes is amended to read:

11 48.686 (4s) (f) The department shall sustain the results of its ~~criminal~~
12 background check report if supported by a preponderance of the available evidence.

13 **SECTION 44.** 48.686 (4s) (m) of the statutes is amended to read:

14 48.686 (4s) (m) Notwithstanding s. 19.35, the department may not publicly
15 release or disclose the results of any ~~criminal~~ individual background report it issues,
16 except that the department may release aggregated data by crime as listed in sub.
17 (1) (c) from ~~criminal~~ background check results so long as the data does not contain
18 personally identifiable information. The department may disclose and use
19 information obtained in conducting ~~criminal~~ background checks as necessary during
20 an appeal or reconsideration under this subsection or for another lawful purpose.

21 **SECTION 45.** 48.686 (5) of the statutes is repealed and recreated to read:

22 48.686 (5) (a) A person may have the opportunity to demonstrate his or her
23 rehabilitation to the department or to a tribe authorized to conduct a rehabilitation
24 review under sub. (5d) if any of the following apply:

1 1. An investigation under sub. (2) (am) indicates that sub. (4m) (a) 2., 3., or 4.
2 applies to the person.

3 2. An investigation under sub. (2) (am) indicates that the person has been
4 convicted or adjudicated delinquent of a serious crime as specified under sub. (1) (c)
5 9. or for a violation of the law of any other state or United States jurisdiction that
6 would be a violation listed in sub. (1) (c) 9. if committed in this state, and the person
7 completed his or her sentence, including any probation, parole, or extended
8 supervision, or was discharged by the department of corrections, more than 5 years
9 before the date of the investigation under sub. (2) (am).

10 (b) If the department or tribe determines that the person has demonstrated
11 rehabilitation in accordance with procedures established by the department by rule
12 or by the tribe and by clear and convincing evidence, the prohibition in sub. (4m) (a)
13 does not apply.

14 **SECTION 46.** 48.686 (5c) (a) of the statutes is renumbered 48.686 (5c).

15 **SECTION 47.** 48.686 (5c) (b) of the statutes is repealed.

16 **SECTION 48.** 48.686 (5c) (c) of the statutes is repealed.

17 **SECTION 49.** 48.686 (5g) of the statutes is amended to read:

18 **48.686 (5g)** On January 1 of each year, the department shall submit a report
19 to the legislature under s. 13.172 (2) that specifies the number of persons in the
20 previous year who have requested to demonstrate that they have been rehabilitated
21 under sub. (5) (a), the number of persons who successfully demonstrated that they
22 have been rehabilitated under sub. (5) (a), and the reasons for the success or failure
23 of a person who has attempted to demonstrate that he or she has been rehabilitated.

24 **SECTION 50.** 48.686 (5m) of the statutes is amended to read:

1 48.686 (5m) Notwithstanding s. 111.335, ~~the department a licensing entity~~
2 may refuse to license a person issue an approval to operate a child care center, ~~the~~
3 ~~department in a county having a population of 750,000 or more, a county~~
4 ~~department, or an agency contracted with under s. 48.651 (2) may refuse to certify~~
5 ~~a child care provider under s. 48.651, a school board may refuse to contract with a~~
6 ~~person under s. 120.13 (14) program to a person,~~ and a child care program may refuse
7 to employ or contract with a caregiver or noncaregiver employee or permit a
8 ~~nonclient resident~~ household member to reside at the child care program if the
9 person has been convicted of or adjudicated delinquent ~~on or after his or her 10th~~
10 ~~birthday~~ for an offense that is not a serious crime, but that is, in the estimation of
11 the department, substantially related to the care of a client. The department shall
12 notify the provider and the individual of the results of a substantially related
13 determination pursuant to the process set forth in sub. (4p) for ~~criminal~~ background
14 check determinations. The individual shall have the same appeal rights as set forth
15 in sub. (4s), and the same appeal procedures apply.

16 **SECTION 51.** 48.686 (7) of the statutes is amended to read:

17 48.686 (7) The department shall conduct throughout the state periodic training
18 sessions that cover procedures and uses of ~~criminal~~ background investigations;
19 reporting and investigating misappropriation of property or abuse or neglect of a
20 client; and any other material that will better enable entities to comply with the
21 requirements of this section.

22 **SECTION 52.** 48.715 (4g) (a) of the statutes is amended to read:

23 48.715 (4g) (a) If a person ~~who has been issued a license under s. 48.66 (1) (a)~~
24 ~~or a probationary license under s. 48.69 to operate a child care center is convicted of~~
25 ~~a serious crime, as defined in s. 48.686 (1) (c), if a caregiver specified in s. 48.686 (1)~~

1 ~~(ag) 1. or a nonclient resident, as defined in s. 48.686 (1) (bm), of the subject to a~~
2 ~~background check under s. 48.686 (2) who operates, works at, or resides at a child~~
3 ~~care center is convicted or adjudicated delinquent for committing a serious crime on~~
4 ~~or after his or her 10th birthday, or if the results of a criminal background check~~
5 ~~conducted under s. 48.686 indicate that the person, caregiver, or nonclient resident~~
6 ~~household member, or noncaregiver employee is not eligible to be licensed, certified,~~
7 ~~or employed, or permitted to reside at a child care program, the department shall~~
8 ~~revoke the license of the child care center immediately upon providing written notice~~
9 ~~of revocation and the grounds for revocation and an explanation of the process for~~
10 ~~appealing the revocation.~~

11 **SECTION 53.** 48.715 (4g) (b) of the statutes is amended to read:

12 48.715 (4g) (b) If a person who has been issued a license under s. 48.66 (1) (a)
13 ~~or a probationary license under s. 48.69 to operate a child care center is the subject~~
14 ~~of a pending criminal charge alleging that the person has committed a serious crime,~~
15 ~~as defined in s. 48.686 (1) (c), or if a caregiver specified in s. 48.686 (1) (ag) 1. or a~~
16 ~~nonclient resident, as defined in s. 48.686 (1) (bm), of the subject to a background~~
17 ~~check under s. 48.686 (2) who operates, works at, or resides at a child care center is~~
18 the subject of a pending criminal charge or delinquency petition alleging that the
19 person has committed a serious crime ~~on or after his or her 10th birthday,~~ the
20 department shall immediately suspend the license of the child care center until the
21 department obtains information regarding the final disposition of the charge or
22 delinquency petition indicating that the person is not ineligible to be licensed to
23 ~~operate, work at, or reside at~~ a child care center.

24 **SECTION 54.** 49.133 of the statutes is repealed.

25 **SECTION 55.** 49.155 (7) (a) 1. of the statutes is amended to read:

1 49.155 (7) (a) 1. If a ~~child care provider is convicted of a serious crime, as defined~~
2 ~~in s. 48.686 (1) (c), or if a caregiver specified in s. 48.686 (1) (ag) 1. a. or a nonclient~~
3 ~~resident, as defined in s. 48.686 (1) (bm), of the person subject to a background check~~
4 ~~under s. 48.686 (2) who operates, works at, or resides at a child care provider is~~
5 ~~convicted or adjudicated delinquent for committing a serious crime on or after his or~~
6 ~~her 10th birthday, as defined in s. 48.686 (1) (c), or if the department provides written~~
7 ~~notice under s. 48.686 (4p) that the child care provider, caregiver, or nonclient~~
8 ~~resident person is ineligible for certification, employment, or residence to operate,~~
9 ~~work at, or reside~~ at the child care provider, the department or the county
10 department under s. 46.215, 46.22, or 46.23 shall refuse to allow payment to the child
11 care provider for any child care provided under this section beginning on the date of
12 the conviction or delinquency adjudication.

13 **SECTION 56.** 49.155 (7) (a) 2. of the statutes is amended to read:

14 49.155 (7) (a) 2. If a ~~child care provider is the subject of a pending criminal~~
15 ~~charge alleging that the person has committed a serious crime, as defined in s. 48.686~~
16 ~~(1) (c), or if a caregiver specified in s. 48.686 (1) (ag) 1. or a nonclient resident, as~~
17 ~~defined in s. 48.686 (1) (bm), of the person subject to a background check under s.~~
18 ~~48.686 (2) who operates, works at, or resides at a child care provider is the subject~~
19 ~~of a pending criminal charge or delinquency petition alleging that the person has~~
20 ~~committed a serious crime on or after his or her 10th birthday, as defined in s. 48.686~~
21 ~~(1) (c), the department or the county department under s. 46.215, 46.22, or 46.23 shall~~
22 ~~immediately suspend~~ refuse to allow payment to the child care provider for any child
23 care provided under this section until the department obtains information regarding
24 the final disposition of the charge or delinquency petition indicating that the person

1 is not ineligible to receive such a payment operate, work at, or reside at the child care
2 provider.

3 **SECTION 57.** 49.155 (7) (b) of the statutes is repealed and recreated to read:

4 49.155 (7) (b) 1. If a person subject to a background check under s. 48.686 (2)
5 who operates, works at, or resides at a child care provider has been convicted or
6 adjudicated delinquent for committing an offense that is not a serious crime, as
7 defined in s. 48.686 (1) (c), but the department determines under s. 48.686 (5m) that
8 the offense substantially relates to the care of children or the department determines
9 that the offense substantially relates to the operation of a business, the department
10 or the county department under s. 46.215, 46.22, or 46.23 may refuse to allow
11 payment to the child care provider for child care provided under this section.

12 2. If a person subject to a background check under s. 48.686 (2) who operates,
13 works at, or resides at a child care provider is the subject of a pending criminal charge
14 or delinquency petition for committing an offense that is not a serious crime, as
15 defined in s. 48.686 (1) (c), but the department determines under s. 48.686 (5m) that
16 the offense substantially relates to the care of children or the department determines
17 that the offense substantially relates to the operation of a business, the department
18 or the county department under s. 46.215, 46.22, or 46.23 may refuse to allow
19 payment to the child care provider for child care provided under this section.

20 **SECTION 58.** 120.13 (14) (b) 1. of the statutes is amended to read:

21 120.13 (14) (b) 1. If a person who has contracted under par. (a) to provide a child
22 care program is convicted of a serious crime, as defined in s. 48.686 (1) (c), or if a
23 caregiver specified in s. 48.686 (1) (ag) 1. or a nonclient resident, as defined in s.
24 48.686 (1) (bm), of the subject to a background check under s. 48.686 (2) who operates,
25 works at, or resides at a child care program contracted for under par. (a), is convicted

1 or adjudicated delinquent for committing a serious crime ~~on or after his or her 10th~~
2 ~~birthday, as defined under s. 48.686 (1) (c),~~ the school board shall rescind the contract
3 ~~of the contractor for the child care program~~ immediately upon providing written
4 notice of the rescission and the grounds for the rescission and an explanation of the
5 process for appealing the rescission.

6 SECTION 59. 120.13 (14) (b) 2. of the statutes is amended to read:

7 120.13 (14) (b) 2. If a person who has contracted under par. (a) to provide a child
8 care program is the subject of a pending criminal charge alleging that the person has
9 committed a serious crime, as defined in s. 48.686 (1) (c), or if a caregiver specified
10 in s. 48.686 (1) (ag) 1. or a nonclient resident, as defined in s. 48.686 (1) (bm), of the
11 subject to a background check under s. 48.686 (2) who operates, works at, or resides
12 at a child care program contracted for under par. (a) is the subject of a pending
13 criminal charge or delinquency petition alleging that the person has committed a
14 serious crime ~~on or after his or her 10th birthday, as defined in s. 48.686 (1) (c),~~ the
15 school board shall immediately suspend the contract of the contractor for the child
16 care program until the school board obtains information regarding the final
17 disposition of the charge or delinquency petition indicating that the person is not
18 ineligible to ~~provide~~ operate, work at, or reside at a child care program under this
19 subsection.

20 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0693/P3
EAW:amn

February 21, 2019

This draft reconciles LRB-0693/P2 and LRB-1144/P4. Both LRB-0693 and LRB-1144 should continue to appear in the compiled bill.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0693/P3
EAW:kjf&amn

DOA:.....Rice, BB0071 - Child care background check modifications

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

1. Background checks for child care programs

This bill makes various definitional changes, changes who can conduct a rehabilitation review, and changes the timeline for an appeal of a decision of DCF in the context of the background check requirements for people who work or reside at a child care program.

Under current law, DCF is required to run a background check on caregivers and nonclient residents who work or reside at a child care program. This bill changes the definition of "caregiver" and adds the term "noncaregiver employee," to describe an employee or a contractor of a child care program who is not a caregiver, but whose work provides opportunities for unrestricted access to children in care. The bill also changes the term "nonclient resident" to "household member." Under the bill, DCF is required to run a background check on all caregivers, noncaregiver employees, and household members of a child care program.

Under current law, if a person has been convicted or adjudicated delinquent of a serious crime, that individual may not be a caregiver or nonclient resident of a child care program. This bill adds arson, patronizing a child, chronic or repeated neglect, and leaving a child unattended in a child care vehicle to the definition of "serious crime."

Under current law, certain offenses are only considered serious crimes if the person who is subject to the background check completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by DOC less than five years before the date of the background check. Under current law, a person may demonstrate his or her rehabilitation with respect to these serious crimes if he or she completed his or her sentence or was discharged by DOC less than five years before the date of the background check. If a person successfully demonstrates his or her rehabilitation under current law, he or she may be allowed to be a caregiver or nonclient resident of a child care program. Under the bill, these offenses are always considered a serious crime, no matter how long ago a person completed his or her sentence or was discharged by DOC, but a person may demonstrate rehabilitation if he or she has completed his or her sentence or was discharged by DOC more than five years ago. Under the bill, if a person successfully demonstrates his or her rehabilitation, he or she may be allowed to be a caregiver, noncaregiver employee, or household member of a child care program.

Under current law, DCF, the county department of human services or social services (county department), the agency under contract with the county department, or the school board that issued a license, certification, or contract to a child care program may conduct a rehabilitation review for the purpose of background checks. This bill removes the ability of county departments, agencies under contract with a county department, and school boards to conduct rehabilitation reviews.

Under current law, a person who is the subject of DCF's report on the results of a background check may appeal DCF's decision on whether the person is eligible to work or reside at the child care program. An appeal must be submitted within 60 days of the decision, unless DCF grants an extension. This bill changes the time to appeal the decision to ten days, unless DCF grants an extension.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.651 (3) (a) of the statutes is amended to read:
2 48.651 (3) (a) ~~If a child care provider certified under sub. (1) is convicted of a~~
3 ~~serious crime, as defined in s. 48.686 (1) (c), or if a caregiver specified in s. 48.686 (1)~~
4 ~~(ag) 1. or a nonclient resident, as defined in s. 48.686 (1) (bm), of the person subject~~
5 ~~to a background check under s. 48.686 (2) who operates, works at, or resides at a child~~
6 ~~care provider certified under sub. (1) is convicted or adjudicated delinquent for~~
7 ~~committing a serious crime, as defined in s. 48.686 (1) (c), on or after his or her 10th~~

1 birthday, or if the department provides written notice of a decision under s. 48.686
2 (4p) that the ~~child care provider, caregiver, or nonclient resident person~~ is ineligible
3 ~~for certification, employment, or residence to operate, work at, or reside~~ at the child
4 care provider, the department in a county having a population of 750,000 or more,
5 a county department, or an agency contracted with under sub. (2) shall revoke the
6 certification of the child care provider immediately upon providing written notice of
7 revocation and the grounds for revocation and an explanation of the process for
8 appealing the revocation.

9 **SECTION 2.** 48.651 (3) (b) of the statutes is amended to read:

10 48.651 (3) (b) If a ~~child care provider certified under sub. (1) is the subject of~~
11 ~~a pending criminal charge alleging that the person has committed a serious crime,~~
12 ~~as defined in s. 48.686 (1) (e), or if a caregiver specified in s. 48.686 (1) (ag) 1. or a~~
13 ~~nonclient resident, as defined in s. 48.686 (1) (bm), of the person subject to a~~
14 ~~background check under s. 48.686 (2) who operates, works at, or resides at a child~~
15 ~~care provider certified under sub. (1) is the subject of a pending criminal charge or~~
16 ~~delinquency petition alleging that the person has committed a serious crime on or~~
17 ~~after his or her 10th birthday, the department in a county having a population of~~
18 ~~750,000 or more, a county department, or an agency contracted with under sub. (2)~~
19 ~~shall immediately suspend the certification of the child care provider until the~~
20 ~~department, county department, or agency obtains information regarding the final~~
21 ~~disposition of the charge or delinquency petition indicating that the person is not~~
22 ~~ineligible to be certified under sub. (1) operate, work at, or reside at the child care~~
23 ~~provider.~~

24 **SECTION 3.** 48.685 (4m) (a) 1. of the statutes is amended to read:

1 48.685 (4m) (a) 1. That the person has been convicted of a serious crime or
2 adjudicated delinquent ~~on or after his or her 10th birthday~~ for committing a serious
3 crime or that the person is the subject of a pending criminal charge or delinquency
4 petition alleging that the person has committed a serious crime ~~on or after his or her~~
5 ~~10th birthday~~.

6 **SECTION 4.** 48.685 (4m) (b) 1. of the statutes is amended to read:

7 48.685 (4m) (b) 1. That the person has been convicted of a serious crime or
8 adjudicated delinquent ~~on or after his or her 10th birthday~~ for committing a serious
9 crime or that the person is the subject of a pending criminal charge or delinquency
10 petition alleging that the person has committed a serious crime ~~on or after his or her~~
11 ~~10th birthday~~.

12 **SECTION 5.** 48.686 (1) (ac) of the statutes is created to read:

13 48.686 (1) (ac) "Approval" means a child care center license under s. 48.65, a
14 child care provider certification under s. 48.651, or a contract with a child care
15 provider under s. 120.13 (14).

16 **SECTION 6.** 48.686 (1) (ag) 1. (intro.) of the statutes is repealed.

17 **SECTION 7.** 48.686 (1) (ag) 1. a. of the statutes is renumbered 48.686 (1) (ag) 1.
18 and amended to read:

19 48.686 (1) (ag) 1. An employee or independent contractor of a child care
20 program who is involved in the care or supervision of clients.

21 **SECTION 8.** 48.686 (1) (ag) 1. b. of the statutes is renumbered 48.686 (1) (ag) 1m.
22 and amended to read:

23 48.686 (1) (ag) 1m. ~~Involved in the care or supervision of clients of a child care~~
24 ~~program or~~ A person who has direct contact and unsupervised access to clients of a
25 child care program.

1 **SECTION 9.** 48.686 (1) (ar) of the statutes is repealed.

2 **SECTION 10.** 48.686 (1) (bm) of the statutes is amended to read:

3 48.686 (1) (bm) "~~Nonclient resident~~" "Household member" means a person who
4 is age 10 or older, who resides, or is expected to reside, at a child care program, and
5 who is not a client of the child care program or caregiver.

6 **SECTION 11.** 48.686 (1) (bo) of the statutes is created to read:

7 48.686 (1) (bo) "Licensing entity" means all of the following:

- 8 1. The department when licensing a child care center under s. 48.65.
- 9 2. The department in a county with a population of 750,000 or more, a county
10 department, or an agency or Indian tribe contracted with under s. 48.651 (2) when
11 certifying a child care provider under s. 48.651.
- 12 3. A school board when contracting with a child care provider under s. 120.13
13 (14).

14 **SECTION 12.** 48.686 (1) (bp) of the statutes is created to read:

15 48.686 (1) (bp) "Noncaregiver employee" means a person who provides services
16 to a child care program as an employee or a contractor and is not a caregiver, but
17 whose work at the child care program provides the ability to move freely throughout
18 the premises and opportunities for interactions with clients of the child care
19 program.

20 **SECTION 13.** 48.686 (1) (c) 5. of the statutes is amended to read:

21 48.686 (1) (c) 5. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21,
22 940.225 (1), (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.02,
23 943.03, 943.04, 943.10 (2), 943.32 (2), or 948.081, 948.21 (1) (a), 948.215, or 948.53
24 (2) (b) 1.

25 **SECTION 14.** 48.686 (1) (c) 9. of the statutes is amended to read:

1 48.686 (1) (c) 9. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b),
2 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205,
3 940.207, 940.25, or 943.23 (1g), ~~a violation of s. 948.51 (2) that is a felony under s.~~
4 ~~948.51 (3) (b) or (c),~~ a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under
5 s. 346.65 (2) (am) ~~4., 5., 6., or 7.~~ or (f), (2j) (d), or (3m), or an offense under ch. 961 that
6 is a felony, ~~if the person completed his or her sentence, including any probation,~~
7 ~~parole, or extended supervision, or was discharged by the department of corrections,~~
8 ~~less than 5 years before the date of the investigation under sub. (2) (am).~~

9 **SECTION 15.** 48.686 (1) (c) 10. of the statutes is amended to read:

10 48.686 (1) (c) 10. A violation of s. 948.22 (2), ~~if the person completed his or her~~
11 ~~sentence, including any probation, parole, or extended supervision, or was~~
12 ~~discharged by the department of corrections, less than 5 years before the date of the~~
13 ~~investigation under sub. (2) (am), unless the person has paid all arrearages due and~~
14 ~~is meeting his or her current support obligations.~~

15 **SECTION 16.** 48.686 (2) (a) of the statutes is amended to read:

16 48.686 (2) (a) ~~The department~~ A licensing entity shall require any person who
17 applies for issuance of an initial license approval to operate a child care center under
18 s. 48.65, a school board shall require any person who proposes an initial contract with
19 the school board under s. 120.13 (14), and the department in a county having a
20 population of 750,000 or more, a county department, or an agency contracted with
21 under s. 48.651 (2) shall require any child care provider who applies for initial
22 certification under s. 48.651 program to submit the information required for a
23 background check request under par. (ag). ~~A~~ If the licensing entity is a school board,
24 county department, or contracted agency or tribe, the licensing entity shall submit
25 the completed background information request to the department.

1 **SECTION 17.** 48.686 (2) (ab) of the statutes is amended to read:

2 48.686 (2) (ab) Each child care program shall submit a request to the
3 department for a ~~criminal~~ background check for each potential caregiver,
4 noncaregiver employee, and ~~potential nonclient resident~~ household member prior to
5 the date on which an individual becomes a caregiver, noncaregiver employee, or
6 ~~nonclient resident~~ household member, and at least once during every 5-year period
7 for each existing caregiver, noncaregiver employee, or ~~nonclient resident~~ household
8 member, except if all of the following apply to the individual:

9 1. The caregiver, ~~potential caregiver, nonclient resident, or potential nonclient~~
10 ~~resident~~ individual has received a background check as described in par. (am) while
11 employed working or seeking employment by work with another child care program
12 within the state within the last 5 years.

13 2. The department provided to the child care program under subd. 1. a
14 qualifying background check result for the caregiver, ~~potential caregiver, nonclient~~
15 ~~resident, or potential nonclient resident~~ individual.

16 3. The caregiver, ~~potential caregiver, nonclient resident, or potential nonclient~~
17 ~~resident is employed by~~ individual works or resides at a child care program within
18 the state or has been separated from employment work or residence at a child care
19 program within the state for a period of not more than 180 consecutive days.

20 **SECTION 18.** 48.686 (2) (ag) 1. b. of the statutes is amended to read:

21 48.686 (2) (ag) 1. b. Any additional information that the department deems
22 necessary to perform the ~~criminal~~ background check.

23 **SECTION 19.** 48.686 (2) (ag) 2. of the statutes is amended to read:

1 48.686 (2) (ag) 2. A request for a ~~eriminal~~ background check is considered
2 submitted on the day that the department receives all of the information required
3 under subd. 1.

4 **SECTION 20.** 48.686 (2) (ag) 3. of the statutes is amended to read:

5 48.686 (2) (ag) 3. The requester of a background check under this paragraph
6 shall submit all fees required by the department pursuant to the instructions
7 provided by the department, not to exceed the actual cost of conducting the ~~eriminal~~
8 background check.

9 **SECTION 21.** 48.686 (2) (am) (intro.) of the statutes is amended to read:

10 48.686 (2) (am) (intro.) Upon receipt of a request submitted under par. (a) or
11 (ab), the department shall obtain all of the following with respect to ~~a caregiver or~~
12 ~~a nonclient resident who is not under 10 years of age~~ the individual who is the subject
13 of the request:

14 **SECTION 22.** 48.686 (2) (am) 1. of the statutes is amended to read:

15 48.686 (2) (am) 1. A fingerprint-based or name-based criminal history search
16 from the records maintained by the department of justice.

17 **SECTION 23.** 48.686 (2) (am) 10. of the statutes is amended to read:

18 48.686 (2) (am) 10. A search of the department's ~~eriminal~~ background check
19 records.

20 **SECTION 24.** 48.686 (2) (ar) of the statutes is amended to read:

21 48.686 (2) (ar) After receiving a request under par. (a) or (ab), the department
22 shall conduct the ~~eriminal~~ background check as expeditiously as possible and shall
23 make a good faith effort to complete all components of the ~~eriminal~~ background check
24 no later than 45 days after the date on which the request was submitted.

25 **SECTION 25.** 48.686 (2) (bd) of the statutes is amended to read:

1 48.686 (2) (bd) Notwithstanding par. (am), the department is not required to
2 obtain the information specified in par. (am) 1. to 10., with respect to a ~~person~~
3 household member under 18 years of age whose background check request under par.
4 (ag) indicates that the ~~person~~ household member is not ineligible to be permitted to
5 reside at a child care program for a reason specified in sub. (4m) (a) 1. to 8. and with
6 respect to whom the department otherwise has no reason to believe that the person
7 is ineligible to be permitted to reside at the child care program for any of those
8 reasons. This paragraph does not preclude the department from obtaining, at its
9 discretion, the information specified in par. (am) 1. to 10. with respect to a ~~person~~
10 household member described in this paragraph ~~who is a nonclient resident or a~~
11 ~~potential nonclient resident of a child care program.~~

12 **SECTION 26.** 48.686 (3) (am) of the statutes is amended to read:

13 48.686 (3) (am) Every year or at any time that the department considers
14 appropriate, the department may request the information specified in sub. (2) (am)
15 1. to 5. for all caregivers under sub. (1) (ag) 2., ~~nonclient residents of such a caregiver,~~
16 ~~and caregivers under sub. (1) (ag) 1. who have direct contact with clients. For the~~
17 ~~purposes of this paragraph, "direct contact" means face-to-face physical proximity~~
18 ~~to a client that affords the opportunity to commit abuse or neglect of a client or to~~
19 ~~misappropriate the property of a client, noncaregiver employees, and household~~
20 ~~members.~~

21 **SECTION 27.** 48.686 (4m) (a) (intro.) of the statutes is amended to read:

22 48.686 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
23 par. (ad) and sub. (5), ~~the department a licensing entity may not license, or continue~~
24 ~~or renew the license of, a person to operate a child care center under s. 48.65, the~~
25 ~~department in a county having a population of 750,000 or more, a county~~

1 ~~department, or an agency contracted with under s. 48.651 (2) may not certify a child~~
2 ~~care provider under s. 48.651, a school board may not contract with a person under~~
3 ~~s. 120.13 (14) issue an approval to operate a child care program to a person, and a~~
4 ~~child care program may not employ or contract with a caregiver specified in sub. (1)~~
5 ~~(ag) 1. or noncaregiver employee or permit a household member to reside at the child~~
6 ~~care program if the department, county department, contracted agency, school~~
7 ~~board, licensing entity or child care program knows or should have known any of the~~
8 following:

9 **SECTION 28.** 48.686 (4m) (a) 1. of the statutes is amended to read:

10 48.686 (4m) (a) 1. That the person has been convicted of a serious crime or
11 adjudicated delinquent ~~on or after his or her 10th birthday~~ for committing a serious
12 crime or that the person is the subject of a pending criminal charge or delinquency
13 petition alleging that the person has committed a serious crime ~~on or after his or her~~
14 ~~10th birthday.~~

15 **SECTION 29.** 48.686 (4m) (a) 2. of the statutes is created to read:

16 48.686 (4m) (a) 2. That the person is registered or is required to be registered
17 on a state sex offender registry or repository or the national sex offender registry.

18 **SECTION 30.** 48.686 (4m) (a) 5. of the statutes is amended to read:

19 48.686 (4m) (a) 5. That the department has determined the person ineligible
20 to be licensed ~~receive an approval~~ to operate a child care center under s. 48.65, to be
21 certified to operate a child care provider under s. 48.651, to contract with a school
22 board under s. 120.13 (14) program, to be employed as a caregiver at by a child care
23 program, or to be a ~~nonclient resident at~~ household member of a child care program.

24 **SECTION 31.** 48.686 (4m) (a) 6. of the statutes is amended to read:

1 48.686 (4m) (a) 6. That the person has refused to provide information under
2 sub. (2) (ag), or that the person refused to participate in, cooperate with, or submit
3 required information for the ~~criminal~~ background check described in sub. (2) (am),
4 including fingerprints.

5 **SECTION 32.** 48.686 (4m) (a) 7. of the statutes is amended to read:

6 48.686 (4m) (a) 7. That the person knowingly made a materially false
7 statement in connection with the person's ~~criminal~~ background check described in
8 sub. (2).

9 **SECTION 33.** 48.686 (4m) (a) 8. of the statutes is amended to read:

10 48.686 (4m) (a) 8. That the person knowingly omitted material information
11 requested in connection with the person's ~~criminal~~ background check conducted
12 under sub. (2).

13 **SECTION 34.** 48.686 (4m) (ad) of the statutes is amended to read:

14 48.686 (4m) (ad) ~~The department~~ A licensing entity may license issue an
15 approval to operate a child care center under s. 48.65; ~~the department in a county~~
16 ~~having a population of 750,000 or more, a county department, or an agency~~
17 ~~contracted with under s. 48.651 (2) may certify a child care provider under s. 48.651;~~
18 ~~and a school board may contract with a person under s. 120.13 (14),~~ program to a
19 person conditioned on the receipt of the information specified in sub. (4p) (a)
20 indicating that the person is not ineligible to be so licensed, certified, or contracted
21 with for a reason specified in par. (a) 1. to 8.

22 **SECTION 35.** 48.686 (4m) (c) of the statutes is amended to read:

23 48.686 (4m) (c) A child care program may employ or contract with a potential
24 caregiver or noncaregiver employee or permit a potential ~~nonclient~~ resident
25 household member to reside at the child care program for up to 45 days from the date

1 a background check request is submitted to the department pending the completion
2 of the department's report under sub. (4p) (a) if the department provides a
3 preliminary report under sub. (4p) (c) to the child care program indicating that the
4 ~~potential caregiver or nonclient resident~~ individual is not ineligible to work or reside
5 at a child care program. At all times that ~~children in care~~ clients of a child care
6 program are present, an individual who received a qualifying result on a background
7 check described in sub. (2) (am) within the past 5 years must supervise a potential
8 ~~employee caregiver, noncaregiver employee, or nonclient resident~~ household
9 member permitted to work or reside at the child care program under this paragraph.

10 **SECTION 36.** 48.686 (4p) (a) of the statutes is amended to read:

11 48.686 (4p) (a) The department shall provide the results of the ~~criminal~~
12 background check to the child care program in a written report that indicates only
13 that the individual on whom the background check was conducted is eligible or
14 ineligible for employment or to reside at the child care program, without revealing
15 any disqualifying ~~crime~~ offense or other information regarding the individual.

16 **SECTION 37.** 48.686 (4p) (b) of the statutes is amended to read:

17 48.686 (4p) (b) The department shall provide the results of the ~~criminal~~
18 background check to the individual on whom the background check was conducted
19 in a written report that indicates whether the individual is eligible or ineligible for
20 employment or to reside at the child care program. If the individual is ineligible for
21 employment or to reside at the child care program, the department's report shall
22 include information on each disqualifying ~~crime~~ offense and information on the right
23 to appeal.

24 **SECTION 38.** 48.686 (4p) (c) of the statutes is amended to read:

1 48.686 (4p) (c) Before the department completes its report under par. (a), a
2 caregiver under sub. (1) (ag) 2. may submit a written request to the department for
3 a preliminary report indicating whether a potential caregiver, noncaregiver
4 employee, or nonclient-resident household member is eligible to work or reside at a
5 child care program under sub. (4m) (c). If the department receives such a request,
6 it shall provide a written preliminary report to that caregiver indicating whether the
7 individual is barred from ~~employment as a caregiver~~ working or ~~residence as a~~
8 ~~nonclient-resident~~ residing at a child care program on the basis of a background
9 check under sub. (2) (am) 1. or 7. If the individual is ineligible ~~for employment or~~
10 ~~residence~~ to work or reside at a child care program based on the results of the
11 preliminary report, the department shall also provide a preliminary report to the
12 individual containing information related to each disqualifying ~~crime~~ offense.

13 **SECTION 39.** 48.686 (4p) (d) of the statutes is amended to read:

14 48.686 (4p) (d) The results of a report under par. (c) may not be appealed by
15 the individual until receipt of the department's report under par. (b) following
16 completion of all components of the ~~criminal~~ background check.

17 **SECTION 40.** 48.686 (4s) (a) of the statutes is amended to read:

18 48.686 (4s) (a) An individual who is the subject of the department's report on
19 the results of a ~~criminal~~ background check may appeal the department's decision.
20 Only the person who is the subject of the department's report may appeal the
21 department's decision. Neither the child care program nor any other person may
22 appeal the department's decision.

23 **SECTION 41.** 48.686 (4s) (b) of the statutes is amended to read:

24 48.686 (4s) (b) An appeal request shall be submitted to the department at the
25 address, e-mail address, or fax number identified in the statement of appeal rights

1 no later than ~~60~~ 10 days after the date of the department's decision, unless the
2 appellant requests, and the department grants, an extension for a specific amount
3 of time prior to expiration of the ~~60~~ 10 day appeal period. Extensions may be granted
4 for good cause shown.

5 **SECTION 42.** 48.686 (4s) (f) of the statutes is amended to read:

6 48.686 (4s) (f) The department shall sustain the results of its ~~eriminal~~
7 background check report if supported by a preponderance of the available evidence.

8 **SECTION 43.** 48.686 (4s) (m) of the statutes is amended to read:

9 48.686 (4s) (m) Notwithstanding s. 19.35, the department may not publicly
10 release or disclose the results of any ~~eriminal~~ individual background report it issues,
11 except that the department may release aggregated data by crime as listed in sub.
12 (1) (c) from ~~eriminal~~ background check results so long as the data does not contain
13 personally identifiable information. The department may disclose and use
14 information obtained in conducting ~~eriminal~~ background checks as necessary during
15 an appeal or reconsideration under this subsection or for another lawful purpose.

16 **SECTION 44.** 48.686 (5) of the statutes is repealed and recreated to read:

17 48.686 (5) (a) A person may have the opportunity to demonstrate his or her
18 rehabilitation to the department or to a tribe authorized to conduct a rehabilitation
19 review under sub. (5d) if any of the following apply:

20 1. An investigation under sub. (2) (am) indicates that sub. (4m) (a) 2., 3., or 4.
21 applies to the person.

22 2. An investigation under sub. (2) (am) indicates that the person has been
23 convicted or adjudicated delinquent of a serious crime as specified under sub. (1) (c)
24 9. or for a violation of the law of any other state or United States jurisdiction that
25 would be a violation listed in sub. (1) (c) 9. if committed in this state, and the person

1 completed his or her sentence, including any probation, parole, or extended
2 supervision, or was discharged by the department of corrections, more than 5 years
3 before the date of the investigation under sub. (2) (am).

4 (b) If the department or tribe determines that the person has demonstrated
5 rehabilitation in accordance with procedures established by the department by rule
6 or by the tribe and by clear and convincing evidence, the prohibition in sub. (4m) (a)
7 does not apply.

8 **SECTION 45.** 48.686 (5c) (a) of the statutes is renumbered 48.686 (5c).

9 **SECTION 46.** 48.686 (5c) (b) of the statutes is repealed.

10 **SECTION 47.** 48.686 (5c) (c) of the statutes is repealed.

11 **SECTION 48.** 48.686 (5g) of the statutes is amended to read:

12 48.686 (5g) On January 1 of each year, the department shall submit a report
13 to the legislature under s. 13.172 (2) that specifies the number of persons in the
14 previous year who have requested to demonstrate that they have been rehabilitated
15 under sub. (5) (a), the number of persons who successfully demonstrated that they
16 have been rehabilitated under sub. (5) (a), and the reasons for the success or failure
17 of a person who has attempted to demonstrate that he or she has been rehabilitated.

18 **SECTION 49.** 48.686 (5m) of the statutes is amended to read:

19 48.686 (5m) Notwithstanding s. 111.335, ~~the department a licensing entity~~
20 ~~may refuse to license a person issue an approval to operate a child care center, the~~
21 ~~department in a county having a population of 750,000 or more, a county~~
22 ~~department, or an agency contracted with under s. 48.651 (2) may refuse to certify~~
23 ~~a child care provider under s. 48.651, a school board may refuse to contract with a~~
24 ~~person under s. 120.13 (14) program to a person, and a child care program may refuse~~
25 ~~to employ or contract with a caregiver or noncaregiver employee or permit a~~

1 ~~nonclient resident~~ household member to reside at the child care program if the
2 person has been convicted of or adjudicated delinquent ~~on or after his or her 10th~~
3 ~~birthday~~ for an offense that is not a serious crime, but that is, in the estimation of
4 the department, substantially related to the care of a client. The department shall
5 notify the provider and the individual of the results of a substantially related
6 determination pursuant to the process set forth in sub. (4p) for ~~criminal~~ background
7 check determinations. The individual shall have the same appeal rights as set forth
8 in sub. (4s), and the same appeal procedures apply.

9 **SECTION 50.** 48.686 (7) of the statutes is amended to read:

10 48.686 (7) The department shall conduct throughout the state periodic training
11 sessions that cover procedures and uses of ~~criminal~~ background investigations;
12 reporting and investigating misappropriation of property or abuse or neglect of a
13 client; and any other material that will better enable entities to comply with the
14 requirements of this section.

15 **SECTION 51.** 48.715 (4g) (a) of the statutes is amended to read:

16 48.715 (4g) (a) If a person ~~who has been issued a license under s. 48.66 (1) (a)~~
17 ~~or a probationary license under s. 48.69 to operate a child care center is convicted of~~
18 ~~a serious crime, as defined in s. 48.686 (1) (c), if a caregiver specified in s. 48.686 (1)~~
19 ~~(ag) 1. or a nonclient resident, as defined in s. 48.686 (1) (bm), of the subject to a~~
20 ~~background check under s. 48.686 (2) who operates, works at, or resides at a child~~
21 ~~care center is convicted or adjudicated delinquent for committing a serious crime ~~on~~~~
22 ~~or after his or her 10th birthday, or if the results of a ~~criminal~~ background check~~
23 ~~conducted under s. 48.686 indicate that the person, caregiver, or ~~nonclient resident~~~~
24 ~~household member, or noncaregiver employee is not eligible to be licensed, certified,~~
25 ~~or employed, or permitted to reside at a child care program, the department shall~~

1 revoke the license of the child care center immediately upon providing written notice
2 of revocation and the grounds for revocation and an explanation of the process for
3 appealing the revocation.

4 **SECTION 52.** 48.715 (4g) (b) of the statutes is amended to read:

5 48.715 (4g) (b) If a person ~~who has been issued a license under s. 48.66 (1) (a)~~
6 ~~or a probationary license under s. 48.69 to operate a child care center is the subject~~
7 ~~of a pending criminal charge alleging that the person has committed a serious crime,~~
8 ~~as defined in s. 48.686 (1) (c), or if a caregiver specified in s. 48.686 (1) (ag) 1. or a~~
9 ~~nonclient resident, as defined in s. 48.686 (1) (bm), of the subject to a background~~
10 ~~check under s. 48.686 (2) who operates, works at, or resides at a child care center is~~
11 ~~the subject of a pending criminal charge or delinquency petition alleging that the~~
12 ~~person has committed a serious crime ~~on or after his or her 10th birthday,~~ the~~
13 ~~department shall immediately suspend the license of the child care center until the~~
14 ~~department obtains information regarding the final disposition of the charge or~~
15 ~~delinquency petition indicating that the person is not ineligible to ~~be licensed to~~~~
16 ~~operate, work at, or reside at a child care center.~~

17 **SECTION 53.** 49.133 of the statutes is repealed.

18 **SECTION 54.** 49.155 (7) (a) 1. of the statutes is amended to read:

19 49.155 (7) (a) 1. If a child care provider is convicted of a serious crime, as defined
20 in s. 48.686 (1) (c), or if a caregiver specified in s. 48.686 (1) (ag) 1. a. or a nonclient
21 resident, as defined in s. 48.686 (1) (bm), of the person subject to a background check
22 under s. 48.686 (2) who operates, works at, or resides at a child care provider is
23 ~~convicted or adjudicated delinquent for committing a serious crime ~~on or after his or~~~~
24 ~~her 10th birthday, as defined in s. 48.686 (1) (c), or if the department provides written~~
25 ~~notice under s. 48.686 (4p) that the ~~child care provider, caregiver, or nonclient~~~~

1 ~~resident person is ineligible for certification, employment, or residence to operate,~~
2 ~~work at, or reside~~ at the child care provider, the department or the county
3 department under s. 46.215, 46.22, or 46.23 shall refuse to allow payment to the child
4 care provider for any child care provided under this section beginning on the date of
5 the conviction or delinquency adjudication.

6 **SECTION 55.** 49.155 (7) (a) 2. of the statutes is amended to read:

7 49.155 (7) (a) 2. If a ~~child care provider is the subject of a pending criminal~~
8 ~~charge alleging that the person has committed a serious crime, as defined in s. 48.686~~
9 ~~(1) (e), or if a caregiver specified in s. 48.686 (1) (ag) 1. or a nonclient resident, as~~
10 ~~defined in s. 48.686 (1) (bm), of the person subject to a background check under s.~~
11 ~~48.686 (2) who operates, works at, or resides at a child care provider is the subject~~
12 ~~of a pending criminal charge or delinquency petition alleging that the person has~~
13 ~~committed a serious crime on or after his or her 10th birthday, as defined in s. 48.686~~
14 ~~(1) (c), the department or the county department under s. 46.215, 46.22, or 46.23 shall~~
15 ~~immediately suspend~~ refuse to allow payment to the child care provider for any child
16 care provided under this section until the department obtains information regarding
17 the final disposition of the charge or delinquency petition indicating that the person
18 is not ineligible to ~~receive such a payment~~ operate, work at, or reside at the child care
19 provider.

20 **SECTION 56.** 49.155 (7) (b) of the statutes is repealed and recreated to read:

21 49.155 (7) (b) 1. If a person subject to a background check under s. 48.686 (2)
22 who operates, works at, or resides at a child care provider has been convicted or
23 adjudicated delinquent for committing an offense that is not a serious crime, as
24 defined in s. 48.686 (1) (c), but the department determines under s. 48.686 (5m) that
25 the offense substantially relates to the care of children or the department determines

1 that the offense substantially relates to the operation of a business, the department
2 or the county department under s. 46.215, 46.22, or 46.23 may refuse to allow
3 payment to the child care provider for child care provided under this section.

4 2. If a person subject to a background check under s. 48.686 (2) who operates,
5 works at, or resides at a child care provider is the subject of a pending criminal charge
6 or delinquency petition for committing an offense that is not a serious crime, as
7 defined in s. 48.686 (1) (c), but the department determines under s. 48.686 (5m) that
8 the offense substantially relates to the care of children or the department determines
9 that the offense substantially relates to the operation of a business, the department
10 or the county department under s. 46.215, 46.22, or 46.23 may refuse to allow
11 payment to the child care provider for child care provided under this section.

12 **SECTION 57.** 120.13 (14) (b) 1. of the statutes is amended to read:

13 120.13 (14) (b) 1. If a person who has contracted under par. (a) to provide a child
14 care program is convicted of a serious crime, as defined in s. 48.686 (1) (e), or if a
15 caregiver specified in s. 48.686 (1) (ag) 1. or a nonclient resident, as defined in s.
16 48.686 (1) (bm), of the subject to a background check under s. 48.686 (2) who operates,
17 works at, or resides at a child care program contracted for under par. (a), is convicted
18 or adjudicated delinquent for committing a serious crime on or after his or her 10th
19 birthday, as defined under s. 48.686 (1) (c), the school board shall rescind the contract
20 of the contractor for the child care program immediately upon providing written
21 notice of the rescission and the grounds for the rescission and an explanation of the
22 process for appealing the rescission.

23 **SECTION 58.** 120.13 (14) (b) 2. of the statutes is amended to read:

24 120.13 (14) (b) 2. If a person who has contracted under par. (a) to provide a child
25 care program is the subject of a pending criminal charge alleging that the person has

1 committed a serious crime, as defined in s. 48.686 (1) (c), or if a caregiver specified
2 in s. 48.686 (1) (ag) 1. or a nonclient resident, as defined in s. 48.686 (1) (bm), of the
3 subject to a background check under s. 48.686 (2) who operates, works at, or resides
4 at a child care program contracted for under par. (a) is the subject of a pending
5 criminal charge or delinquency petition alleging that the person has committed a
6 serious crime on or after his or her 10th birthday, as defined in s. 48.686 (1) (c), the
7 school board shall immediately suspend the contract of the contractor for the child
8 care program until the school board obtains information regarding the final
9 disposition of the charge or delinquency petition indicating that the person is not
10 ineligible to provide operate, work at, or reside at a child care program under this
11 subsection.

12

(END)