

## **ADULT ABUSE REPORTING REQUIREMENTS UNDER § 46.90 & § 55.043 – ELDER ABUSE REPORTING SYSTEM & ADULT AT RISK AGENCY**

**This document, created by the End Domestic Abuse Wisconsin — Wisconsin Coalition Against Domestic Violence — Legal Department, does not constitute legal advice. The WCADV gratefully acknowledges Attorney Betsy Abramson for her guidance and contributions to this document.**

**This document covers the following professionals:**

- Chiropractor
- Christian Science Treatment, person practicing
- Dentist
- Home Health Agency as defined in § [50.49 \(1\)\(a\)](#) (and employee of)
- Marriage & Family Therapist
- Nurse
- Occupational Therapist
- Occupational Therapy Assistant
- Optometrist
- Partnership of a corporation or limited liability company that provides health care services
- Perfusionist
- Physical Therapist
- Physical Therapist Assistant
- Physician
- Physician Assistant
- Podiatrist
- Professional Counselor
- Psychologist
- Social Worker

### **A. Definitions:**

1. **Individual at risk:** An elder adult at risk or an adult at risk. See § [940.285](#)
2. **Adult at risk:** Any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. See § [55.01\(1e\)](#)
3. **Elder adult at risk:** A person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. See § [46.90\(1\)\(br\)](#)
4. **Adult-at-risk agency:** The agency designated by the county board of supervisors under § [55.043 \(1d\)](#) to receive, respond to, and investigate reports of abuse, neglect, self-neglect, and financial exploitation under § [55.043](#). See § [55.01\(1f\)](#)
5. **Elder-adult-at-risk agency:** The agency designated by the county board of supervisors under sub. [\(2\)](#) to receive, respond to, and investigate reports of abuse, neglect, self-neglect, and financial exploitation under sub. [\(4\)](#). See § [46.90\(1\)\(bt\)](#)

## B. Who is reportable under §§ [46.90\(1\)](#) & [55.043](#)?

Elder adults at risk and adults at risk, respectively. (See definitions above)

## C. What is reportable? See §§ [46.90\(4\)\(ad\)](#) & [55.01](#)

1. **Abuse** – §§ [46.90\(1\)\(a\)](#) & [55.01\(1\)](#) include the following:
  - Physical abuse<sup>1</sup>
  - Emotional Abuse<sup>2</sup>
  - Sexual Abuse<sup>3</sup>
  - Treatment without consent<sup>4</sup>
  - Unreasonable confinement or restraint<sup>5</sup>
2. **Financial Exploitation**<sup>6</sup>
3. **Neglect**<sup>7</sup>
4. **Self-neglect**<sup>8</sup>

## D. Who is required to report under §§ [46.90](#) and [55.043](#)?

1. An employee of any entity that is licensed, certified, or approved by or registered with the Department of Health Services.
2. A health care provider, as defined in § [55.01\(7\)](#).

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<sup>1</sup> Intentional or reckless infliction of bodily harm. See §§ [46.90\(1\)\(fg\)](#) & [55.01\(1\)](#)

<sup>2</sup> Language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed. See §§ [46.90\(1\)\(cm\)](#) & [55.01\(1\)](#)

<sup>3</sup> Violation of §§ [940.225\(1\)](#), [\(2\)](#), [\(3\)](#) or [\(3m\)](#) (criminal sexual assault laws). See §§ [46.90\(1\)\(gd\)](#) & [55.01\(1\)](#)

<sup>4</sup> The administration of medication to an individual who has not provided informed consent, or the performance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent, with the knowledge that no lawful authority exists for the administration or performance. See §§ [46.90\(1\)\(h\)](#) & [55.01\(1\)](#)

<sup>5</sup> Includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining devices, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices in entities regulated by the department if the methods or devices are employed in conformance with state and federal standards governing confinement and restraint.” See §§ [46.90\(1\)\(i\)](#) & [55.01\(1\)](#)

<sup>6</sup> Any of the following: 1. Obtaining an individual's money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent; 2. Theft, as prohibited in § [943.20](#); 3. The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities; 4. Unauthorized use of an individual's personal identifying information or documents, as prohibited in § [943.201](#); 5. Unauthorized use of an entity's identifying information or documents, as prohibited in § [943.203](#); 6. Forgery, as prohibited in § [943.38](#); 7. Financial transaction card crimes, as prohibited in § [943.41](#). See §§ [46.90\(1\)\(ed\)](#) & [55.01\(2s\)](#)

<sup>7</sup> The failure of a caregiver, as evidenced by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. "Neglect" does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do-not-resuscitate order under [ch. 154](#), a power of attorney for health care under [ch. 155](#), or as otherwise authorized by law. See §§ [46.90\(1\)\(f\)](#) & [55.01\(4r\)](#).

<sup>8</sup> A significant danger to an individual's physical or mental health because the individual is responsible for his or her own care but fails to obtain adequate care, including food, shelter, clothing, or medical or dental care. See §§ [46.90\(1\)\(g\)](#) & [55.01\(6u\)](#)

3. A social worker, professional counselor, or marriage and family therapist certified under chapter 457.

See §§ [46.90\(4\)\(ab\)](#) & [55.043\(1m\)\(a\)](#)

**E. Wisconsin Law contains “Limited Required Reporting.” You must file a report *if* the individual at risk is seen in the course of your professional duties and:**

1. The individual at risk has requested that you make the report; or
2. There is reasonable cause to believe that the individual at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make informed judgment about whether to report the risk; or
3. Other individuals at risk are at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by the suspected perpetrator.

See §§ [46.90\(4\)\(ab\)](#), [\(ad\)](#) & [55.043\(1m\)\(b\)](#)

**Wisconsin Law contains these exceptions [See §§ [46.90\(4\)\(ae\)](#) & [55.043\(1m\)\(be\)](#)]:**

- a. You are not required to report if you believe that filing a report would **not** be in the best interest of the individual at risk. Be sure to document the reasons for your belief in the case file of the suspected victim.
- b. You are not required to report if a health care provider provides treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition and his or her communications with patients are required by his or her religious denomination to be held confidential.

**Note: Others who are permitted but not required to report adult abuse:** [See §§ [46.90\(4\)\(ar\)](#) & [55.043\(1m\)\(br\)](#)]

- a. Any person, including an attorney or a person working under the supervision of an attorney, may file a report.

**Note:** Any intentional failure to report may be fined up to \$500 or imprisoned for up to six months. See §§ [46.90\(4\)\(e\)](#) & [55.043\(9m\)\(e\)](#)

**F. To what agency do you report?**

1. Adult-at-risk agency or an Elder-adult-at-risk agency. (*See definitions above*)

**G. What are penalties for failure to report? See §§ [46.90\(9\)](#) & [55.043\(9m\)](#)**

1. Any person, including the state or any political subdivision of the state, violating sub. [\(6\)](#) is liable to any person damaged as a result of the violation for such damages as may be proved, together with

exemplary damages of not less than \$100 nor more than \$500 for each violation and the costs and reasonable actual attorney fees that are incurred by the person damaged.

2. In any action brought under par. [\(a\)](#) in which the court determines that the violator acted in a manner that was knowing and willful, the violator shall be liable for such damages as may be proved together with exemplary damages of not less than \$500 nor more than \$1,000 for each violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under par. [\(a\)](#) that the plaintiff suffer or be threatened with actual damages.
3. An individual may bring an action to enjoin any violation of sub. [\(6\)](#) or to compel compliance with sub. [\(6\)](#), and may in the same action seek damages as provided in this subsection [ §§ [46.90\(9\)](#) & [55.043\(9m\)](#) ]. The individual may recover costs and reasonable actual attorney fees incurred in the action, if he or she prevails.
4. Any person who violates sub. [\(4\)\(b\)1.](#) or sub. [\(1m\)\(c\)1.](#) may be fined not more than \$10,000 or imprisoned for not more than 6 months or both.
5. Whoever intentionally violates sub. [\(4\)\(ad\)](#) or sub. [\(1m\)\(b\)](#) by failure to report as required may be fined not more than \$500 or imprisoned not more than 6 months or both.

#### **H. What are the protections for reporting? See §§ [46.90\(4\)\(b\)](#) & [55.043\(1m\)\(c\)](#)**

1. No person may discharge or otherwise retaliate or discriminate against any person for reporting in good faith under this subsection ( §§ [46.90\(4\)\(b\)](#) & [55.043\(1m\)\(c\)](#) ).
2. No person may discharge or otherwise retaliate or discriminate against any individual on whose behalf another person has reported in good faith under this subsection ( §§ [46.90\(4\)\(b\)](#) & [55.043\(1m\)\(c\)](#) ).
3. Any discharge of a person or act of retaliation or discrimination that is taken against a person who makes a report under this subsection ( § [46.90](#) ), within 120 days after the report is made, establishes a rebuttable presumption that the discharge or act is made in response to the report. This presumption may be rebutted by a preponderance of evidence that the discharge or act was not made in response to the report.
4. Any employee who is discharged or otherwise discriminated against may file a complaint with the department of workforce development under § [106.54\(5\)](#).

#### **I. What are Elder-adult-at-risk and Adult-at-risk agencies required to do? See § [46.90\(3\)\(a\)](#)**

1. Develop a policy for notifying other investigative agencies, including law enforcement officials in appropriate cases, and shall establish an elder adult at risk abuse reporting system.
2. Commence investigation within 24 hours after a report is received, excluding Saturdays, Sundays and legal holidays. See § [46.90\(5\)\(a\)1.](#)

**J. If after responding to a report, the elder-adult-at-risk or adult-at-risk agency has reason to believe that the individual at risk has been the subject of abuse, financial exploitation, neglect, or self-neglect, what may the agency do? See § [46.90\(5m\)\(br\)](#)**

1. Request immediate assistance in initiating a protective services action under Chapter 55 or contact an investigative agency, as appropriate.
2. Take appropriate emergency action, including emergency protective placement under §[55.06](#), if the adult-at-risk agency or elder-adult-at-risk agency determines that the emergency action is in the best interest of the adult at risk or elder adult at risk and the emergency action is the least restrictive appropriate intervention.
3. Refer the case to law enforcement officials for further investigation or to the district attorney, if the adult-at-risk agency or elder-adult-at-risk agency has reason to believe that a crime has been committed.
4. Refer the case to the licensing, permitting, registration, or certification authorities of the department or to other regulatory bodies if the residence, facility, or program for the elder adult at risk is or should be licensed, permitted, registered, or certified or is otherwise regulated.
5. Refer the case to the department of regulation and licensing if the financial exploitation, neglect, self-neglect, or abuse involves an individual who is required to hold a credential under Chapters 440 to 460.
6. Bring a petition for guardianship and protective placement under Chapter 55 or a review of an existing guardianship if necessary to prevent financial exploitation, neglect, self-neglect, or abuse and if the elder adult at risk would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter, or services.
7. Seek an individual at risk restraining order under § [813.123](#). See § [46.90\(5\)\(d\)](#)

**K. Other possible reporting requirements:**

1. Duty to aid victim or report a crime. See §[940.34](#)
  - a. § [940.34\(2\)\(a\)](#), states that any person who knows a crime is being committed and that the victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim. This duty does not apply if compliance would place the reporting person in danger or interfere with duties the person owes to others.
  - b. § [940.34\(2\)\(b\)](#), states any person licensed as a private detective or granted a private security permit under § [440.26](#), who has reasonable grounds to believe that a crime is being committed or has been committed shall notify promptly an appropriate law enforcement agency of the facts which form the basis for this belief.
  - c. §[940.34\(2\)\(c\)2.](#), states any unlicensed private security person, as defined in § [440.26\(1m\)\(h\)](#), who has reasonable grounds to believe a crime is being committed or has been committed shall notify an appropriate law enforcement agency of the facts which form the basis for this belief.

**Penalties under § [940.34\(1\)\(a\)](#), [\(b\)](#) & [\(c\)](#):** Violations of §[940.34\(2\)\(a\)](#), [\(b\)](#) & [\(c\)](#) are Class C misdemeanors. Those who are licensed face having their license revoked, suspended, or limited.