



State of Wisconsin
1997 - 1998 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 341**

June 10, 1997 - Offered by COMMITTEE ON HEALTH.

1 **AN ACT** *to repeal* 48.65 (1m); *to renumber* 146.40 (1) (a); *to amend* 48.60 (1),
2 48.625 (1), 48.65 (1), 48.68 (1), 48.981 (3) (c) 8., 49.498 (3) (b) 1., 50.065 (2) (a)
3 (intro.), 55.043 (1) (a) (intro.), (4) (intro.), (e) and (f) and (5), 120.13 (14), 146.40
4 (title), 146.40 (4g) (a) 2. (intro.), 146.40 (4g) (a) 2. b., 146.40 (4g) (a) 3., 146.40
5 (4r) (a), 146.40 (4r) (b), 146.40 (4r) (d), 813.123 (5) (a) 3. a. and 938.22 (7) (a);
6 and *to create* 48.685, 50.01 (1r), 50.065, 146.40 (1) (ad), 146.40 (1) (ag), 146.40
7 (1) (as), 146.40 (4g) (a) 3m., 146.40 (4r) (am), 146.40 (4r) (em) and (er), 165.825,
8 440.03 (3q) and 440.03 (13) of the statutes; **relating to:** requiring criminal
9 history searches of certain persons hired or proposed to be hired by certain
10 facilities or services, clarifying requirements for reporting the
11 misappropriation of property or the abuse or neglect of certain patients or
12 facility residents, granting rule-making authority, making appropriations and
13 providing a penalty.

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

1 **SECTION 1.** 48.60 (1) of the statutes is amended to read:

2 48.60 (1) No person may receive children, with or without transfer of legal
3 custody, to provide care and maintenance for 75 days in any consecutive 12 months'
4 period for 4 or more such children at any one time unless that person obtains a license
5 to operate a child welfare agency from the department. To obtain a license under this
6 subsection to operate a child welfare agency, a person must meet the minimum
7 requirements for a license established by the department under s. 48.67, meet the
8 requirements specified in s. 48.685 and pay the applicable license fee under s. 48.615
9 (1) (a) or (b). A license issued under this subsection is valid for 2 years after the date
10 of issuance, unless sooner revoked or suspended.

11 **SECTION 2.** 48.625 (1) of the statutes is amended to read:

12 48.625 (1) Any person who receives, with or without transfer of legal custody,
13 5 to 8 children, to provide care and maintenance for those children shall obtain a
14 license to operate a group home from the department. To obtain a license under this
15 subsection to operate a group home, a person must meet the minimum requirements
16 for a license established by the department under s. 48.67, meet the requirements
17 specified in s. 48.685 and pay the license fee under sub. (2). A license issued under
18 this subsection is valid for 2 years after the date of issuance, unless sooner revoked
19 or suspended.

20 **SECTION 3.** 48.65 (1) of the statutes is amended to read:

21 48.65 (1) No person may for compensation provide care and supervision for 4
22 or more children under the age of 7 for less than 24 hours a day unless that person
23 obtains a license to operate a day care center from the department. To obtain a

1 license under this subsection to operate a day care center, a person must meet the
2 minimum requirements for a license established by the department under s. 48.67,
3 meet the requirements specified in s. 48.685 and pay the license fee under sub. (3).
4 A license issued under this subsection is valid for 2 years after the date of issuance,
5 unless sooner revoked or suspended.

6 **SECTION 4.** 48.65 (1m) of the statutes is repealed.

7 **SECTION 5.** 48.68 (1) of the statutes is amended to read:

8 48.68 (1) After receipt of an application for a license, the department shall
9 investigate to determine if the applicant meets the minimum requirements for a
10 license adopted by the department under s. 48.67 and meets the requirements
11 specified in s. 48.685. In determining whether to issue a license, the department may
12 consider any action by the applicant, or by an employe of the applicant, that
13 constitutes a substantial failure by the applicant or employe to protect and promote
14 the health, safety and welfare of a child. Upon satisfactory completion of this
15 investigation and payment of the fee required under s. 48.615 (1) (a) or (b), 48.625
16 (2) (a), 48.65 (3) (a) or 938.22 (7) (b), the department shall issue a license under s.
17 48.66 (1) or, if applicable, a probationary license under s. 48.69. At the time of initial
18 licensure and license renewal, the department shall provide a foster home licensee
19 with written information relating to the age-related monthly foster care rates and
20 supplemental payments specified in s. 48.62 (4), including payment amounts,
21 eligibility requirements for supplemental payments and the procedures for applying
22 for supplemental payments.

23 **SECTION 6.** 48.685 of the statutes is created to read:

24 **48.685 Criminal history and child abuse record search.** (1) In this
25 section:

1 (a) "Client" means a child who receives services from an entity.

2 (b) "Entity" means a child welfare agency that is licensed under s. 48.60 to
3 provide care and maintenance for children, to place children for adoption or to license
4 foster homes or treatment foster homes; a group home that is licensed under s.
5 48.625; a shelter care facility that is licensed under s. 938.22; or a day care center that
6 is licensed under s. 48.65 or contracted for under s. 120.13 (14).

7 (c) "Serious crime" has the meaning specified by the department by rule
8 promulgated under sub. (7) (a).

9 **(2)** (a) Notwithstanding s. 111.335, the department may not license a person
10 to operate an entity or renew the license of a person to operate an entity, a school
11 board may not contract with a person under s. 120.13 (14), and an entity may not hire
12 a person, or offer a contract to a person who will be under the entity's control, as
13 defined by the department by rule, and who is expected to have access to its clients,
14 if the department, school board or entity knows or should have known any of the
15 following:

16 1. Except as provided in sub. (5), that the person has been convicted of a serious
17 crime.

18 2. That the person has pending against him or her a charge for a serious crime.

19 3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has
20 made a finding that the person has abused or neglected any client or
21 misappropriated the property of any client.

22 4. That a determination was made under s. 48.981 (3) (c) 4. that the person has
23 abused or neglected a child.

1 5. That, in the case of a position for which the person must be credentialed by
2 the department of regulation and licensing, the person's credential is not current or
3 is limited so as to restrict the person from providing adequate care to a client.

4 (b) The department and every entity shall obtain all of the following with
5 respect to a person specified under par. (a):

6 1. A criminal history search from the records maintained by the department
7 of justice.

8 2. Information that is contained in the registry under s. 146.40 (4g) regarding
9 any findings against the person.

10 3. Information maintained by the department of regulation and licensing
11 regarding the status of the person's credentials, if applicable.

12 (bg) If entity contracts with a person for whom, within the last 4 years, the
13 information required under par. (b) was already obtained, either by another entity
14 or by a temporary employment agency, the entity may obtain the information
15 required under par. (b) from that other entity or temporary employment agency,
16 which shall provide the information, if possible, to the entity.

17 (bm) If the person who is the subject of the search under par. (b) 1. is not a
18 resident of this state, or if at any time within the 3 years preceding the date of the
19 search that person has not been a resident of this state, the department or entity
20 shall make a good faith effort to obtain criminal records of the person from any state
21 in which the person is a resident or was a resident within the 3 years preceding the
22 date of the search.

23 (c) The department may license, a school board may contract with, and an
24 entity may employ or contract with, a person specified under par. (a) for not more
25 than 60 days pending the receipt of the information sought under par. (b). An entity

1 shall provide supervision for a person who is employed or contracted with as
2 permitted under this paragraph.

3 (3) Every 4 years or at any other time that the department or an entity
4 considers appropriate, the department and every entity shall request information
5 maintained by the department of regulation and licensing regarding the status of
6 any relevant credential held by a person who is licensed to operate an entity or by
7 an employe or contract worker of an entity who has, or is expected to have, access to
8 clients of the entity and shall request a criminal history search and a search of the
9 registry under s. 146.40 (4g) for all persons who are licensed to operate an entity or
10 for all of the employes and contract workers of the entity who have, or are expected
11 to have, access to clients of the entity.

12 (4) Whoever violates sub. (2) or (3) may be required to forfeit not more than
13 \$1,000 and may be subject to other sanctions specified by the department by rule.

14 (5) The department may license a person to operate an entity, a school board
15 may contract with a person under s. 120.13 (14) and an entity may employe or
16 contract with a person who has been convicted of a serious crime if the person
17 demonstrates to the department by clear and convincing evidence and in accordance
18 with procedures established by the department by rule that he or she has been
19 rehabilitated. No person who has been convicted of any of the following offenses may
20 be permitted to demonstrate that he or she has been rehabilitated:

21 (a) First-degree intentional homicide under s. 940.01.

22 (b) First degree sexual assault under s. 940.225 (1).

23 (c) First degree sexual assault of a child under s. 948.02 (1).

1 (d) Second degree sexual assault of a child under s. 948.02 (2) if the person was,
2 at the time of the sexual contact or sexual intercourse, more than 4 years older than
3 the child with whom the person had the sexual contact or sexual intercourse.

4 (e) Repeated acts of sexual assault of the same child under s. 948.025 if the child
5 had not attained the age of 13, or if the child had attained the age of 13 and had not
6 attained the age of 16 and the person was, at the time of the sexual contact or sexual
7 intercourse, more than 4 years older than the child with whom the person had the
8 sexual contact or sexual intercourse.

9 **(5c)** Any person who is permitted but fails under sub. (5) to demonstrate to the
10 department that he or she has been rehabilitated may appeal to the secretary of
11 health and family services or his or her designee. Any person who is adversely
12 affected by a decision of the secretary or his or her designee under this subsection has
13 a right to a contested case hearing under ch. 227.

14 **(5g)** Beginning on the first January 1 after the effective date of this subsection
15 [revisor inserts date], and annually thereafter, the department shall submit a
16 report to the legislature under s. 13.172 (2) that specifies the number of persons in
17 the previous year who have requested to demonstrate to the department that they
18 have been rehabilitated under sub. (5), the number of persons who successfully
19 demonstrated that they have been rehabilitated under sub. (5) and the reasons for
20 the success or failure of a person who has attempted to demonstrate that he or she
21 has been rehabilitated.

22 **(5m)** Notwithstanding s. 111.335, the department may refuse to license a
23 person to operate an entity, a school board may refuse to contract with a person under
24 s. 120.13 (14), and an entity may refuse to employ a person who has, or is expected
25 to have, access to its clients, if the person has been convicted of an offense that the

1 department has not defined as a “serious crime” by rule promulgated under sub. (7)
2 (a), or specified in the list established by rule under sub. (7) (b), but that is, in the
3 estimation of the department, school board or entity substantially related to the care
4 of the client.

5 **(6)** (a) The department shall require any person who applies for issuance or
6 renewal of a license to operate an entity or who proposes to contract with a school
7 board under s. 120.13 (14) or to renew a contract under that subsection to complete
8 a background information form that is developed by the department.

9 (am) Every entity shall require all of the following persons to complete a
10 background information form that is developed and distributed to the entity by the
11 department:

12 1. A person that the entity employs or contracts with, or intends to employ or
13 contract with, if the person has, or is expected to have, access to any client of the
14 entity.

15 2. A person who is a resident or prospective resident at the entity and who is
16 not a client or prospective client of the entity, if the person has, or is expected to have,
17 access to any client of the entity.

18 (b) For person specified under par. (am) 1. who are regulated, licensed or
19 certified by, or registered with, the department, the entity shall send the background
20 information form to the department. For all other persons specified under par. (am),
21 the entity shall maintain the background information form on file for inspection by
22 the department.

23 (c) A person who provides false information on a background information form
24 required under this subsection may be required to forfeit not more than \$1,000 and
25 may be subject to other sanctions specified by the department by rule.

1 **(7)** The department shall do all of the following:

2 (a) Establish by rule a definition of “serious crime” for the purpose of this
3 section. The definition shall include only crimes or acts that are substantially related
4 to the care of a client and shall include classes of crimes or acts involving abuse or
5 neglect of a client for which no person who has committed any of those crimes or acts
6 may be permitted to demonstrate under sub. (5) that he or she has been
7 rehabilitated. The definition may also include other crimes or acts that do not
8 involve abuse or neglect of a client but that are substantially related to the care of
9 a client for which no person who committed any of those crimes or acts may be
10 permitted to demonstrate under sub. (5) that he or she has been rehabilitated.

11 (b) Establish by rule a list of crimes or acts that are not included in the
12 definition established under par. (a), that are substantially related to the care of
13 clients and the commission of which warrants a less stringent measure than a bar
14 on employment or similar type of association with an entity. The rule shall be
15 consistent with federal law and regulations and shall include a description of the
16 measures to be taken for the crimes or acts that the department lists under this
17 paragraph.

18 (c) Conduct throughout the state periodic training sessions that cover criminal
19 background investigations; reporting misappropriation of property or abuse or
20 neglect of a client; and any other material that will better enable entities to comply
21 with the requirements of this section.

22 **SECTION 7.** 48.981 (3) (c) 8. of the statutes is amended to read:

23 48.981 **(3)** (c) 8. Using the format prescribed by the department, each county
24 department shall provide the department with information about each report that
25 it receives or that is received by a licensed child welfare agency that is under contract

1 with the county department and about each investigation it or a licensed child
2 welfare agency under contract with the county department conducts. This
3 information shall be used by the department to monitor services provided by county
4 departments or licensed child welfare agencies under contract with county
5 departments and shall be used by the department for inclusion on the registry under
6 s. 146.40 (4g) in those instances in which the county department has made a
7 determination under subd. 4. that abuse or neglect occurred. The department shall
8 use nonidentifying information to maintain statewide statistics on child abuse and
9 neglect, and for planning and policy development.

10 **SECTION 8.** 49.498 (3) (b) 1. of the statutes is amended to read:

11 49.498 **(3)** (b) 1. Inform each resident, orally and in writing at the time of
12 admission to the nursing facility, of the resident's legal rights during the stay at the
13 nursing facility, including a description of the protection of personal funds under sub.
14 (8) and a statement that a resident may file a complaint with the department under
15 s. 146.40 (4r) (a) concerning ~~neglect, abuse or~~ misappropriation of property or neglect
16 or abuse of a resident.

17 **SECTION 9.** 50.01 (1r) of the statutes is created to read:

18 50.01 **(1r)** "Home health agency" has the meaning given under s. 50.49 (1) (a).

19 **SECTION 10.** 50.065 of the statutes is created to read:

20 **50.065 Criminal history and patient abuse record search.** (1) In this
21 section:

22 (b) "Client" means a person who receives services from an entity.

23 (c) "Entity" means a facility, organization or service that is regulated, licensed
24 or certified by or registered with the department. "Entity" includes a personal care

1 worker agency and a supportive home care service agency. “Entity” does not include
2 any of the following:

3 1. Licensed or certified child care under ch. 48.

4 2. Kinship care under s. 48.57 (3m).

5 3. A person certified as a medical assistance provider, as defined in s. 49.43 (10),
6 who is not otherwise regulated, licensed or certified by or registered with the
7 department.

8 4. An entity, as defined in s. 48.685 (1) (b).

9 (d) “Personal care worker agency” has the meaning specified by the department
10 by rule.

11 (e) “Serious crime” has the meaning specified by the department by rule under
12 sub. (7) (a).

13 (f) “Supportive home care service agency” has the meaning specified by the
14 department by rule.

15 **(2)** (a) Notwithstanding s. 111.335, the department may not license a person
16 to operate an entity or renew the license of a person to operate an entity, and an entity
17 may not hire a person, or offer a contract to a person who will be under the entity’s
18 control, as defined by the department by rule, and who is expected to have access to
19 its clients if the department or entity knows or should have known any of the
20 following:

21 1. Except as provided in sub. (5), that the person has been convicted of a serious
22 crime.

23 2. That the person has pending against him or her a charge for a serious crime.

1 3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has
2 made a finding that the person has abused or neglected any client or
3 misappropriated the property of any client.

4 4. That a determination was made under s. 48.981 (3) (c) 4. that the person has
5 abused or neglected a child.

6 5. That, in the case of a position for which the person must be credentialed by
7 the department of regulation and licensing, the person's credential is not current or
8 is limited so as to restrict the person from providing adequate care to a client.

9 (b) The department and every entity shall obtain all of the following with
10 respect to a person specified under par. (a):

11 1. A criminal history search from the records maintained by the department
12 of justice.

13 2. Information that is contained in the registry under s. 146.40 (4g) regarding
14 any findings against the person.

15 3. Information maintained by the department of regulation and licensing
16 regarding the status of the person's credentials, if applicable.

17 (bg) If an entity contracts with a person for whom, within the last 4 years, the
18 information required under par. (b) was already obtained, either by another entity
19 or by a temporary employment agency, the entity may obtain the information
20 required under par. (b) from that other entity or temporary employment agency,
21 which shall provide the information, if possible, to the entity.

22 (bm) If the person who is the subject of the search under par. (b) 1. is not a
23 resident of this state, or if at any time within the 3 years preceding the date of the
24 search that person has not been a resident of this state, the department or entity
25 shall make a good faith effort to obtain criminal records of the person from any state

1 in which the person is a resident or was a resident within the 3 years preceding the
2 date of the search.

3 (c) The department may license, and an entity may employ or contract with,
4 a person specified under par. (a) for not more than 60 days pending the receipt of the
5 information sought under par. (b). An entity shall provide supervision for a person
6 who is employed or contracted with as permitted under this paragraph.

7 (3) Every 4 years or at any other time that the department or an entity
8 considers appropriate, the department and every entity shall request information
9 maintained by the department of regulation and licensing regarding the status of
10 any relevant credential held by a person who is licensed to operate an entity or by
11 an employe or contract worker of an entity who has, or is expected to have, access to
12 clients of the entity and shall request a criminal history search and a search of the
13 registry under s. 146.40 (4g) for all persons who are licensed to operate an entity or
14 for all of the employes and contract workers of the entity who have, or are expected
15 to have, access to clients of the entity.

16 (4) An entity that violates sub. (2) or (3) may be required to forfeit not more than
17 \$1,000 and may be subject to other sanctions specified by the department by rule.

18 (5) The department may license a person to operate an entity and an entity may
19 employ or contract with a person who has been convicted of a serious crime if the
20 person demonstrates to the department by clear and convincing evidence and in
21 accordance with procedures established by the department by rule that he or she has
22 been rehabilitated. No person who has been convicted of any of the following offenses
23 may be permitted to demonstrate that he or she has been rehabilitated:

24 (a) First-degree intentional homicide under s. 940.01.

25 (b) First degree sexual assault under s. 940.225 (1).

1 (c) First degree sexual assault of a child under s. 948.02 (1).

2 (d) Second degree sexual assault of a child under s. 948.02 (2) if the person was,
3 at the time of the sexual contact or sexual intercourse, more than 4 years older than
4 the child with whom the person had the sexual contact or sexual intercourse.

5 (e) Repeated acts of sexual assault of the same child under s. 948.025 if the child
6 had not attained the age of 13, or if the child had attained the age of 13 and had not
7 attained the age of 16 and the person was, at the time of the sexual contact or sexual
8 intercourse, more than 4 years older than the child with whom the person had the
9 sexual contact or sexual intercourse.

10 **(5c)** Any person who is permitted but fails under sub. (5) to demonstrate to the
11 department that he or she has been rehabilitated may appeal to the secretary of
12 health and family services or his or her designee. Any person who is adversely
13 affected by a decision of the secretary or his or her designee under this subsection has
14 a right to a contested case hearing under ch. 227.

15 **(5g)** Beginning on the first January 1 after the effective date of this subsection
16 [revisor inserts date], and annually thereafter, the department shall submit a
17 report to the legislature under s. 13.172 (2) that specifies the number of persons in
18 the previous year who have requested to demonstrate to the department that they
19 have been rehabilitated under sub. (5), the number of persons who successfully
20 demonstrated that they have been rehabilitated under sub. (5) and the reasons for
21 the success or failure of a person who has attempted to demonstrate that he or she
22 has been rehabilitated.

23 **(5m)** Notwithstanding s. 111.335, the department may refuse to license a
24 person to operate an entity, and an entity may refuse to employ a person who has,
25 or is expected to have, access to its clients, if the person has been convicted of an

1 offense that the department has not defined as a “serious crime” by rule promulgated
2 under sub. (7) (a), or specified in the list established by rule under sub. (7) (b), but
3 that is, in the estimation of the department or entity substantially related to the care
4 of a client.

5 (6) (a) The department shall require any person who applies for issuance or
6 renewal of a license to operate an entity to complete a background information form
7 that is developed by the department.

8 (am) Every entity shall require all of the following persons to complete a
9 background information form that is developed and distributed to the entity by the
10 department:

11 1. A person that the entity employs or contracts with, or intends to employ or
12 contract with, if the person has, or is expected to have, access to any client of the
13 entity.

14 2. A person who is a resident or prospective resident at the entity and who is
15 not a client or prospective client of the entity, if the person has, or is expected to have,
16 access to any client of the entity.

17 (b) For persons specified under par. (am) 1. who are regulated, licensed or
18 certified by, or registered with, the department, the entity shall send the background
19 information form to the department. For all other persons specified under par. (am),
20 the entity shall maintain the background information form on file for inspection by
21 the department.

22 (c) A person who provides false information on a background information form
23 required under this subsection may be required to forfeit not more than \$1,000 and
24 may be subject to other sanctions specified by the department by rule.

25 (7) The department shall do all of the following:

1 (a) Establish by rule a definition of “serious crime” for the purpose of this
2 section. The definition shall include only crimes or acts that are substantially related
3 to the care of a client and shall include classes of crimes or acts involving abuse or
4 neglect of a client for which no person who has committed any of those crimes or acts
5 may be permitted to demonstrate under sub. (5) that he or she has been
6 rehabilitated. The definition may also include other crimes or acts that do not
7 involve abuse or neglect of a client but that are substantially related to the care of
8 a client for which no person who committed any of those crimes or acts may be
9 permitted to demonstrate under sub. (5) that he or she has been rehabilitated.

10 (b) Establish by rule a list of crimes or acts that are not included in the
11 definition established under par. (a), that are substantially related to the care of
12 clients and the commission of which warrants a less stringent measure than a bar
13 on employment or similar type of association with an entity. The rule shall be
14 consistent with federal law and regulations and shall include a description of the
15 measures to be taken for the crimes or acts that the department lists under this
16 paragraph.

17 (c) Conduct throughout the state periodic training sessions that cover criminal
18 background investigations; reporting misappropriation of property or abuse or
19 neglect of a client; and any other material that will better enable entities to comply
20 with the requirements of this section.

21 **SECTION 11.** 50.065 (2) (a) (intro.) of the statutes, as created by 1997 Wisconsin
22 Act (this act), is amended to read:

23 50.065 (2) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
24 sub. (5), the department may not license a person to operate an entity or renew the
25 license of a person to operate an entity, and an entity may not ~~hire a person, or offer~~

1 ~~a contract to~~ employ or contract with a person who will be under the entity's control,
2 as defined by the department by rule, and who has, or is expected to have, access to
3 its clients, ~~or permit a person who is not a client to reside at the entity if the person~~
4 has, or is expected to have, access to a client, if the department or entity knows or
5 should have known any of the following:

6 **SECTION 12.** 55.043 (1) (a) (intro.), (4) (intro.), (e) and (f) and (5) of the statutes
7 are amended to read:

8 55.043 (1) (a) (intro.) If a county protective services agency has probable cause
9 to believe that there is ~~abuse, neglect or misappropriation of property~~ or neglect or
10 abuse of a vulnerable adult, the county protective services agency may conduct an
11 investigation in Milwaukee county to determine if the vulnerable adult in question
12 is in need of protective services. The county protective services agency shall conduct
13 the investigation in accordance with standards established by the department for
14 conducting the investigations. The investigation shall include at least one of the
15 following:

16 (4) OFFER OF SERVICES. (intro.) If upon investigation the county protective
17 services agency finds ~~abuse, neglect or misappropriation of property~~ or neglect or
18 abuse of a vulnerable adult, the county protective services agency may do one or more
19 of the following:

20 (e) Refer the case to the department of regulation and licensing ~~or the~~
21 ~~appropriate examining board~~ if the ~~abuse, neglect or misappropriation of property~~
22 or neglect or abuse involves an individual who is required to ~~be licensed, permitted,~~
23 ~~certified or registered~~ hold a credential, as defined in s. 440.01 (2) (a), under chs. 440
24 to 459.

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

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

12 **SECTION 13.** 120.13 (14) of the statutes is amended to read:

13 120.13 (14) DAY CARE PROGRAMS. Establish and provide or contract for the
14 provision of day care programs for children. The school board may receive federal
15 or state funds for this purpose. The school board may charge a fee for all or part of
16 the cost of the service for participation in a day care program established under this
17 subsection. Costs associated with a day care program under this subsection may not
18 be included in shared costs under s. 121.07 (6). Day care programs established under
19 this subsection shall meet the standards for licensed day care centers established by
20 the department of health and family services. If a school board proposes to contract
21 for or renew a contract for the provision of a day care program under this subsection
22 or if on July 1, 1996, a school board is a party to a contract for the provision of a day
23 care program under this subsection, the school board shall refer the contractor or
24 proposed contractor to the department of health and family services for the

1 background investigations criminal history and child abuse record search required
2 under s. 48.65 (1m) 48.685.

3 **SECTION 14.** 146.40 (title) of the statutes is amended to read:

4 **146.40 (title) Instructional programs for nurse's assistants and home**
5 **health and hospice aides; reporting client abuse.**

6 **SECTION 15.** 146.40 (1) (a) of the statutes is renumbered 146.40 (1) (am).

7 **SECTION 16.** 146.40 (1) (ad) of the statutes is created to read:

8 146.40 (1) (ad) "Client" means a person who receives services from an entity.

9 **SECTION 17.** 146.40 (1) (ag) of the statutes is created to read:

10 146.40 (1) (ag) "Credential" has the meaning given in s. 440.01 (2) (a).

11 **SECTION 18.** 146.40 (1) (as) of the statutes is created to read:

12 146.40 (1) (as) "Entity" has the meaning given in s. 50.065 (1) (c).

13 **SECTION 19.** 146.40 (4g) (a) 2. (intro.) of the statutes is amended to read:

14 146.40 (4g) (a) 2. (intro.) A listing of all individuals about whom the
15 department is notified under sub. (4r) (a) or (am), for whom the department makes
16 findings under sub. (4r) (b) and to whom any of the following applies:

17 **SECTION 20.** 146.40 (4g) (a) 2. b. of the statutes is amended to read:

18 146.40 (4g) (a) 2. b. A hearing officer finds reasonable cause to believe that the
19 individual performed an action alleged under sub. (4r) (a) or (am).

20 **SECTION 21.** 146.40 (4g) (a) 3. of the statutes is amended to read:

21 146.40 (4g) (a) 3. Findings of the department under sub. (4r) (b) or of the
22 hearing officer under sub. (4r) (d) concerning the ~~neglect, abuse or misappropriation~~
23 of property or the neglect or abuse of a client by an individual listed under subd. 2.

24 **SECTION 22.** 146.40 (4g) (a) 3m. of the statutes is created to read:

1 146.40 (4g) (a) 3m. A listing of all the individuals for whom a county
2 department has made a determination under s. 48.981 (3) (c) 4. that abuse or neglect
3 occurred.

4 **SECTION 23.** 146.40 (4r) (a) of the statutes is amended to read:

5 146.40 (4r) (a) Any individual may report to the department that he or she
6 believes that ~~a nurse's assistant~~ any person employed by or under contract with an
7 entity has neglected, or abused a client or misappropriated the client's property of
8 ~~a nursing home resident or a hospital patient or that a home health aide has~~
9 ~~neglected, abused or misappropriated the property of a home health agency patient.~~

10 **SECTION 24.** 146.40 (4r) (am) of the statutes is created to read:

11 146.40 (4r) (am) 1. Except as provided in subd. 2., an entity shall report to the
12 department any allegation of misappropriation of property or of neglect or abuse of
13 a client by any person employed by or under contract with the entity.

14 2. An entity shall report to the department of regulation and licensing any
15 allegation of misappropriation of property or of neglect or abuse of a client by any
16 person employed by or under contract with the entity if that person holds a credential
17 that is related to the person's employment at, or contract with, the entity.

18 3. An entity that intentionally fails to report an allegation of misappropriation
19 of property or of neglect or abuse of a client may be required to forfeit not more than
20 \$1,000 and may be subject to other sanctions specified by the department by rule.

21 **SECTION 25.** 146.40 (4r) (b) of the statutes is amended to read:

22 146.40 (4r) (b) The Except as provided in pars. (em) and (er), the department
23 shall review and investigate any report received under par. (a) or (am) and, if the
24 allegation is substantiated, make specific, documented findings concerning the
25 ~~neglect, abuse or misappropriation of property~~ or the neglect or abuse. The

1 department shall in writing by certified mail notify the ~~nurse's assistant or home~~
2 ~~health aide~~ person specified in the report that ~~his or her~~ the person's name and the
3 department's findings about ~~him or her~~ the person shall be listed in the registry
4 under sub. (4g) (a) 2. and 3. unless ~~he or she~~ the person contests the listings in a
5 hearing before the ~~department~~ division of hearings and appeals created under s.
6 15.103 (1). The written notification shall describe the investigation conducted by the
7 department, enumerate the findings alleging ~~neglect, abuse or misappropriation of~~
8 ~~property or neglect or abuse of a nursing home resident or home health agency~~
9 ~~patient~~ client and explain the consequence to the ~~nurse's assistant or home health~~
10 ~~aide~~ person specified in the report of waiving a hearing to contest the findings. The
11 ~~nurse's assistant or home health aide named~~ person specified in the report shall have
12 30 days after receipt of the notification to indicate to the department in writing
13 whether he or she intends to contest the listing or to waive the hearing.

14 **SECTION 26.** 146.40 (4r) (d) of the statutes is amended to read:

15 146.40 (4r) (d) If the ~~nurse's assistant or home health aide~~ person specified in
16 the report received under par. (b) ~~(a) or (am)~~ timely notifies the ~~department~~ division
17 of hearings and appeals created under s. 15.103 (1) that he or she contests the listings
18 in the registry under par. (b), the ~~department~~ division of hearings and appeals shall
19 hold a hearing under the requirements of ch. 227. If after presentation of evidence
20 a hearing officer finds that there is no reasonable cause to believe that the ~~nurse's~~
21 ~~assistant or home health aide~~ person specified in the report received under par. (a)
22 or (am) performed an action alleged under par. (a) or (am), the hearing officer shall
23 dismiss the proceeding. If after presentation of evidence a hearing officer finds that
24 there is reasonable cause to believe that the ~~nurse's assistant or home health aide~~
25 person specified in the report received under par. (a) or (am) performed an action

1 alleged under par. (a) or (am), the hearing officer shall so find and shall cause the
2 name of the ~~nurse's assistant or home health aide~~ person specified in the report
3 received under par. (a) or (am) to be entered under sub. (4g) (a) 2. and the hearing
4 officer's findings about the ~~nurse's assistant or home health aide~~ person specified in
5 the report received under par. (a) or (am) to be entered under sub. (4g) (a) 3.

6 **SECTION 27.** 146.40 (4r) (em) and (er) of the statutes are created to read:

7 146.40 (4r) (em) If the department of health and family services receives a
8 report under par. (a) or (am) and determines that a person who is the subject of the
9 report holds a credential that is related to the person's employment at, or contract
10 with, the entity, the department of health and family services shall refer the report
11 to the department of regulation and licensing.

12 (er) The department may contract with private field investigators to conduct
13 investigations of reports received by the department under par. (a) or (am).

14 **SECTION 28.** 165.825 of the statutes is created to read:

15 **165.825 Information link; department of health and family services.**

16 The department of justice shall cooperate with the departments of regulation and
17 licensing and health and family services in developing and maintaining a computer
18 linkup to provide access to the information obtained from a criminal history search.

19 **SECTION 29.** 440.03 (3q) of the statutes is created to read:

20 440.03 (3q) Notwithstanding sub. (3m), the department of regulation and
21 licensing shall investigate any report that it receives under s. 146.40 (4r) (am) 2. or
22 (em).

23 **SECTION 30.** 440.03 (13) of the statutes is created to read:

24 440.03 (13) The department of regulation and licensing shall cooperate with
25 the departments of justice and health and family services in developing and

1 maintaining a computer linkup to provide access to information regarding the
2 current status of a credential issued to any person by the department of regulation
3 and licensing, including whether that credential has been restricted in any way.

4 **SECTION 31.** 813.123 (5) (a) 3. a. of the statutes is amended to read:

5 813.123 (5) (a) 3. a. That the respondent has interfered with, or based upon
6 prior conduct of the respondent may interfere with, an investigation of the
7 vulnerable adult under s. 55.043 and that the interference complained of, if
8 continued, would make it difficult to determine if ~~abuse, neglect or misappropriation~~
9 of property or abuse or neglect is occurring or may recur.

10 **SECTION 32.** 938.22 (7) (a) of the statutes is amended to read:

11 938.22 (7) (a) No person may establish a shelter care facility without first
12 obtaining a license under s. 48.66 (1). To obtain a license under s. 48.66 (1) to operate
13 a shelter care facility, a person must meet the minimum requirements for a license
14 established by the department of health and family services under s. 48.67, meet the
15 requirements specified in s. 48.685 and pay the license fee under par. (b). A license
16 issued under s. 48.66 (1) to operate a shelter care facility is valid for 2 years after the
17 date of issuance, unless sooner revoked or suspended.

18 **SECTION 33. Nonstatutory provisions.**

19 (1) ABUSE AND NEGLECT INVESTIGATIONS. The authorized FTE positions for the
20 department of health and family services are increased by 4.15 FED positions on the
21 effective date of this paragraph, to be funded from the appropriation under section
22 20.435 (6) (n) of the statutes, for the purpose of conducting investigations under
23 section 146.40 (4r) (b) of the statutes, as affected by this act.

24 (2) COMPUTER LINK FOR CRIMINAL BACKGROUND INVESTIGATIONS.

1 (a) The authorized FTE positions for the department of justice are increased
2 by 1.0 PR positions, to be funded from the appropriation under section 20.455 (2) (gm)
3 of the statutes, for the purpose of establishing and maintaining the computer linkup
4 under section 165.825 of the statutes, as created by this act.

5 (b) The authorized FTE positions for the department of justice are increased
6 6.0 PR project positions, to be funded from the appropriation under section 20.455
7 (2) (gm) of the statutes, for the period ending on July 1, 2000, for the purpose of
8 conducting criminal history searches required under section 50.065 (2) (b) 1. of the
9 statutes, as created by this act.

10 (3) STUDY ON DETERMINING CONVICTIONS IN OTHER STATES. The department of
11 health and family services and the department of justice shall conduct a study to
12 determine whether efficient methods exist by which both departments may
13 ascertain whether a person for whom a criminal history search must be conducted
14 under this act has a relevant conviction in another state or has been reported in
15 another state for misappropriation of property or abuse or neglect of a person who
16 is considered a vulnerable person in that state. Not later than July 1, 1998, the
17 department of health and family services, in conjunction with the department of
18 justice, shall submit to the legislature in the manner provided under section 13.172
19 (2) of the statutes a report detailing the results of the study.

20 (4) AUDIT OF ABUSE INVESTIGATIONS. The legislative audit bureau is requested
21 to perform a performance evaluation audit to compare the investigation processes of
22 the department of health and family services under section 146.40 (4r) (b) of the
23 statutes, as affected by this act and the department of regulation and licensing under
24 section 440.03 (3q) of the statutes, as created by this act, and any private
25 investigators with whom the department of health and family services has

1 contracted under section 146.40 (4r) (er) of the statutes, as created by this act. The
2 audit shall compare methods, timeliness and outcomes of the investigations. If the
3 legislative audit bureau performs the audit, it shall file its report as described under
4 section 13.94 (1) (b) of the statutes by June 30, 2000.

5 (5) COMPUTER LINK. The department of justice and the secretaries of health and
6 family services and regulation and licensing shall, not later than 6 months after the
7 effective date of this subsection, submit to the chairpersons of the joint committee on
8 finance a plan for a computer linkup required under sections 165.825 and 440.03 (13)
9 of the statutes, as created by this act, to allow the department of health and family
10 services to access the information required under section 50.065 (2) (b) of the
11 statutes, as created by this act. The plan shall include a projected implementation
12 date, which may not be later than 18 months after the submission of the plan. The
13 plan may not require the department of justice to expend more than 30% of the
14 difference between the revenues received under section 165.82 (1) of the statutes and
15 \$39,000 in any quarter of fiscal year 1998-99 to establish the computer linkup. If
16 the joint committee on finance approves the plan, it may supplement the
17 appropriation under section 20.435 (6) (a) of the statutes by not more than \$420,000
18 in fiscal year 1998-99. Notwithstanding section 13.101 (3) (a) of the statutes, the
19 committee is not required to find that an emergency exists. Of the moneys
20 appropriated to the joint committee on finance under section 20.865 (4) (a) of the
21 statutes in the 1997-99 fiscal biennium, \$420,000 in fiscal year 1998-99 is allocated
22 for the implementation of the computer linkup plan.

23 (6) STUDY ON UNIFORM FEES. The department of justice shall prepare a report
24 on the feasibility of establishing uniform fees for criminal history searches under
25 section 165.82 of the statutes. The department shall submit the report to the

1 legislature in the manner provided under section 13.172 (2) of the statutes no later
2 than July 1, 1998.

3 **SECTION 34. Appropriation changes.**

4 (1) REGULATION AND LICENSING.

5 (a) In the schedule under section 20.005 (3) of the statutes for the appropriation
6 to the department of regulation and licensing under section 20.165 (1) (g) of the
7 statutes, as affected by the acts of 1997, the dollar amount is increased by \$49,000
8 for fiscal year 1998-99 to increase the authorized FTE positions for the department
9 of regulation and licensing by 1.0 PR position.

10 (b) In the schedule under section 20.005 (3) of the statutes for the appropriation
11 to the department of regulation and licensing under section 20.165 (1) (g) of the
12 statutes, as affected by the acts of 1997, the dollar amount is increased by \$200,000
13 for fiscal year 1998-99 for the purpose of establishing a computer linkup under
14 section 440.03 (13) of the statutes, as created by this act.

15 (2) HEALTH CARE REGISTRY. In the schedule under section 20.005 (3) of the
16 statutes for the appropriation to the department of health and family services under
17 section 20.435 (6) (a) of the statutes, as affected by the acts of 1997, the dollar amount
18 is increased by \$415,300 for fiscal year 1998-99 to increase the authorized FTE
19 positions for the department by 9.5 GPR positions for investigations conducted under
20 section 146.40 (4r) (b) of the statutes, as affected by this act.

21 (3) JOINT COMMITTEE ON FINANCE; SUPPLEMENT. In the schedule under section
22 20.005 (3) of the statutes for the appropriation to the joint committee on finance
23 under section 20.865 (4) (a) of the statutes, as affected by the acts of 1997, the dollar
24 amount is increased by \$420,000 for fiscal year 1998-99 for the purpose of providing
25 a supplement as provided under SECTION 33 (5) of this act.

