

1993 Assembly Bill 900

Date of enactment: April 27, 1994  
Date of publication: May 11, 1994

## 1993 Wisconsin Act 445 (Vetoed in Part)

AN ACT to repeal 940.29 (1) to (9); to renumber 55.01 (1) and 940.225 (5) (a); to renumber and amend 51.30 (10), 51.42 (7) (a) 2, 146.84 (2) (b) and 940.29 (intro.); to amend ~~§ 46.23 (4) (a) 1, 51.30 (4) (b) 17, § 51.42 (3) (ar) 5, 51.42 (4) (b), 51.42 (7) (a) 1, 51.42 (7) (b) (intro.), 51.61 (1) (p), 51.61 (3), 51.61 (5) (a), 55.02, 55.05 (4) (b), 146.82 (2) (a) 7, 146.82 (2) (a) 9, 146.83 (title), 146.84 (title), 939.24 (2), 939.66 (6), 940.225 (2) (g) and 969.08 (10) (b); to repeal and recreate ~~§ 51.42 (3) (ar) 16, 51.61 (5) (b) and 940.285 (2); and to create 20.435 (7) (bL), 20.435 (7) (cm), 51.01 (3n), 51.02 (1) (f), 51.02 (1) (g), 51.02 (1) (h), § 51.30 (4) (dm), 51.30 (10) (a) to (c), § 51.42 (3) (ar) 16, 51.42 (3) (d), 51.42 (3) (e), 51.42 (7) (a) 2. a. and b., 51.42 (7) (a) 2m, 51.42 (7) (a) 3m and 3r, 51.42 (7) (a) 7, 51.42 (7) (a) 8, 51.42 (7) (a) 9, 51.42 (7) (b) 10, 51.42 (7) (b) 11, 51.42 (7) (b) 9, 51.42 (7) (c), 51.423 (3), 51.61 (1) (fm), 51.61 (1) (u) to (x), 51.61 (5) (c) and (d), 51.61 (7m), 51.61 (10), 55.01 (1), (1m), (1p), (1t), (2r), (2t), (4p), (4r) and (7), 55.043, 146.83 (4), 146.84 (2) (a) to (c), 440.03 (10), 448.40 (2) (e), 455.065 (5), 813.123, 939.66 (6c), 939.66 (6e), 940.225 (5) (am) and (ar), 940.285 (1) (title), 940.285 (1) (bm), 940.285 (1) (dm), 940.295, 943.20 (2) (am), 943.20 (2) (cm), 943.20 (2) (e) and 943.20 (3) (d) 6 of the statutes, relating to: requiring the department of health and social services to develop a model community mental health plan; expanding requirements for community mental health plans; requiring the council on mental health to review community mental health plans; requiring the department of health and social services to enter into an agreement for the development of a mental health client survey prototype; requiring counties to periodically conduct mental health client surveys; patients'~~~~

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**Vetoed in Part** rights for certain persons; ~~establishing a pilot program for~~ protection and advocacy services for community mental health clients; requiring the department of health and social services to establish standards for patient grievance procedures; certification of community mental health programs; requiring the secretary of health and social services to designate a departmental subunit to supervise the grievance process for clients of mental health services; ~~providing funding for state payment of the local matching funds to secure federal funds for certified community support programs;~~ maltreatment of vulnerable adults; the abuse and neglect of inmates and certain patients and residents; requiring consumer representation on county human services boards and county community programs boards; appointment of receivers for county departments of community programs and related programs; certification and review of community mental health programs; ~~funding for staff of the council on mental health;~~ intentional destruction, damage, concealment or falsification of patient health care records and treatment records; the exchange of professional services to evaluate community-mental health programs for continuing education credits; designation of a county protective services agency in Milwaukee county for the investigation of abuse, neglect or misappropriation of property of a vulnerable adult and providing protective services; directing the department of health and social services to develop a training curriculum and provide the curriculum for use in training members of county human services boards and county community services boards; ~~funding staff of the department of health and social services to hear appeals of final decisions concerning grievances;~~ permitting exchange of certain client confidential information; granting rule-making authority; making appropriations; and providing penalties.

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

**Vetoed in Part**

~~SECTION 1. 15.01 (4) of the statutes is amended to read:  
15.01 (4) "Council" means a part-time body appointed to function on a continuing basis for the study and recommendation of solutions and policy alternatives of the problems arising in a specified~~

~~functional area of state government, except the Milwaukee river revitalization council has the powers and duties specified in s. 23.18, the council on physical disabilities has the powers and duties specified in s. 46.29 (1) and (2) and the privacy council has the powers specified in s. 19.625 and the council on mental health has the powers and duties specified in s. 51.02 (1m).~~

**Vetoed in Part**

SECTION 2. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

		<u>1993-94</u>	<u>1994-95</u>
<b>20.435</b>	<b>Health and social services, department of</b>		
(7)	COMMUNITY SERVICES; AIDS AND LOCAL ASSISTANCE		
(bL)	Community support program grants	GPR A 89,100	186,900
(cm)	Community mental health protection and advocacy services	GPR A 50,000	50,000

SECTION 3. 20.435 (7) (bL) of the statutes is created to read:

20.435 (7) (bL) *Community support program grants.* The amounts in the schedule for one-time grants under s. 51.423 (3) to counties that currently do not operate certified community support programs.

SECTION 4. 20.435 (7) (cm) of the statutes is created to read:

20.435 (7) (cm) *Community mental health protection and advocacy services.* The amounts in the schedule ~~for the pilot program~~ for community mental health protection and advocacy services under s. 51.02 (1m).

**Vetoed in Part**

SECTION 5. 46.23 (4) (a) 1 of the statutes is amended to read:

46.23 (4) (a) 1. In any single-county or multicounty department of human services, the county human services board shall be composed of not less than 7 nor more than 15 persons of recognized ability and demonstrated interest in human services. Not less than

one-third nor more than two-thirds of the county human services board members may be members of the county board of supervisors. At least one member appointed to a county human services board shall be an individual who receives or has received human services or shall be a family member of such an individual. The remainder of the county human services board members shall be consumers of services or citizens-at-large. No public or private provider of services may be appointed to the county human services board.

SECTION 6. 51.01 (3n) of the statutes is created to read:

51.01 (3n) "Community mental health program" means a program to provide community-based outpatient mental health services that is operated by or under contract with a county department of community programs or that requests payment for the ser-

vices under the medical assistance program or under benefits required under s. 632.89 (2).

SECTION 7. 51.02 (1) (f) of the statutes is created to read:

51.02 (1) (f) Consult with the department in the development of a model community mental health plan under s. 51.42 (7) (a) 9, and review and advise the department on community mental health plans submitted by counties under s. 51.42 (3) (ar) 5.

SECTION 8. 51.02 (1) (g) of the statutes is created to read:

51.02 (1) (g) Promote the development and administration of a delivery system for community mental health services that is sensitive to the needs of consumers of the services.

SECTION 9. 51.02 (1) (h) of the statutes is created to read:

51.02 (1) (h) Review and comment on the human services and community programs board member training curriculum developed by the department under s. 51.42 (7) (a) 3m.

SECTION 10. 51.02 (1m) of the statutes is created to read:

51.02 (1m) (a) In this subsection, "community mental health services" includes the following:

1. Services provided to persons with mental illness under s. 51.42 (3) (ar) 4, a. to c., except for inpatient services.
2. Services provided to persons with mental illness under s. 51.42 (2).
3. Services provided by mental health clinics and certified transitional treatment programs.
4. Mental health rehabilitation services.

(b) From the appropriation under s. 20.435 (7) (cm), the council on mental health shall develop a request for proposals and shall, by January 1, 1995, award a grant from the proposals received to a private, nonprofit organization to provide services to protect and advocate for the rights of persons who are clients of or applicants for community mental health services and other persons with mental illness.

(c) The grantee under par. (b) may do any of the following:

1. Pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of persons with mental illness, including persons who are clients of or applicants for community mental health services, and provide information on and referral to programs and services addressing the needs of persons with mental illness.
2. Have access to records as specified under ss. 51.30 (4) (b) 18 and 146.82 (2) (a) 9.
3. Have immediate access to any person with mental illness, regardless of age, who has requested services or on whose behalf services have been requested from the grantee and concerning whom the grantee has reasonable cause to believe abuse, neglect or a violation of rights has occurred.

~~(d) The council on mental health shall, by January 1, 1997, evaluate the operation of the pilot program established under this subsection. The evaluation shall specify all of the following:~~

- ~~1. The number of persons receiving protection and advocacy services.~~
  - ~~2. A description of the problems giving rise to the need for protection and advocacy services.~~
  - ~~3. A description of the actions taken on behalf of persons seeking protection and advocacy services.~~
  - ~~4. Any changes in community mental health services operations arising out of the activities of the grantee.~~
- ~~(e) This subsection does not apply after June 30, 1997.~~

~~SECTION 11. 51.02 (3) of the statutes is created to read:~~

~~51.02 (3) The council shall employ a director and staff necessary for the performance of its duties. To the extent feasible, the positions shall be held by community mental health consumers, former consumers or members of the immediate families of consumers or former consumers.~~

~~SECTION 12. 51.30 (4) (b) 17 of the statutes is amended to read:~~

~~51.30 (4) (b) 17. To the county agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for the purposes of s. 46.90 (4) (a) and (5) or to the county protective services agency designated under s. 55.02 for purposes of s. 55.043. The treatment record holder may release treatment record information by initiating contact with the county protective services agency without first receiving a request for release of the treatment record from the county protective services agency.~~

~~SECTION 13. 51.30 (4) (b) 18 of the statutes is amended to read:~~

~~51.30 (4) (b) 18. To staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3, if any, for the purpose of protecting and advocating the rights of persons with developmental disabilities, as defined under s. 51.62 (1) (a), or mental illness, as defined under s. 51.62 (1) (bm), and to staff members of the grantee under s. 51.02 (1m) (b), except that, if the patient has a guardian appointed under s. 880.33, information concerning the patient obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted or by staff members of the grantee is limited to the nature of an alleged rights violation, if any, name, birth date and county of residence of the patient, information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment, and the name, address and telephone number of any guardian of the patient and the date~~

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and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's guardian in writing of the request and of the guardian's right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

SECTION 14. 51.30 (4) (dm) of the statutes is created to read:

51.30 (4) (dm) *Destruction, damage, falsification or concealment of treatment records.* No person may do any of the following:

1. Intentionally falsify a treatment record.
2. Conceal or withhold a treatment record with intent to prevent its release to the subject individual under par. (d), to his or her guardian appointed under ch. 880 or to persons with the informed written consent of the subject individual or with intent to prevent or obstruct an investigation or prosecution.
3. Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

SECTION 15. 51.30 (10) of the statutes is renumbered 51.30 (10) (intro.) and amended to read:

51.30 (10) (title) PENALTIES. (intro.) Any person who requests or obtains confidential information under this section under false pretenses Whoever does any of the following may be fined not more than \$500 \$1,000 or imprisoned for not more than one year in the county jail 6 months or both-;

SECTION 16. 51.30 (10) (a) to (c) of the statutes are created to read:

51.30 (10) (a) Requests or obtains confidential information under this section under false pretenses.

(b) Discloses confidential information under this section with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

(c) Violates sub. (4) (dm) 1, 2 or 3.

SECTION 17. 51.42 (3) (ar) 5 of the statutes is amended to read:

51.42 (3) (ar) 5. Prepare a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of the mentally ill, developmentally disabled, alcoholic, drug abusers and those with other psychiatric disabilities for citizens residing within the jurisdiction of the county department of community programs and for persons in need of emergency services found within the jurisdiction of the county department of community programs. The plan shall also include the establishment of long-range goals and intermediate-range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care. The plan shall state

how the needs of homeless persons and adults with serious and persistent mental illness, children with serious emotional disturbances and minorities will be met by the county department of community programs. The county department of community programs shall submit the plan to the department for review under sub. (7) (a) 9 and s. 51.02 (1) (f) in accordance with the schedule and deadlines established under sub. (7) (a) 9.

SECTION 18. 51.42 (3) (ar) 5 of the statutes, as affected by 1993 Wisconsin Act ... (this act), is repealed and recreated to read:

51.42 (3) (ar) 5. Prepare a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of the mentally ill, developmentally disabled, alcoholic, drug abusers and those with other psychiatric disabilities for citizens residing within the jurisdiction of the county department of community programs and for persons in need of emergency services found within the jurisdiction of the county department of community programs. The plan shall also include the establishment of long-range goals and intermediate-range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care, and shall make use of the results of the survey conducted under subd. 16. The plan shall state how the needs of homeless persons and adults with serious and persistent mental illness, children with serious emotional disturbances and minorities will be met by the county department of community programs. The county department of community programs shall submit that part of the plan that relates to mental illness to the department for review under sub. (7) (a) 9 and to the council on mental health for review under s. 51.02 (1) (f) in accordance with the schedule and deadlines established under sub. (7) (a) 9.

SECTION 19. 51.42 (3) (ar) 16 of the statutes is created to read:

51.42 (3) (ar) 16. Conduct a survey of community mental health program clients once every 36 months, in advance of the development of the community mental health plan under subd. 5, to facilitate use of its results in the preparation of the plan. The survey shall solicit client feedback on services provided to the client. In conducting the survey, counties may utilize the community mental health client survey prototype developed under sub. (7) (a) 8. The survey results shall be submitted to the members of the county human services or county community programs board, the county community programs director, county consumer and advocacy groups, community mental health program providers, and the certification staff of the department under sub. (7) (a) 1.

SECTION 20. 51.42 (3) (d) of the statutes is created to read:

51.42 (3) (d) *Appointment of receiver.* 1. In this paragraph:

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a. "Emergency" means a situation, physical condition or one or more practices, methods or operations that present imminent danger of death or serious physical or mental harm to a consumer of mental health, developmental disabilities, alcoholism or drug abuse services of a county department of community programs.

b. "Related program" means a program that is operated by the county department of community programs or under a contract under par. (ar) 1.

2. The department of health and social services may apply to a court for an order appointing a receiver to perform the functions of a county department of community programs or a related program if the department of health and social services determines that appointment of a receiver is necessary to address an emergency.

3. The department of health and social services, represented by the department of justice, may apply for a court order appointing a receiver for a county department of community programs or a related program. The department of health and social services, as represented, may apply by verified petition to the circuit court for Dane county for the order. The court shall hold a hearing on the petition within 5 days after the petition is filed. The petition and notice of the hearing shall be served on the county community programs director or the director of the related program as provided under ch. 801. If it appears from the petition filed under this subdivision, or from an affidavit or affidavits filed with the petition, or from testimony of witnesses under oath when the court determines that this is necessary, that there is probable cause that an emergency exists in the county department of community programs or related program, the court shall immediately issue the requested order for appointment of a receiver, ex parte and without further hearing. The court shall appoint the receiver for a specified time period, up to 120 days, requested by the department of health and social services. The court may extend the period of the receivership in 30-day increments only on the petition of the department of health and social services if the court finds that it is necessary for the receivership to be extended for the continued health, safety and welfare of the consumers of mental health, developmental disabilities, alcoholism or drug abuse services of the county department of community programs or related program. Notwithstanding s. 808.03 (1), any order issued at the hearing on a petition for receivership under this subdivision or at a subsequent hearing concerning matters arising in the receivership or concerning termination of the receivership under subd. 11 may be appealed as a matter of right.

4. An appearance by the department of justice on behalf of the department of health and social services to obtain the order under subd. 3 is not a hearing of any preliminary contested matter for the purposes of s. 801.58 (1). After the hearing under subd. 3, the

court may terminate, continue or modify the temporary order.

5. The receiver shall, with all reasonable speed, but in any event by the date on which the receivership ends under subd. 3 or 4, provide for the continued health, safety and welfare of consumers of mental health, developmental disabilities, alcoholism or drug abuse services of the county department of community programs or related program.

6. A receiver appointed under this paragraph:

a. May exercise those powers and shall perform those duties set out by the court.

b. Shall operate the county department of community programs or related program in such a manner as to assure safety and adequate care for the consumers of mental health, developmental disabilities, alcoholism and drug abuse services of the county department or related program.

c. Shall have the same rights to possession of the buildings occupied by the county department of community programs or related program and of all goods and fixtures in the buildings at the time that the petition for receivership is filed as the county department or related program would have had if the receiver had not been appointed. The receiver shall take action that is reasonably necessary to protect or conserve the tangible assets or property of which the receiver takes possession, or the proceeds of any transfer of those tangible assets or property, and may use them only in the performance of the powers and duties set forth in this paragraph and by order of the court.

d. May use the buildings, fixtures, furnishings and any accompanying consumer goods in the provision of care and services to consumers of mental health, developmental disabilities, alcoholism and drug abuse services of the county department of community programs or related program at the time that the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to those consumers or others during the period of the receivership, at the same rate of payment as was charged by the county department of community programs or related program at the time that the petition for receivership was filed, unless a different rate is set by the court.

e. May let contracts and hire agents and employees to carry out the powers and duties created under this paragraph. Competitive bidding requirements under s. 16.75 do not apply to contracts for services or materials let by the receiver.

f. Shall honor all leases, mortgages and secured transactions governing a building in which the county department of community programs or related program is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of the receivership or which, in the case

of a purchase agreement, come due during the period of the receivership.

g. Shall have full power to direct and manage and to discharge employes of the county department of community programs or related program, subject to any civil service provisions to which they may be subject or to any contract rights that they may have. The receiver shall pay employes at the same rate of compensation, including benefits, that the employes would have received from the county department of community programs or related program, except that the receiver shall compensate employes for time actually worked during the period of receivership and may reimburse for vacations or periods of sick leave. Receivership does not relieve the county department of community programs or related program of any obligation to employes that is not carried out by the receiver.

h. Shall assume the powers and duties of the county community programs board under sub. (5).

7. a. A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services if they had been supplied by the county department of community programs or related program. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit amounts received in a special account and shall use this account for all disbursements.

b. The receiver may bring an action to enforce the liability created under subd. 7. a. Proof of payment to the receiver is as effective in favor of the person making the payment as payment of the amount to the person who would, but for this subdivision, have been entitled to receive the sum so paid.

c. A consumer of mental health, developmental disabilities, alcoholism or drug abuse services provided by the county department of community programs or related program may not be discontinued from receiving services, nor may any contract or rights be forfeited or impaired, nor may forfeiture or liability be increased, by reason of an omission to pay the county department or related program a sum paid to the receiver.

8. No person may impede the operation of a receivership established under this paragraph. After the appointment of a receiver, any action that interferes with the functioning of the county department of community programs or related program, including cancellation of an insurance policy executed on behalf of the county department or related program, repossession of equipment used in the county department or related program or termination of utility services or other services or goods that are necessary to protect the health, safety or welfare of the consumers of mental health, developmental disabilities, alcoholism

or drug abuse services of the county department or related program, is automatically stayed for not more than 60 days.

9. The court shall set the compensation of the receiver, which shall be considered a necessary expense of a receivership.

10. a. In any action or special proceeding brought against a receiver in the receiver's official capacity for acts committed while carrying out the powers and duties created under this paragraph, the receiver shall be considered a public employe for purposes of s. 895.46.

b. A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts or breach of fiduciary duty.

c. A receiver may not be required to post any bond.

11. The court may terminate a receivership only if the time period specified in the order appointing a receiver and any extended time period granted by the court have elapsed and if the receiver determines and notifies the court that the county department of community programs or related program is able to ensure continued compliance with federal statutes and regulations and state statutes and rules. If the court terminates a receivership, the court may require the county department of community programs or related program to post a bond for not less than 120 days in an amount fixed by the court as security for maintaining compliance with federal statutes and regulations and state statutes and rules. If the court, after notice to the parties in the receivership proceeding and after a hearing, finds that the standard for appointment of a receiver under subd. 2 is met, the court may reappoint the receiver. If the court reappoints the receiver, the receiver may use the security, if any has been required under this subdivision, in addition to any funds received under subds. 6 and 7 for purposes of the receivership.

12. a. Within 30 days after termination of a receivership, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected under this paragraph and of the expenses of the receivership.

b. If the operating funds collected by the receiver under subds. 6 and 7 exceed the reasonable expenses of the receivership, the court shall order payment of the surplus to the county department of community programs or related program. If the operating funds are insufficient to cover the reasonable expenses of the receivership, the county department of community programs or related program shall be liable for the deficiency. The county department of community programs or related program may apply to the courts to determine the reasonableness of any expenses of the receivership. The county department of community programs or related program shall not be responsible for expenses in excess of what the court finds to be reasonable.

c. The receiver has a lien for any deficiency under subd. 12. b. upon any beneficial interest, direct or indirect, of the county department of community programs or related program in the building in which the county department or related program is located, the land on which the building is located, any fixtures, equipment or goods used in the operation of the county department or related program and the proceeds from the conveyance of any of the property described in this subd. 12. c. made by the county department or related program within one year prior to the filing of the petition for receivership.

d. The lien provided by subd. 12. c. is prior to any lien or other interest which originates subsequent to the filing of a petition for receivership under this paragraph, except for a construction or mechanic's lien arising out of work performed with the express consent of the receiver.

e. The clerk of circuit court for the county in which the facility is located shall record the filing of the petition for receivership in the lien docket kept under s. 779.07 opposite the name of the county department of community programs or related program named in the petition.

f. The receiver shall, within 60 days after termination of the receivership, file a notice of any lien created under this subdivision. No action on a lien created under this subdivision may be brought more than 2 years after the date of filing. If the lien is on real property, the notice shall be filed with the clerk of circuit court for the county in which the county department of community programs or related program is located and entered on a lien docket kept under s. 779.07. If the lien is on personal property, the lien shall be filed with the secretary of state. The secretary of state shall place the lien on personal property in the same file as financing statements are filed under ss. 409.401 and 409.402. The notice shall specify the name of the county department of community programs or related program against which the lien is claimed, the name of the receiver, the dates of the petition for receivership and the termination of receivership, a description of the property involved and the amount claimed. No lien may exist under this subdivision against any person, on any property or for any amount not specified in the notice filed under this subd. 12. f. To the extent applicable, ch. 846 controls the foreclosure of liens under this subdivision that attach to real property.

13. Nothing in this subdivision may be considered to relieve any county department of community programs or related program of any liability incurred, or any duty imposed by law, by reason of acts or omissions of personnel of the county department or related program prior to the appointment of a receiver under this paragraph, nor may anything contained in this subdivision be construed to suspend during the receivership any obligation of the county department or related program for the payment of operating and maintenance expenses of a building owned by the

county department or related program or for the payment of mortgages or liens.

14. This paragraph does not apply after the first day of the 73rd month after the effective date of this subdivision .... [revisor inserts date].

SECTION 21. 51.42 (3) (e) of the statutes is created to read:

51.42 (3) (e) *Exchange of information.* Notwithstanding ss. 49.45 (4), 49.53 (1m), 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82 and 252.11 (7), any subunit of a county department of community programs acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of community programs or with any person providing services to the client under a purchase of services contract with the county department of community programs, if necessary to enable an employe or service provider to perform his or her duties, or to enable the county department of community programs to coordinate the delivery of services to the client.

SECTION 22. 51.42 (4) (b) of the statutes is amended to read:

51.42 (4) (b) *Composition.* 1. In a single-county department of community programs the county community programs board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the mentally ill, developmentally disabled, alcoholic or drug dependent persons and shall have representation from the interest group of the mentally ill, the interest group of the developmentally disabled, the interest group of the alcoholic and the interest group of the drug dependent. At least one member appointed to a county community programs board shall be an individual who receives or has received services for mental illness, developmental disability, alcoholism or drug dependency or shall be a family member of such an individual. No more than 5 members may be appointed from the county board of supervisors.

2. In a multicounty department of community programs, the county community programs board shall be composed of 11 members with 3 additional members for each county in a multicounty department of community programs in excess of 2. Appointments shall be made by the county boards of supervisors of the counties in a multicounty department of community programs in a manner acceptable to the counties in the multicounty department of community programs and shall have representation from the interest group of the mentally ill, the interest group of the developmentally disabled, the interest group of the alcoholic and the interest group of the drug dependent. At least one member appointed to a county community programs board shall be an individual who receives or has received services for mental illness, developmental disability, alcoholism or drug dependency or shall be a family member of such an

individual. Each of the counties in the multicounty department of community programs may appoint to the county community programs board not more than 3 members from its county board of supervisors.

SECTION 23. 51.42 (7) (a) 1 of the statutes is amended to read:

51.42 (7) (a) 1. Review requests and certify county departments of community programs and community mental health programs to assure that those county departments and those programs are in compliance with this section.

SECTION 24. 51.42 (7) (a) 2 of the statutes is renumbered 51.42 (7) (a) 2. (intro.) and amended to read:

51.42 (7) (a) 2. (intro.) Periodically review and evaluate ~~county departments of community mental health programs~~ to assure compliance with this section. Such The review shall include a periodic assessment of need which shall separately identify elements of service required under this section. The periodic review of community mental health programs shall be made at least once every 36 months, except that all of the following apply:

Vetoed in Part

SECTION 25. 51.42 (7) (a) 2. a. and b. of the statutes are created to read:

51.42 (7) (a) 2. a. The secretary may require annual review of a community mental health program that, in the immediately preceding 36 months, substantially failed to comply with the requirements for certification or was the subject of grievances or an investigation.

b. The department may review and evaluate a community mental health program at any time.

SECTION 26. 51.42 (7) (a) 2m of the statutes is created to read:

51.42 (7) (a) 2m. Review and evaluate at random at least 5 community mental health programs each year. Review and evaluation under this subdivision may be coincident with or in addition to that made under subd. 2 and may be conducted with or without notice to a community mental health program.

SECTION 27. 51.42 (7) (a) 3m and 3r of the statutes are created to read:

51.42 (7) (a) 3m. Develop a training curriculum for use in training members of county community programs boards and county human services boards. The training curriculum shall delineate the board members' roles and responsibilities and shall provide information on client groups served and programs provided by the county department of community programs or human services. In developing the training curriculum, the department shall consult with representatives of county interests, consumer and advocacy groups and community mental health program providers. The department shall submit the training curriculum to the council on mental health under s. 51.02 (1) (h) for the council's review and comment.

3r. Establish a training schedule that ensures that county community programs boards and county human services boards in all geographical areas of the state are provided access to training under the training curriculum under subd. 3m once every 2 years.

SECTION 28. 51.42 (7) (a) 7 of the statutes is created to read:

51.42 (7) (a) 7. Develop a program in consultation with the department of regulation and licensing to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and social services in evaluating community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

SECTION 29. 51.42 (7) (a) 8 of the statutes is created to read:

51.42 (7) (a) 8. Enter into an agreement with an institution of higher education or a private, nonprofit organization to develop a community mental health client survey prototype. The department shall attempt to secure a grant to fund the development of the survey prototype. ~~The survey prototype shall be made available for use by counties under sub. (3) (ar) 16.~~

Vetoed in Part

SECTION 30. 51.42 (7) (a) 9 of the statutes is created to read:

51.42 (7) (a) 9. ~~Develop, by January 1, 1995,~~ a model community mental health plan available for use by counties and to assist them in developing their community plans as required under s. 51.42 (3) (ar) 5. In the process of developing the model community mental health plan, the department shall select 6 counties, both urban and rural, to submit plans ~~by September 30, 1994,~~ to the department for review. The department shall revise the model plan, if necessary, considering the comments of the 6 counties selected. The department shall also consult with the council on mental health and with groups that represent counties, consumers of mental health services and family members of the consumers in developing the model community mental health plan. The department shall establish a schedule that requires each county in this state to submit a plan under s. 51.42 (3) (ar) 5 once every 3 years, in accordance with deadlines established by the subunit of the department with jurisdiction over community mental health. The department, in conjunction with the council on mental health, shall review the plans submitted by counties.

Vetoed in Part

Vetoed in Part

SECTION 31. 51.42 (7) (b) (intro.) of the statutes is amended to read:

51.42 (7) (b) (intro.) The ~~secretary~~ department shall promulgate rules which do all of the following:

SECTION 32. 51.42 (7) (b) 9 of the statutes is created to read:

51.42 (7) (b) 9. Promulgate rules establishing medication procedures to be used in the delivery of mental health services.

SECTION 33. 51.42 (7) (b) 10 of the statutes is created to read:



51.42 (7) (b) 10. Establish criteria for the level of scrutiny for evaluation of community mental health programs.

SECTION 34. 51.42 (7) (b) 11 of the statutes is created to read:

51.42 (7) (b) 11. Prescribe requirements for certification of community mental health programs, including all of the following:

a. A requirement that, as part of the certification process, community mental health programs must demonstrate that their staff have knowledge of laws, regulations and standards of practice which apply to the program and its clients.

b. A requirement that, when conducting certifications, certification staff must use a random selection process in reviewing client records.

c. A requirement that certification staff conduct client interviews as part of the certification process.

d. A requirement that certification staff provide certification results to the community mental health program reviewed, to subunits within the department responsible for community mental health program monitoring and to the county department under this section in which the community mental health program is located upon completion of certification.

SECTION 35. 51.42 (7) (c) of the statutes is created to read:

51.42 (7) (c) The secretary shall designate the subunit of the department that is responsible for supervising the grievance process for clients of mental health services.

SECTION 40. 51.423 (3) of the statutes is created to read:

51.423 (3) From the appropriation under s. 20.435 (7) (bL), the department shall award one-time grants to applying counties that currently do not operate certified community support programs, to enable uncertified community support programs to meet requirements for certification as providers of medical assistance services.

SECTION 41. 51.61 (1) (fm) of the statutes is created to read:

51.61 (1) (fm) Have the right to be informed of his or her treatment and care and to participate in the planning of his or her treatment and care.

SECTION 42. 51.61 (1) (p) of the statutes is amended to read:

51.61 (1) (p) ~~Be permitted~~ Have reasonable access to a telephone to make and receive telephone calls within reasonable limits.

SECTION 43. 51.61 (1) (u) to (x) of the statutes are created to read:

51.61 (1) (u) Have the right to present grievances under the procedures established under sub. (5) on his or her own behalf or that of others to the staff or administrator of the treatment facility or community mental health program without justifiable fear of reprisal and to communicate, subject to par. (p), with

public officials or with any other person without justifiable fear of reprisal.

(v) Have the right to use his or her money as he or she chooses, except to the extent that authority over the money is held by another, including the parent of a minor, a court-appointed guardian of the patient's estate or a representative payee. If a treatment facility or community mental health program so approves, a patient or his or her guardian may authorize in writing the deposit of money in the patient's name with the facility or program. Any earnings attributable to the money accrue to the patient. The treatment facility or community mental health program shall maintain a separate accounting of the deposited money of each patient. The patient or his or her guardian shall receive, upon written request by the patient or guardian, a written monthly account of any financial transactions made by the treatment facility or community mental health program with respect to the patient's money. If a patient is discharged from a treatment facility or community mental health program, all of the patient's money, including any attributable accrued earnings, shall be returned to the patient. No treatment facility or community mental health program or employe of such a facility or program may act as representative payee for a patient for social security, pension, annuity or trust fund payments or other direct payments or monetary assistance unless the patient or his or her guardian has given informed written consent to do so or unless a representative payee who is acceptable to the patient or his or her guardian and the payer cannot be identified. A community mental health program or treatment facility shall give money of the patient to him or her upon request, subject to any limitations imposed by guardianship or representative payeeship, except that an inpatient facility may, as a part of its security procedures, limit the amount of currency that is held by a patient and may establish reasonable policies governing patient account transactions.

(w) 1. Have the right to be informed in writing, before, upon or at a reasonable time after admission, of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

2. If the patient is a minor, if the patient's parents may be liable for the cost of the patient's care and treatment and if the patient's parents can be located with reasonable effort, the treatment facility or community mental health program shall notify the patient's parents of any liability that the parents may have for the cost of the patient's care and treatment and of their right to receive information under subd. 3, except that a minor patient's parents may not be notified under this subdivision if the minor patient is receiving care under s. 51.47 without the consent of the minor patient's parent or guardian.

3. A patient, a patient's relative who may be liable for the cost of the patient's care and treatment or a patient's guardian may request information about charges for care and treatment services at the treatment facility or community mental health program. If a treatment facility or community mental health program receives such a request, the treatment facility or community mental health program shall promptly provide to the individual making the request written information about the treatment facility's or community mental health program's charges for care and treatment services. Unless the request is made by the patient, the guardian of a patient adjudged incompetent under ch. 880, the parent or guardian of a minor who has access to the minor's treatment records under s. 51.30 (5) (b) 1 or a person designated by the patient's informed written consent under s. 51.30 (4) (a) as a person to whom information may be disclosed, information released under this subdivision is limited to general information about the treatment facility's or community mental health program's charges for care and treatment services and may not include information which may not be disclosed under s. 51.30.

(x) Have the right to be treated with respect and recognition of the patient's dignity and individuality by all employes of the treatment facility or community mental health program and by licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

SECTION 44. 51.61 (3) of the statutes is amended to read:

51.61 (3) The rights accorded to patients under this section apply to patients receiving services in outpatient and day-service treatment facilities, as well as community mental health programs, insofar as applicable.

SECTION 45. 51.61 (5) (a) of the statutes is amended to read:

51.61 (5) (a) The department shall establish procedures to assure protection of patients' rights guaranteed under this chapter, and shall, except for the grievance procedures of the Mendota and Winnebago mental health institutes and the state centers for the developmentally disabled, implement a grievance procedure which complies with par. (b) to assure that rights of patients under this chapter are protected and enforced by the department, by service providers and by county departments under ss. 51.42 and 51.437. The procedures established by the department under this subsection ~~do not~~ apply to patients in private hospitals ~~or~~ and public general hospitals ~~except for patients who are admitted through the department or a county department under s. 51.42 or 51.437, or who are admitted in accordance with a written agreement between the hospital and the department or a county department under s. 51.42 or 51.437.~~

SECTION 46. 51.61 (5) (b) of the statutes is repealed and recreated to read:

51.61 (5) (b) The department shall promulgate rules that establish standards for the grievance procedure used as specified in par. (a) by the department, county departments under ss. 51.42 and 51.437 and service providers. The standards shall include all of the following components:

1. Written policies and procedures regarding the uses and operation of the grievance system.

2. A requirement that a person, who is the contact for initiating and processing grievances, be identified within the department and in each county department under ss. 51.42 and 51.437 and be specified by each service provider.

3. An informal process for resolving grievances.

4. A formal process for resolving grievances, in cases where the informal process fails to resolve grievances to the patient's satisfaction.

5. A process for notification of all patients of the grievance process.

6. Time limits for responses to emergency and non-emergency grievances, as well as time limits for deciding appeals.

7. A process which patients may use to appeal unfavorable decisions within the department or county department under s. 51.42 or 51.437 or through the service provider.

8. A process which may be used to appeal final decisions under subd. 7 of the department, county department under s. 51.42 or 51.437 or service provider to the department of health and social services.

9. Protections against the application of sanctions against any complainant or any person, including an employe of the department, county department under s. 51.42 or 51.437 or service provider who assists a complainant in filing a grievance.

SECTION 47. 51.61 (5) (c) and (d) of the statutes are created to read:

51.61 (5) (c) Each county department of community programs shall attach a statement to an application for recertification of its community mental health programs or treatment facilities that are operated by or under contract with the county. The statement shall indicate if any complaints or allegations of violations of rights established under this section were made during the certification period immediately before the period of recertification that is requested and shall summarize any complaints or allegations made. The statement shall contain the date of the complaint or allegation, the disposition of the matter and the date of disposition. The department shall consider the statement in reviewing the application for recertification.

(d) No person may intentionally retaliate or discriminate against any patient or employe for contacting or providing information to any official or to an employe of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section. Whoever violates this

paragraph may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

SECTION 48. 51.61 (7m) of the statutes is created to read:

51.61 (7m) Whoever intentionally deprives a patient of the ability to seek redress for the alleged violation of his or her rights under this section by unreasonably precluding the patient from doing any of the following may be fined not more than \$1,000 or imprisoned for not more than 6 months or both:

(a) Using the grievance procedure specified in sub. (5).

(b) Communicating, subject to sub. (1) (p), with a court, government official or staff member of the protection and advocacy agency that is designated under s. 51.62 or with legal counsel.

SECTION 49. 51.61 (10) of the statutes is created to read:

51.61 (10) No person who, in good faith, files a report with the appropriate examining board concerning the violation of rights under this section by persons licensed, certified, registered or permitted under ch. 441, 446, 450, 455 or 456, or who participates in an investigation of an allegation by the appropriate examining board, is liable for civil damages for the filing or participation.

SECTION 50. 55.01 (1) of the statutes is renumbered 55.01 (1g).

SECTION 51. 55.01 (1), (1m), (1p), (1t), (2r), (2t), (4p), (4r) and (7) of the statutes are created to read:

55.01 (1) "Abuse" means any of the following:

(a) An act, omission or course of conduct by another that is inflicted intentionally or recklessly and that does at least one of the following:

1. Results in bodily harm or great bodily harm to a vulnerable adult.

2. Intimidates, humiliates, threatens, frightens or otherwise harasses a vulnerable adult.

(b) The forcible administration of medication to a vulnerable adult, with the knowledge that no lawful authority exists for the forcible administration.

(c) An act that constitutes first degree, second degree, third degree or fourth degree sexual assault as specified under s. 940.225.

(1m) "Bodily harm" has the meaning given in s. 939.22 (4).

(1p) "Caretaker" means the person, if any, who takes care of a vulnerable adult voluntarily or under a contract for care.

(1t) "County protective services agency" means the county department designated in s. 55.02.

(2r) "False representation" includes a promise that is made with the intent not to fulfill the promise.

(2t) "Great bodily harm" has the meaning given in s. 939.22 (14).

(4p) "Misappropriation of property" means any of the following:

(a) The intentional taking, carrying away, use, transfer, concealment or retention of possession of the property of a vulnerable adult without the vulnerable adult's informed consent and with intent to deprive the vulnerable adult of possession of the property.

(b) Obtaining the property of a vulnerable adult by intentionally deceiving the vulnerable adult with a representation that is known to be a false representation, is made with intent to defraud and does defraud the vulnerable adult.

(4r) "Neglect" means an act, omission or course of conduct that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or mental health of a vulnerable adult.

(7) "Vulnerable adult" has the meaning given in s. 940.285 (1) (e).

SECTION 52. 55.02 of the statutes is amended to read:

**55.02 Protective service system; establishment.** The department shall develop a statewide system of protective service for mentally retarded and other developmentally disabled persons, for aged infirm persons, for chronically mentally ill persons and for persons with other like incapacities incurred at any age in accordance with rules promulgated by the department. The protective service system shall be designed to encourage independent living and to avoid protective placement whenever possible. The system shall use the planning and advice of agencies, including the county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437. The chairperson of each county board of supervisors shall designate a county department under s. 46.215, 46.22, 51.42 or 51.437 which is providing services in his or her county or a joint mechanism of these county departments to have the responsibility for local planning for the protective service system. The chairperson of the Milwaukee county board of supervisors shall designate the county department under s. 46.215 to serve as the county protective services agency for purposes of s. 55.043. The department and these county departments shall cooperate in developing a coordinated system of services. The department shall provide direct services and enter into contracts with any responsible public or private agency for provision of protective services. In each county, the county department designated under this section ~~in each county~~ shall determine the reporting requirements applicable to the county under s. 880.38 (3).

SECTION 53. 55.043 of the statutes is created to read:

**55.043 County protective services agency.** (1) INVESTIGATION; POWERS. (a) If a county protective services agency has probable cause to believe that there is abuse, neglect or misappropriation of property, the county protective services agency may conduct an investigation in Milwaukee county to determine if the vulnerable adult in question is in need of protective

services. The county protective services agency shall conduct the investigation in accordance with standards established by the department for conducting the investigations. The investigation shall include at least one of the following:

1. Observation of or an interview with the vulnerable adult, in private to the extent practicable, and with or without consent of his or her guardian, if any.
2. A visit to the residence of the vulnerable adult.
3. An interview with the guardian, if any, and with the caretaker, if any, of the vulnerable adult.
4. A review of the treatment and patient health care records of the vulnerable adult.
5. A review of those financial records, if any, of the vulnerable adult that are maintained by the caretaker or landlord of the vulnerable adult or by a member of the immediate family of the vulnerable adult, the caretaker or the landlord.

(b) The county protective services agency may transport the vulnerable adult for performance of a medical examination by a physician if any of the following applies:

1. The vulnerable adult or his or her guardian, if any, consents to the examination.
2. The vulnerable adult is incapable of consenting to the examination and one of the following applies:
  - a. The vulnerable adult has no guardian.
  - b. The vulnerable adult's guardian refuses to consent to the examination, but the examination is authorized by order of a court.

(2) LOCAL ENFORCEMENT ASSISTANCE. The county protective services agency may request a sheriff or police officer to accompany the investigator during visits to the residence of the vulnerable adult or request other assistance as needed. If the request is made, a sheriff or police officer shall accompany the investigator of the county protective services agency to the residence of the vulnerable adult and shall provide other assistance as requested or necessary.

(3) RESTRAINING ORDER; INJUNCTION. If a person other than the vulnerable adult interferes with the investigation under sub. (1) or interferes with the delivery of protective services to the vulnerable adult, the county protective services agency may obtain a restraining order or injunction under s. 813.123 against the person.

(4) OFFER OF SERVICES. If upon investigation the county protective services agency finds abuse, neglect or misappropriation of property, the county protective services agency may do one or more of the following:

(a) Offer services, including protective services under s. 55.05, a protective placement under s. 55.06, relocation assistance or other services.

(b) Take appropriate emergency action, including emergency protective placement under s. 55.06, if the county protective services agency considers that the emergency action is in the vulnerable adult's best

interests and the emergency action is the least restrictive appropriate intervention.

(c) Refer the case to local law enforcement officials under sub. (2) for further investigation or to the district attorney, if the county protective services agency has reason to believe that a violation of chs. 939 to 951 has occurred.

(d) Refer the case to the licensing or certification authorities of the department or to other regulatory bodies if the residence, facility or program for the vulnerable adult is or should be licensed or certified or is otherwise regulated.

(e) Refer the case to the department of regulation and licensing or the appropriate examining board if the abuse, neglect or misappropriation of property involves an individual who is required to be licensed, permitted, certified or registered under chs. 440 to 459.

(f) Bring a petition for a guardianship and protective service or protective placement if necessary to prevent abuse, neglect or misappropriation of property and if the vulnerable adult would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter and services.

(5) APPLICABILITY. This section does not apply to patients or residents of state-operated or county-operated inpatient institutions or hospitals issued certificates of approval under s. 50.35 unless the alleged abuse, neglect or misappropriation of property of such a patient or resident is alleged to have been done by a person other than an employe of the inpatient institution or hospital.

SECTION 54. 55.05 (4) (b) of the statutes is amended to read:

55.05 (4) (b) Where it is necessary to forcibly enter a premises, the representative of an agency or of a county protective services agency shall obtain a court order authorizing entry and shall make the entry accompanied by a sheriff, police officer or member of a fire department. When it appears probable that substantial physical harm, irreparable injury or death may occur to an individual, the police officer, fire fighter or sheriff may enter a premises without a court order if the time required to obtain such an order would result in greater risk of physical harm to the individual.

SECTION 55. 146.82 (2) (a) 7 of the statutes is amended to read:

146.82 (2) (a) 7. To a county agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for purposes of s. 46.90 (4) (a) and (5) or to the county protective services agency designated under s. 55.02 for purposes of s. 55.043. The health care provider may release information by initiating contact with the county agency or county protective services agency without receiving a request for release of the information from the county agency or county protective services agency.

Vetoed  
in Part

~~SECTION 56. 146.82 (2) (a) 9 of the statutes is amended to read:~~

~~146.82 (2) (a) 9. To staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3, if any, for the purpose of protecting and advocating the rights of a person with developmental disabilities, as defined under s. 51.62 (1) (a) who resides in or who is receiving services from an inpatient health care facility, as defined under s. 51.62 (1) (b), or a person with mental illness, as defined under s. 51.62 (1) (bm), and to staff members of the grantees under s. 51.02 (1m) (b), except that, if the patient has a guardian appointed under s. 880.33, information concerning the patient obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted or by staff members of the grantee is limited to the nature of an alleged rights violation, if any, name, birth date and county of residence of the patient, information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment, and the name, address and telephone number of any guardian of the patient and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's guardian in writing of the request and of the guardian's right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.~~

SECTION 57. 146.83 (title) of the statutes is amended to read:

**146.83 (title) Access to patient health care records.**

SECTION 58. 146.83 (4) of the statutes is created to read:

146.83 (4) No person may do any of the following:

- (a) Intentionally falsify a patient health care record.
- (b) Conceal or withhold a patient health care record with intent to prevent its release to the patient, to his or her guardian appointed under ch. 880 or to a person with the informed written consent of the patient or with intent to prevent or obstruct an investigation or prosecution.
- (c) Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

SECTION 59. 146.84 (title) of the statutes is amended to read:

**146.84 (title) Violations related to patient health care records.**

SECTION 60. 146.84 (2) (b) of the statutes is renumbered 146.84 (2) (intro.) and amended to read:

146.84 (2) PENALTIES. (intro.) ~~Any person who violates s. 146.82, except s. 146.82 (2) (a) 3, in a manner that is knowing and wilful or any person who requests or obtains confidential information under s. 146.82 or 146.83 (1) under false pretenses~~ Whoever does any of the following may be fined not more than \$500 \$1,000 or imprisoned for not more than one year in the county jail, 6 months or both:

SECTION 61. 146.84 (2) (a) to (c) of the statutes are created to read:

146.84 (2) (a) Requests or obtains confidential information under s. 146.82 or 146.83 (1) under false pretenses.

(b) Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

(c) Violates s. 146.83 (4).

SECTION 62. 440.03 (10) of the statutes is created to read:

440.03 (10) The department shall cooperate with the department of health and social services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and social services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

SECTION 63. 448.40 (2) (e) of the statutes is created to read:

448.40 (2) (e) Establishing the criteria for the substitution of uncompensated hours of professional assistance volunteered to the department of health and social services for some or all of the hours of continuing education credits required under s. 448.13 for physicians specializing in psychiatry. The eligible substitution hours shall involve professional evaluation of community programs for the certification and recertification of community mental health programs, as defined in s. 51.01 (3n), by the department of health and social services.

SECTION 64. 455.065 (5) of the statutes is created to read:

455.065 (5) Promulgate rules establishing the criteria for the substitution of uncompensated hours of professional assistance volunteered to the department of health and social services for some or all hours of continuing education credits required under subs. (1) and (3). The eligible substitution hours shall involve professional evaluation of community programs for the certification and recertification of community mental health programs, as defined in s. 51.01 (3n), by the department of health and social services.

SECTION 65. 813.123 of the statutes is created to read:

**813.123 Vulnerable adult restraining orders and injunctions.** (1) DEFINITIONS. In this section:

(a) "Abuse" has the meaning given in s. 55.01 (1).

(b) "Bodily harm" has the meaning given in s. 939.22 (4).

(c) "County protective services agency" means the county department designated in s. 55.02.

(d) "False representation" includes a promise that is made with the intent not to fulfill the promise.

(e) "Great bodily harm" has the meaning given in s. 939.22 (14).

(f) "Misappropriation of property" has the meaning given in s. 55.01 (4p).

(g) "Neglect" has the meaning given in s. 55.01 (4r).

(h) "Vulnerable adult" has the meaning given in s. 940.285 (1) (e).

(2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The vulnerable adult, a parent, an adult sibling, an adult child or the legal guardian of the vulnerable adult or a county protective services agency may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(3) GENERAL PROCEDURE. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(b) The court or court commissioner, on its or his or her own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed under s. 880.331 (1) for the vulnerable adult.

2. That all persons, other than the vulnerable adult, the parties, their attorneys, a representative of the county protective services agency, witnesses, court personnel and any guardian or any guardian ad litem, be excluded from any hearing under this section.

3. That access to any record of an action under this section be available only to the vulnerable adult, the parties, their attorneys, any guardian or any guardian ad litem, the county protective services agency, court personnel and any applicable court upon appeal.

(4) TEMPORARY RESTRAINING ORDER. (a) Unless the vulnerable adult, guardian or guardian ad litem consents in writing and the judge or court commissioner

agrees that the contact is in the best interests of the vulnerable adult, a judge or court commissioner shall issue a temporary restraining order ordering the respondent to avoid interference with an investigation of the vulnerable adult under s. 55.043, the delivery of protective services to the vulnerable adult under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 if all of the following occur:

1. The petitioner submits to the judge or court commissioner a petition alleging the elements set forth under sub. (6).

2. The judge or court commissioner finds reasonable grounds to believe that the respondent has interfered with, or based on prior conduct of the respondent may interfere with, an investigation of the vulnerable adult under s. 55.043, the delivery of protective services to the vulnerable adult under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(5) INJUNCTION. (a) Unless the vulnerable adult, guardian or guardian ad litem consents to that contact in writing and the judge agrees that the contact is in the best interests of the vulnerable adult, a judge may grant an injunction ordering the respondent to avoid interference with an investigation of the vulnerable adult under s. 55.043, the delivery of protective services to the vulnerable adult under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge finds reasonable cause to believe any of the following:

a. That the respondent has interfered with, or based upon prior conduct of the respondent may interfere with, an investigation of the vulnerable adult under s. 55.043 and that the interference complained of, if continued, would make it difficult to determine if abuse,

neglect or misappropriation of property is occurring or may recur.

b. That the respondent has interfered with the delivery to the vulnerable adult of protective services under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 after the offer of services or placement has been made and the vulnerable adult or his or her guardian, if any, has consented to receipt of the protective services or placement.

(b) The injunction may be entered only against the respondent named in the petition.

(c) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years.

2. When an injunction that has been in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the vulnerable adult. This extension shall remain in effect until 6 months after the date on which the court first entered the injunction.

3. If the petitioner states that an extension is necessary to protect the vulnerable adult, the court may extend the injunction for not more than 2 years.

4. Notice need not be given to the respondent before extending an injunction under subd. 2 or 3. The petitioner shall notify the respondent after the court extends an injunction under subd. 2 or 3.

(6) PETITION. The petition shall allege facts sufficient to show the following:

(a) The name of the petitioner and the vulnerable adult.

(b) The name of the respondent and that the respondent is an adult.

(c) That the respondent interfered with, or based on prior conduct of the respondent may interfere with, an investigation of the vulnerable adult under s. 55.043, the delivery of protective services to the vulnerable adult under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06.

(7) INTERFERENCE ORDER. Any order under this section directing a person to avoid interference with an investigation of a vulnerable adult under s. 55.043, the delivery of protective services to a vulnerable adult under s. 55.05 or a protective placement of a vulnerable adult under s. 55.06 prohibits the person from intentionally preventing a representative or employe of the county protective services agency from meeting, communicating or being in visual or audio contact with the vulnerable adult, except as provided in the order.

(8) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner, the court or court commissioner shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

(b) Within 24 hours after request by the petitioner, the clerk of circuit court shall send a copy of any order issued or provide notice of any order extended under

this section to the sheriff or to any other local law enforcement agency which is the central repository for orders and which has jurisdiction over the vulnerable adult's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order issued under this section. The information need not be maintained after the order is no longer in effect.

(9) ARREST. A law enforcement officer may arrest and take a person into custody if all of the following occur:

(a) A petitioner presents the law enforcement officer with a copy of an order issued under sub. (4) or an injunction issued under sub. (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or the injunction issued under sub. (5).

(10) PENALTY. Whoever intentionally violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

(11) APPLICABILITY. This section does not apply to vulnerable adults who are patients or residents of state-operated or county-operated inpatient institutions unless the alleged interference with an investigation of the vulnerable adult under s. 55.043 or with the delivery to the vulnerable adult of protective services under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 is alleged to have been done by a person other than an employe of the inpatient institution.

SECTION 66. 939.24 (2) of the statutes is amended to read:

939.24 (2) If Except as provided in ss. 940.285, 940.29 and 940.295, if criminal recklessness is an element of a crime in chs. 939 to 951, the recklessness is indicated by the term "reckless" or "recklessly".

SECTION 67. 939.66 (6) of the statutes is amended to read:

939.66 (6) The A crime specified in s. 940.285 (2) (b) 4 or 5 when the crime charged is specified in s. 940.19 (1m), (2) or (3), 940.225 (1), (2) or (3) or 940.30.

SECTION 68. 939.66 (6c) of the statutes is created to read:

939.66 (6c) A crime that is a less serious type of violation under s. 940.285 than the one charged.

SECTION 69. 939.66 (6e) of the statutes is created to read:

939.66 (6e) A crime that is a less serious type of violation under s. 940.295 than the one charged.

SECTION 70. 940.225 (2) (g) of the statutes is amended to read:

940.225 (2) (g) Is an employe of ~~an inpatient a~~ facility or ~~a state treatment facility program under s. 940.295 (2) (b), (c), (h) or (k)~~ and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

SECTION 71. 940.225 (5) (a) of the statutes is renumbered 940.225 (5) (ag).

SECTION 72. 940.225 (5) (am) and (ar) of the statutes are created to read:

940.225 (5) (am) "Patient" means any person who does any of the following:

1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), (h) or (k).

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

SECTION 73. 940.285 (1) (title) of the statutes is created to read:

940.285 (1) (title) DEFINITIONS.

SECTION 74. 940.285 (1) (bm) of the statutes is created to read:

940.285 (1) (bm) "Maltreatment" includes any of the following conduct:

1. Conduct that causes or could reasonably be expected to cause bodily harm or great bodily harm.

2. Restraint, isolation or confinement that causes or could reasonably be expected to cause bodily harm or great bodily harm or mental or emotional damage, including harm to the vulnerable adult's psychological or intellectual functioning that is exhibited by severe anxiety, depression, withdrawal, regression or outward aggressive behavior or a combination of these behaviors. This subdivision does not apply to restraint, isolation or confinement by order of a court or other lawful authority.

3. Deprivation of a basic need for food, shelter, clothing or personal or health care, including deprivation resulting from the failure to provide or arrange for a basic need by a person who has assumed responsibility for meeting the need voluntarily or by contract, agreement or court order.

SECTION 75. 940.285 (1) (dm) of the statutes is created to read:

940.285 (1) (dm) "Recklessly" means conduct that creates a situation of unreasonable risk of harm and demonstrates a conscious disregard for the safety of the vulnerable adult.

SECTION 76. 940.285 (2) of the statutes is repealed and recreated to read:

940.285 (2) MALTREATMENT; PENALTIES. (a) Any person, other than a person in charge of or employed in a facility under s. 940.29 or in a facility or program under s. 940.295 (2), who does any of the following may be penalized under par. (b):

1. Intentionally subjects a vulnerable adult to maltreatment.

2. Recklessly subjects a vulnerable adult to maltreatment.

(b) 1. Any person violating par. (a) 1 under circumstances that cause or are likely to cause great bodily harm is guilty of a Class D felony.

2. Any person violating par. (a) 1 under circumstances that cause or are likely to cause bodily harm is guilty of a Class E felony.

3. Any person violating par. (a) 2 under circumstances that cause or are likely to cause great bodily harm is guilty of a Class E felony.

4. Any person violating par. (a) 2 under circumstances that cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

5. Any person violating par. (a) 1 or 2 under circumstances not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

SECTION 77. 940.29 (intro.) of the statutes is renumbered 940.29 and amended to read:

**940.29 (title) Abuse of residents of penal facilities.** Any person in charge of or employed in ~~any of the following facilities~~ a penal or correctional institution or other place of confinement who abuses, neglects or ill-treats any person confined in or a resident of any such facility institution or place or who knowingly permits another person to do so is guilty of a Class E felony.

SECTION 78. 940.29 (1) to (9) of the statutes are repealed.

SECTION 79. 940.295 of the statutes is created to read:

**940.295 Abuse and neglect of patients and residents.** (1) DEFINITIONS. In this section:

(a) "Adult family home" has the meaning given in s. 50.01 (1).

(b) "Bodily harm" has the meaning given in s. 939.22 (4).

(c) "Community-based residential facility" has the meaning given in s. 50.01 (1g).

(d) "Foster home" has the meaning given in s. 48.02 (6).

(e) "Great bodily harm" has the meaning given in s. 939.22 (14).

(f) "Group home" has the meaning given in s. 48.02 (7).

(g) "Home health agency" has the meaning given in s. 141.15 (1) (a).

(h) "Hospice" has the meaning given in s. 50.90 (1).



(i) "Inpatient health care facility" has the meaning given in s. 50.135 (1).

(j) "Intentional abuse" means any of the following, if done intentionally:

1. An act, omission or course of conduct by another that is not reasonably necessary for treatment or maintenance of order and discipline in a program or facility under sub. (2) and that does at least one of the following:

a. Results in bodily harm or great bodily harm to a patient or resident.

b. Intimidates, humiliates, threatens, frightens or otherwise harasses a patient or resident.

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

(k) "Neglect" means an act, omission or course of conduct by another that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or mental health of a patient or resident.

(L) "Patient" means any person who does any of the following:

1. Receives care or treatment from a facility or program under sub. (2), from an employe of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under sub. (2) for the purpose of receiving care or treatment from a facility or program under sub. (2), from an employe of a facility or program under sub. (2), or from a person providing services under contract with a facility or program under sub. (2).

(n) "Reckless abuse" means an act, omission or course of conduct by another, if done recklessly, that is not reasonably necessary for treatment or maintenance of order and discipline in a program or facility under sub. (2) and that does at least one of the following:

1. Results in bodily harm or great bodily harm to a patient or resident.

2. Intimidates, humiliates, threatens, frightens or otherwise harasses a patient or resident.

(o) "Recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the patient or resident.

(p) "Resident" means any person who resides in a facility under sub. (2).

(q) "State school for the visually handicapped or hearing impaired" means any schools described in s. 115.52 (2).

(r) "State treatment facility" has the meaning given in s. 51.01 (15).

(s) "Treatment facility" has the meaning given in s. 51.01 (19).

(2) APPLICABILITY. This section applies to any of the following types of facilities or programs:

(a) An adult day care center.

(b) An adult family home.

(c) A community-based residential facility.

(d) A foster home.

(e) A group home.

(f) A home health agency.

(g) A hospice.

(h) An inpatient health care facility.

(i) A program under s. 51.42 (2).

(j) A state school for the visually handicapped or hearing impaired.

(k) A state treatment facility.

(L) A treatment facility.

(m) An institution operated by a child welfare agency licensed under s. 48.60 or by a public agency for the care of neglected, dependent or delinquent children.

(n) Any other health facility or care-related facility or home, whether publicly or privately owned.

(3) ABUSE AND NEGLECT; PENALTIES. (a) Any person in charge of or employed in any facility or program under sub. (2) who does any of the following, or who knowingly permits another person to do so, may be penalized under par. (b):

1. Intentionally abuses or intentionally neglects a patient or resident.

2. Recklessly abuses or recklessly neglects a patient or resident.

(b) 1. Any person violating par. (a) 1 under circumstances that cause or are likely to cause great bodily harm is guilty of a Class D felony.

2. Any person violating par. (a) 1 under circumstances that cause or are likely to cause bodily harm is guilty of a Class E felony.

3. Any person violating par. (a) 2 under circumstances that cause or are likely to cause great bodily harm is guilty of a Class E felony.

4. Any person violating par. (a) 2 under circumstances that cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

5. Any person violating par. (a) 1 or 2 under circumstances not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

SECTION 80. 943.20 (2) (am) of the statutes is created to read:

943.20 (2) (am) "Patient" has the meaning given in s. 940.295 (1) (L).

SECTION 81. 943.20 (2) (cm) of the statutes is created to read:

943.20 (2) (cm) "Resident" has the meaning given in s. 940.295 (1) (p).

SECTION 82. 943.20 (2) (e) of the statutes is created to read:

943.20 (2) (e) "Vulnerable adult" has the meaning given in s. 940.285 (1) (e).

SECTION 83. 943.20 (3) (d) 6 of the statutes is created to read:

943.20 (3) (d) 6. The property is taken from a patient or resident of a facility or program under s. 940.295 (2) or from a vulnerable adult.

SECTION 84. 969.08 (10) (b) of the statutes, as affected by 1993 Wisconsin Acts 50, 92 and 94, is amended to read:

969.08 (10) (b) "Serious crime" means any crime specified in s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (2), 940.20, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1, 2 or 3, 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.

**SECTION 9126. Nonstatutory provisions; health and social services.**

(1) **STANDARDS FOR GRIEVANCE PROCEDURE; RULES.** The department of health and social services shall submit proposed rules required under section 51.61 (5) (b) of the statutes, as affected by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 13th month beginning after the effective date of this subsection.

(2) **CERTIFICATION OF COMMUNITY MENTAL HEALTH PROGRAMS; RULES.** The department of health and social services shall submit in proposed form the rules required under section 51.42 (7) (b) 11 of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this subsection.

(4) **EVALUATION OF COMMUNITY MENTAL HEALTH PROGRAMS; RULES.** The secretary of health and social services shall submit in proposed form the rules required under section 51.42 (7) (b) 10 of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this subsection.

**Vetoed in Part** (5) **COUNCIL ON MENTAL HEALTH.** The authorized FTE positions for the department of health and social services are increased by 1.5 FTE positions on July 1, 1994, to be funded from the appropriation under sec-

~~tion 20.435 (6) (m) of the statutes, for the purpose of services for the council on mental health, except that funding to counties under section 20.435 (6) (m) of the statutes on July 1, 1994, may not be reduced in order to fund these positions.~~ **Vetoed in Part**

(6) **TRAINING CURRICULUM.** By the first day of the 13th month beginning after the effective date of this subsection, the department of health and social services shall provide the training curriculum developed under section 51.42 (7) (a) 3m of the statutes, as created by this act, for use in training members of county community programs boards and county human services boards.

~~SECTION 9226. Appropriation changes; health and social services.~~ **Vetoed in Part**

~~(1) POSITION AUTHORIZATION.~~ In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of health and social services under section 20.435 (8) (a) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$25,000 for fiscal year 1994-95 to increase the authorized FTE positions for the department by 1.0 GPR position on January 1, 1995, to hear appeals of final decisions under section 51.61 (5) (b) 8 of the statutes, as affected by this act.

**SECTION 9326. Initial applicability; health and social services.**

(1) **CONSUMER REPRESENTATION ON CERTAIN BOARDS.** The treatment of sections 46.23 (4) (a) 1 and 51.42 (4) (b) of the statutes first applies to the appointment of a person to a county human services board or county community programs board on the first day of the 4th month beginning after publication.

**SECTION 9359. Initial applicability; other.**

(1c) **CRIMES.** The treatment of sections 939.24 (2), 939.66 (6), (6c) and (6e), 940.225 (2) (g) and (5) (a), (am) and (ar), 940.285 (1) (title), (bm) and (dm) and (2), 940.29, 940.295 and 943.20 (2) (am), (cm) and (e) and (3) (d) 6 of the statutes first applies to offenses occurring on the effective date of this subsection.

~~SECTION 9400. Effective dates.~~ This act takes effect on the day after publication, except as follows: **Vetoed in Part**

~~(1) MENTAL HEALTH PROGRAM CLIENT SURVEY.~~ The repeal and recreation of section 51.42 (3) (ar) 5 of the statutes and the treatment of section 51.42 (3) (ar) 16 of the statutes take effect on January 1, 1995.