

46.90 Elder abuse reporting system.

(1) DEFINITIONS. In this section:

(a) "Abuse" means any of the following:

1. Physical abuse.
2. Emotional abuse.
3. Sexual abuse.
4. Treatment without consent.
5. Unreasonable confinement or restraint.

(ag) "Aging unit" has the meaning given under s. [46.82 \(1\) \(a\)](#).

(aj) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(an) "Caregiver" means a person who has assumed responsibility for all or a portion of an individual's care voluntarily, by contract, or by agreement, including a person acting or claiming to act as a legal guardian.

(ar) "Case management" means an assessment of need for direct services, development of a direct service plan and coordination and monitoring of the provision of direct services.

(bm) "Direct services" includes temporary shelter, relocation assistance, housing, respite care, emergency funds for food and clothing and legal assistance.

(br) "Elder adult at risk" means any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

(bt) "Elder-adult-at-risk agency" means 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)

(cm) "Emotional abuse" means 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.

(ed) "Financial exploitation" means 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 s. [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 s. [943.201](#).
5. Unauthorized use of an entity's identifying information or documents, as prohibited in s. [943.203](#).
6. Forgery, as prohibited in s. [943.38](#).
7. Financial transaction card crimes, as prohibited in s. [943.41](#).

(eg) "Fiscal agent" includes any of the following:

1. A guardian of the estate appointed under s. [54.10](#).
2. A conservator appointed under s. [54.76](#).
3. An agent under a power of attorney under ch. [244](#).
4. A representative payee under [20 CFR 416.635](#).
5. A conservatorship under the U.S. Department of Veteran's Affairs.

(er) "Investigative agency" means a law enforcement or a city, town, village, county, or state governmental agency or unit with functions relating to protecting health, welfare, safety, or property, including an agency concerned with animal protection, public health, building code enforcement, consumer protection, or insurance or financial institution regulation.

(f) "Neglect" means 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.

(fg) "Physical abuse" means the intentional or reckless infliction of bodily harm.

(g) "Self-neglect" means 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.

(gd) "Sexual abuse" means a violation of s. 940.225 (1), (2), (3), or (3m).

(gf) "State governmental agency" has the meaning given for "agency" in s. 16.417 (1) (a).

(gr) "State official" means any law enforcement officer employed by the state or an employee of one of the following:

1. The department of health services.
2. The department of justice.
3. The department of safety and professional services.
4. The board on aging and long-term care.
5. A state governmental agency other than those specified in subds. 1. to 4. with functions relating to protecting health and safety.

(h) "Treatment without consent" means 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.

(i) "Unreasonable confinement or restraint" 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.

(2) ELDER-ADULT-AT-RISK AGENCY DESIGNATION. Each county board shall designate an agency in the county as the elder-adult-at-risk agency for the purposes of this section.

(3) ELDER-ADULT-AT-RISK AGENCY DUTIES. (a) Each elder-adult-at-risk agency shall develop a policy for notifying other investigative agencies, including law enforcement officials in appropriate cases, and shall establish an elder abuse reporting system to carry out the purposes of this section. Each elder-adult-at-risk agency shall enter into a memorandum of understanding regarding the operation of the system with the county department under s. 46.215 or 46.22 and with any private or public agency, including a county department under s. 51.42 or 51.437, within the county that is participating in the elder abuse reporting system. The memorandum of understanding shall, at a minimum, identify the agencies that are responsible for the investigation of reports of abuse, financial exploitation, neglect, or self-neglect of elder adults at risk and for the provision of specific direct services.

(b) Each elder-adult-at-risk agency shall receive reports of abuse, financial exploitation, neglect, or self-neglect of elder adults at risk.

(c) Each elder-adult-at-risk agency shall publicize the existence of an elder abuse reporting system in the county and shall provide a publicized telephone number that can be used by persons wishing to report suspected cases of abuse, financial exploitation, neglect, or self-neglect of elder adults at risk. Each elder-adult-at-risk agency shall also provide a telephone number that can be used to make reports after the elder-adult-at-risk agency's regular business hours.

(4) REPORTING. (ab) The following persons shall file reports as specified in par. (ad):

1. An employee of any entity that is licensed, certified, or approved by or registered with the department.
3. A health care provider, as defined in s. 155.01 (7).
4. A social worker, professional counselor, or marriage and family therapist certified under ch. 457.

(ad) Except as provided in par. (ae), a person specified in par.

(ab) who has seen an elder adult at risk in the course of the person's professional duties shall file a report with the county department, the elder-adult-at-risk agency, a state or local law enforcement agency, the department, or the board on aging and long-term care if the elder adult at risk has requested the person to make the report, or if the person has reasonable cause to believe that any of the following situations exist:

1. The elder adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk.
2. An elder adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.
3. An elder adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.

(ae) A person specified in par. (ab) to whom any of the following applies is not required to file a report as provided in par. (ad):

1. If the person believes that filing a report would not be in the best interest of the elder adult at risk. If the person so believes, the person shall document the reasons for this belief in the case file that the person maintains on the elder adult at risk.

2. 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.

(ar) Any person, including an attorney or a person working under the supervision of an attorney, may report to the county department, the elder-adult-at-risk agency, a state or local law enforcement agency, the department, or the board on aging and long-term care that he or she believes that abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.

(b) 1. a. No person may discharge or otherwise retaliate or discriminate against any person for reporting in good faith under this subsection.

b. 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.

cm. Any discharge of a person or act of retaliation or discrimination that is taken against a person who makes a report under this subsection, 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.

2. b. Any employee who is discharged or otherwise discriminated against may file a complaint with the department of workforce development under s. 106.54 (5).

c. Any person not described in subd. 2. b. who is retaliated or discriminated against in violation of subd. 1. a. or b. may commence an action in circuit court for damages incurred as a result of the violation.

(c) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for reporting in good faith under this subsection and within the scope of his or her authority, or for filing a report with an agency not listed in par. (ad) (intro.) or (ar) if the person had a good faith belief that the report was filed correctly with one of the listed agencies.

(d) If a report under par. (ad) or (ar) is made to a state official, the state official shall refer the report to the appropriate elder-adult-at-risk agency. The requirement under this paragraph does not apply to an employee of the board on aging and long-term care who determines that his or her referral would be in violation of 42 USC 3058g (d).

(e) Any person making a report under this subsection is presumed to have reported in good faith.

(5) RESPONSE AND INVESTIGATION. (a) 1. Except as otherwise provided, upon receiving a report of alleged abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk, the elder-adult-at-risk agency shall either respond to the report including, if necessary, by conducting an investigation, or refer the report to another agency for investigation. Upon receiving a report of alleged abuse, financial exploitation, neglect, or self-neglect of a client, as defined in s. 50.065 (1) (b), of an entity, as defined in s. 50.065 (1) (c), if the person suspected of perpetrating the alleged abuse, financial exploitation, or neglect is a caregiver or a non-client resident of the entity, the elder-adult-at-risk agency shall refer the report within 24 hours after the report is received to the department for investigation. The department shall coordinate its investigatory efforts with other investigative agencies or authorities as appropriate. An elder-adult-at-risk agency's response to or another investigative agency's investigation of a report of alleged abuse, financial exploitation, neglect, or self-neglect that is not referred to the department shall be commenced within 24 hours after a report is received, excluding Saturdays, Sundays and legal holidays.

50.065 Criminal history and patient abuse record search.

(1) In this section:

(b) "Client" means a person who receives direct care or treatment services from an entity.

(c) "Entity" means a facility, organization or service that is licensed or certified by or registered with the department to provide direct care or treatment services to clients; or an agency that employs or contracts with an individual to provide personal care services. "Entity" includes a hospital, a home health agency licensed under s. 50.49, a temporary employment agency that provides caregivers to another entity, and the board on aging and long-term care. "Entity" does not include any of the following:

1. Licensed or certified child care under ch. 48.
2. Kinship care under s. 48.57 (3m) or long-term kinship care under s. 48.57 (3n).
3. A person certified as a medical assistance provider, as defined in s. 49.43 (10), who is not otherwise approved under s. 50.065 (1) (cm), licensed or certified by or registered with the department.
4. An entity, as defined in s. 48.685 (1) (b).
6. A public health dispensary established under s. 252.10.

2. If an agent or employee of an elder-adult-at-risk agency required to respond under this subsection is the subject of a report, or if the elder-adult-at-risk agency or an agency under contract with the county department determines that the relationship between the elder-adult-at-risk agency and the agency under contract with the county department would not allow for an unbiased response, the elder-adult-at-risk agency shall, after taking any action necessary to protect the elder adult at risk, notify the department. Upon receipt of the notice, the department or a

county department under s. [46.215](#), [46.22](#), [51.42](#), or [51.437](#) designated by the department shall conduct an independent investigation. The powers and duties of a county department making an independent investigation are those given to an elder–adult–at–risk agency under pars. (b) to (f) and sub. (6).

46.215 County department of social services in populous counties.
46.22 County social services.
51.42 Community mental health, developmental disabilities, alcoholism and drug abuse services
51.437 Developmental disabilities services.

(b) The elder–adult–at–risk agency’s response or another investigative agency’s investigation may include one or more of the following:

1. A visit to the residence of the elder adult at risk.
2. Observation of the elder adult at risk, with or without consent of his or her guardian or agent under an activated power of attorney for health care, if any.
3. An interview with the elder adult at risk, in private to the extent practicable, and with or without the consent of his or her guardian or agent under an activated power of attorney for health care, if any.
4. An interview with the guardian or agent under an activated power of attorney for health care, if any, and with any caregiver of the elder adult at risk.
5. A review of the treatment and patient health care records of the elder adult at risk.
6. A review of any financial records of the elder adult at risk that are maintained by a financial institution, as defined in s. [705.01 \(3\)](#); by an entity, as defined in s. [50.065](#); by any caregiver of the elder adult at risk; or by a member of the immediate family of the elder adult at risk or caregiver. The records shall be released without informed consent in either of the following circumstances:
 - a. To an elder–adult–at–risk agency or other investigative agency under this section. The financial record holder may release financial record information by initiating contact with the elder–adult–at–risk agency or other investigative agency without first receiving a request for release of the information from the elder–adult–at–risk agency or other investigative agency.
 - b. Under a lawful order of a court of record.

705.01 (3) “Financial institution” means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan associations and credit unions.
50.065 Criminal history and patient abuse record search

(br) The elder–adult–at–risk agency or other investigative agency may transport the elder adult at risk for performance of a medical examination by a physician if any of the following applies:

1. The elder adult at risk or his or her guardian or agent under an activated power of attorney for health care, if any, consents to the examination.
2. The elder adult at risk is incapable of consenting to the examination and one of the following applies:
 - a. The elder adult at risk has no guardian or agent under an activated power of attorney for health care.
 - b. The elder adult at risk has a guardian or an agent under an activated power of attorney for health care, but that guardian or agent is the person suspected of abusing, neglecting, or financially exploiting the elder adult at risk.
 - c. The examination is authorized by order of a court.

(c) The elder–adult–at–risk agency may request a sheriff or police officer to accompany the elder–adult–at–risk agency investigator or worker during visits to the residence of the elder adult at risk or request other assistance as needed. If the request is made, a sheriff or police officer shall accompany the elder–adult–at–risk agency investigator or worker to the residence of the elder adult at risk and shall provide other assistance as requested or necessary.

(d) If a person interferes with the response or investigation under this subsection or interferes with the delivery of protective services under ch. [55](#) to the elder adult at risk, the elder–adult–at–risk agency investigator or worker may apply for an order under s. [813.123](#) prohibiting the interference.

813.123 Restraining orders and injunctions for individuals at risk

(f) If the elder–adult–at–risk agency worker or investigator or other agency investigator has reason to believe that substantial physical harm, irreparable injury, or death may occur to an elder adult at risk, the worker or investigator shall request immediate assistance in either initiating a protective services action under ch. [55](#) or contact law enforcement or another public agency, as appropriate.

(h) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for responding to a report or for participating in or conducting an investigation under this subsection, including the taking of photographs or the conducting of a medical examination, if the response or investigation was performed in good faith and within the scope of his or her authority.

(5m) OFFER OF SERVICES AND REFERRAL OF CASES. (a) Upon responding to a report, the elder–adult–at–risk agency or the investigative agency shall determine whether the elder adult at risk or any other individual involved in the alleged abuse, financial exploitation, neglect, or self–neglect is in need of services under this chapter or ch. [47](#), [49](#), [51](#), [54](#), or [55](#). From the appropriation under s. [20.435 \(7\) \(dh\)](#), the department shall allocate to selected counties not less than

\$25,000 in each fiscal year, and within the limits of these funds and of available state and federal funds and of county funds appropriated to match the state and federal funds, the elder–adult–at–risk agency shall provide the necessary direct services to the elder adult at risk or other individual or arrange for the provision of the direct services with other agencies or individuals. Those direct services provided shall be rendered under the least restrictive conditions necessary to achieve their objective.

(b) If the elder–adult–at–risk agency is not the aging unit, the elder–adult–at–risk agency in each county shall consult with and accept advice from the aging unit with respect to the distribution of the funds for direct services that are allocated under par. (a).

(br) If, after responding to a report, the elder–adult–at–risk agency has reason to believe that the elder adult at risk has been the subject of abuse, financial exploitation, neglect, or self–neglect, the elder–adult–at–risk agency may do any of the following:

1. Request immediate assistance in initiating a protective services action under ch. 55 or contact an investigative agency, as appropriate.
2. Take appropriate emergency action, including emergency protective placement under s. 55.135, if the elder–adult–at–risk agency determines that the emergency action is in the best interests of the elder adult at risk and the emergency action is the least restrictive appropriate intervention.
3. Refer the case to law enforcement officials, as specified in sub. (3) (a), for further investigation or to the district attorney, if the 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 safety and professional services if the financial exploitation, neglect, self–neglect, or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 460.
- 5g. Refer the case to the department of financial institutions if the financial exploitation, neglect, self–neglect, or abuse involves an individual who is required to be registered under s. 202.13 or 202.14.
202.13: Regulation of fund-raising counsel; 202.14: Regulation of professional fund-raisers.
6. Bring a petition for a guardianship and protective services or protective placement under ch. 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.

(c) An elder adult at risk may refuse to accept services unless a guardian authorizes the services. The older–adult–at–risk agency or other provider agency shall notify the elder adult at risk of this right to refuse before providing services.

(6) RECORDS; CONFIDENTIALITY. (ac) In this subsection: 1. “Departmental report form” includes documentation of an elder–adult–at–risk agency’s response to or investigation of a report made under sub. (5) and is the information required to be submitted to the department.

2. “Record” includes any document relating to the response, investigation, assessment, and disposition of a report made under this section.

(am) The elder–adult–at–risk agency shall prepare a departmental report form of its response under sub. (5) to a report of suspected abuse, financial exploitation, neglect, or self–neglect. If the elder–adult–at–risk agency refers the report to an investigative agency, the investigative agency shall advise the elder–adult–at–risk agency in writing of its response to the report. The elder–adult–at–risk agency shall maintain records of suspected abuse, financial exploitation, neglect, or self–neglect.

(b) Departmental report forms are confidential and may not be released by the elder–adult–at–risk agency or other investigative agency, except under the following circumstances:

1. To the elder adult at risk, any person named in a departmental report form who is suspected of abusing, neglecting, or financially exploiting an elder adult at risk, and the suspect’s attorney. These persons may inspect the departmental report form, except that information identifying the person who initially reported the suspected abuse, financial exploitation, neglect, or self–neglect, or any other person whose safety might be endangered through disclosure, may not be released.
2. To the agency or other entity from which assistance is requested under sub. (5) (f). Information obtained under this subdivision shall remain confidential.
3. To an individual, organization, or agency designated by the department or as required by law for the purposes of management audits or program monitoring and evaluation. Information obtained under this subdivision shall remain confidential and may not be used in any way that discloses the names of or other identifying information about the individuals involved.
4. For purposes of research, if the research project has been approved by the department or the elder–adult–at–risk agency and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not

connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individuals involved. The information shall remain confidential. In approving the use of information under this subdivision, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

5. Under a lawful order of a court of record.

6. To any agency or individual that provides direct services under sub. (5m), including an attending physician for purposes of diagnosis and treatment, and within the department to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals committed to or under the supervision of the department. Information obtained under this subdivision shall remain confidential.

7. To the guardian of the elder adult at risk or the guardian of any person named in a report who is suspected of abusing, neglecting, or financially exploiting an elder adult at risk. These persons may inspect the departmental report form, except that information identifying the person who initially reported the suspected abuse, financial exploitation, neglect, or self-neglect, or any other person whose safety might be endangered through disclosure, may not be released.

8. To law enforcement officials in accordance with the policy developed under sub. (3) (a).

9. To a federal agency, state governmental agency, agency of any other state, or local governmental unit in this state or any other state that has a need for a departmental report form in order to carry out its responsibility to protect elder adults at risk from abuse, financial exploitation, neglect, or self-neglect.

10. To the reporter who made a report in his or her professional capacity, regarding action to be taken to protect or provide services to the alleged victim of abuse, financial exploitation, neglect, or self-neglect.

(bd) If a person requesting a departmental report form is not one of the persons or entities specified in par. (b), the elder-adult-at-risk agency may release information indicating only whether or not a report was received and whether or not statutory responsibility was fulfilled.

(br) Notwithstanding par. (b) 1. to 10., an elder-adult-at-risk agency or an investigative agency may not release departmental report forms under this section if any of the following applies:

1. The elder-adult-at-risk agency determines that the release would be contrary to the best interests of the elder adult at risk who is the subject of the departmental report form or of another person residing with the subject of the departmental report form, or the release is likely to cause mental, emotional, or physical harm to the subject of the departmental report form or to any other individual.

2. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

3. The elder-adult-at-risk agency determines that disclosure would jeopardize ongoing or future civil investigations or proceedings or would jeopardize the fairness of such a legal proceeding.

(bt) Subject to pars. (b), (bd), (br), (bv), and (bw), records under this subsection are confidential and may not be released by the elder-adult-at-risk agency or other investigative agency, except under the following circumstances, upon request:

1. To the elder adult at risk who is the alleged victim named in the record.

2. To the legal guardian, conservator, or other legal representative of the elder adult at risk who is the alleged victim named in the record, if the legal guardian, conservator, or other legal representative of the alleged victim is not the alleged perpetrator of the abuse, financial exploitation, or neglect.

3. To law enforcement officials and agencies in accordance with the policy developed under sub. (3) (a) or with investigations conducted under sub. (5), or a district attorney, for purposes of investigation or prosecution.

4. To the department, under s. 51.03 (2), or for death investigations under s. 50.04 (2t) or 50.035 (5); or to a sheriff, police department, or district attorney for death investigations under s. 51.64 (2) (a).

5. To an employee of a county department under s. 51.42 or 51.437 that is providing services either to the elder adult at risk who is the alleged victim named in the record or to the alleged perpetrator of abuse, to determine whether the alleged victim should be transferred to a less restrictive or more appropriate treatment modality or facility.

6. To a court, tribal court, or state governmental agency for a proceeding relating to the licensure or regulation of an individual or entity regulated or licensed by the state governmental agency, that was an alleged perpetrator of abuse, financial exploitation, or neglect.

7. To the department, for management, audit, program monitoring, evaluation, billing, or collection purposes.

8. To the attorney or guardian ad litem for the elder adult at risk who is the alleged victim named in the record, to assist in preparing for any proceeding under ch. 48, 51, 54, 55, 813, 971, or 975 pertaining to the alleged victim.

9. To a coroner, medical examiner, pathologist, or other physician investigating the cause of death of an elder adult at risk that is unexplained or unusual or is associated with unexplained or suspicious circumstances.

10. To staff members of the protection and advocacy agency designated under s. 51.62 and the board on aging and long-term care under s. 16.009.

11. To an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, neglect, or financial exploitation of an elder adult at risk.

12. To a grand jury, if it determines that access to specified records is necessary for the conduct of its official business.

13. Under a lawful order of a court of record.

(bv) The identity of a person making a report of alleged abuse, neglect, self-neglect, or financial exploitation shall be deleted from any record prior to its release under par. (bt) or from any departmental report form prior to its release under par. (b). The identity of any reporter may only be released with the written consent of the reporter or under a lawful order of a court of record.

(bw) A person to whom a departmental report form or a record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this subsection.

(by) A custodian of records or departmental report forms incurs no civil or criminal liability under this subsection and may not be found guilty of unprofessional conduct for the release or non-release of records or departmental report forms in accordance with this subsection while acting in good faith and within the scope of his or her authority.

(d) Any person who requests or obtains confidential information under this subsection under false pretenses may be fined not more than \$500 or imprisoned not more than one year in the county jail or both.

(e) Any employee who violates this subsection may be subject to discharge or suspension without pay.

(7) EXCEPTION. Nothing in this section may be construed to mean that a person is abused, financially exploited, neglected or in need of direct or protective services solely because he or she consistently relies upon treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition.

(8) DEPARTMENT DUTIES. (a) The department shall develop a plan to assist elder-adult-at-risk agencies in determining appropriate responses to reports of abuse, financial exploitation, neglect, or self-neglect.

(b) The department shall prepare and distribute sample departmental report forms for use by elder-adult-at-risk agencies.

(c) The department shall collect statistical information from each county pertaining to each reported case of abuse, financial exploitation, neglect, or self-neglect. The department may require elder-adult-at-risk agency workers or investigators to submit departmental report forms to the department that summarize the information being reported. These departmental report forms may not name or otherwise identify individuals. The department shall use this information to review the effectiveness of this section, to plan program changes, and to formulate reports.

(d) The department shall develop and disseminate information on elder-adult-at-risk abuse and the elder abuse reporting system under this section. The department shall also develop informational materials to be used by elder-adult-at-risk agencies regarding abuse of elder adults at risk and regarding the elder abuse reporting system. The department shall solicit contributions of labor, materials, and expertise from private sources to assist in developing the informational materials.

(9) PENALTIES. (a) 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.

(b) 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.

(c) 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. The individual may recover costs and reasonable actual attorney fees incurred in the action, if he or she prevails.

(d) Any person who violates sub. (4) (b) 1. may be fined not more than \$10,000 or imprisoned for not more than 6 months or both.

(e) Whoever intentionally violates sub. (4) (ad) by failure to report as required may be fined not more than \$500 or imprisoned not more than 6 months or both.

History: 1983 a. 398, 1985 a. 176; 1989 a. 31; 1991 a. 39, 235; 1993 a. 27; 1995 a. 27 ss. 2334, 9130 (4); 1995 a. 225; 1997 a. 3, 131; 1999 a. 82; 2003 a. 33; 2005 a. 264, 388; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45; 2009 a. 319; 2011 a. 32; 2013 a. 20. Failure of a defamation plaintiff to assert any facts to support a finding of bad faith on the part of a person who reported possible material abuse resulted in a concession that the reporter was acting in good faith at the time he made the elder abuse report and thus his statements were entitled to protection or privilege under sub. (4) (c). A ruling finding good faith did not resolve a counterclaim under sub. (4) (b) 2. c. that the lawsuit was retaliatory. Attorney fees are not recoverable as damages resulting from the statutory tort of retaliation. *Schau v. Kordell*, 2009 WI App 135, 321 Wis. 2d 105, 773 N.W.2d 454, 08-2571. Abuse and Neglect in Long-term Care Facilities: The Civil Justice System's Response. Studinski. Wis. Law. Aug. 2004. Preventing Abuse and Neglect in Health Care Settings: The Regulatory Agency's Responsibility. Dawson. Wis. Law. Aug. 2004. Seeking Justice in Death's Waiting Room: Barriers to Effectively Prosecuting Crime in Long-term Care Facilities. Hanrahan. Wis. Law. Aug. 2004. A Response: Issues Affecting Long-term Care. Purtell. Wis. Law. Oct. 2004.