Adult Protective Services (APS) Policy Manual

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### Adult Protective Services (APS) Introduction

APS operates under the authority of Sections §46.90 and §55.01 and §55.02(2) of the Wisconsin Statutes to protect those who are persons age 60 or older and adults with disabilities.

##### Guiding Value

*Every action taken by Adult Protective Services must balance the duty to protect the safety of the vulnerable adult with the adult's right to self-determination.*

-National Adult Protective Services Association

##### APS Purpose and Objectives

The APS program protects adults-at-risk from abuse, neglect, self-neglect and financial exploitation by investigating and providing or arranging for services necessary to alleviate or prevent further maltreatment.

APS provides:

1. Thorough review of intakes (initial reports) of abuse, neglect, self-neglect or exploitation;
2. Timely and thorough investigation to determine the validity and allegations of abuse, neglect, self-neglect, and exploitation;
3. Comprehensive assessment and identification of root causes to achieve a thorough understanding of overall situations;
4. Comprehensive services planning;
5. Preventative and supportive services that originate from community involvement in the protection of Adults-At-Risk;
6. Cooperation with other state and local agencies;
7. Consultations to other professionals and the community;
8. Guardianship, protective service, and protective placement services in conjunction with county corporation counsels;
9. Monitoring and reporting of those under protective placement services;
10. Guidance and referral to existing guardians.

Wisconsin Mandatory Reporting Guidelines

##### Legal Authority

Wis. Stats. §46.90(4) and §55.043(1m)

##### Mandated Reporters

The following individuals are listed as mandated reporters:

* + Employees of any entity that is licensed, certified, or approved by or registered with the Department of Health and Services
  + Chiropractors
  + Cooperative health care associations providing direct services through salaried employees
  + Counselors certified under Wis. Stat. §457
  + Dentists
  + Family therapists
  + Home health agencies as defined in Wis. Stat. §50.49 (1)(a)
  + Marriage therapists
  + Nurses
  + Occupational therapists
  + Optometrists
  + Partnerships, corporations, or LLCs that provide health care services
  + Perfusionists
  + Physical therapists or their assistants
  + Physicians
  + Physicians' assistants
  + Podiatrists
  + Psychiatrists
  + Psychologists
  + Social workers
  + Any person practicing Christian Science Treatment

##### Exceptions to the reporting requirements:

If a mandatory reporter believes that filing a report would not be in the best interest of the adult- at-risk, he or she does not have to report. However, the reporter must document the reasons for this belief in the adult-at-risk's case file.

In addition, a health care provider need not report if he or she 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.

##### Voluntary Reporters:

Voluntary reporters may report if they have reasonable belief that abuse, neglect, self-neglect or financial exploitation have occurred.

##### Protection for All Reporters:

* + Anyone who makes a good faith report has several protections; not only mandatory reporters. Reports are presumed to be made in good faith.
  + A reporter may not be held civilly or criminally liable or be found guilty of unprofessional conduct for making a good faith report within the scope of his or her authority.
  + A reporter, or someone reporting for another person, may not be discharged, retaliated against, or discriminated against for making a good faith report.
  + If a reporter is fired, retaliated, or discriminated against within 120 days of reporting, there is a rebuttable presumption that the discharge/ retaliation/ discrimination was in response to the report.
  + If this happens, a reporter can file complaints with various agencies and seek damages in court.
  + In addition, if someone violates this protective provision, they may be fined up to

$10,000 and imprisoned for up to 6 months, or both.

**Legal Authority**

### Intake

Wisconsin State Statutes §55.001, 55.01, & 46.90

###### Purpose

The purpose of intake is to manage information regarding reports alleging abuse/neglect or risk of abuse/neglect of Adults-at-Risk who are unable to protect themselves; to determine whether the information reported is within the scope of services provided by Adult Protective Services (APS).

#### Establishing APS Involvement

###### Definitions

1. The two categories for Adults-at-Risk are:

“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. §46.90(1)(br)

“Adult at risk" means 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. §55.01(1e)

1. The definitions of abuse and neglect are:

“Physical abuse" means the intentional or reckless infliction of bodily harm. §46.90(1)(fg)

“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. §46.90(1)(g)

“Sexual abuse" means a violation of s. §[940.225 (1)](https://docs.legis.wisconsin.gov/document/statutes/940.225(1)), [(2)](https://docs.legis.wisconsin.gov/document/statutes/940.225(2)), [(3)](https://docs.legis.wisconsin.gov/document/statutes/940.225(3)), or [(3m)](https://docs.legis.wisconsin.gov/document/statutes/940.225(3m)) (criminal sexual assault law) §46.90(1)(gd).

“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](https://docs.legis.wisconsin.gov/document/statutes/ch.%20154), a power of attorney for health care under ch. §[155](https://docs.legis.wisconsin.gov/document/statutes/ch.%20155), or as otherwise authorized by law. §46.90(1)(f)

“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. §46.90(1)(cm)

“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](https://docs.legis.wisconsin.gov/document/statutes/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](https://docs.legis.wisconsin.gov/document/statutes/943.201).
5. Unauthorized use of an entity's identifying information or documents, as prohibited in s.

§[943.203](https://docs.legis.wisconsin.gov/document/statutes/943.203).

1. Forgery, as prohibited in s. §[943.38](https://docs.legis.wisconsin.gov/document/statutes/943.38).
2. Financial transaction card crimes, as prohibited in s. §[943.41](https://docs.legis.wisconsin.gov/document/statutes/943.41). 46.90(1)(ed)1.

“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. §46.90(1)(h)

“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. §46.90(1)(i)

1. The definitions of those who may be in need of protective services or placement:

Declaration of policy. The legislature recognizes that many citizens of the state, because of serious and persistent mental illness, degenerative brain disorder, developmental

disabilities, or other like incapacities, are in need of protective services or protective placement. §55.001

“Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support, and that may be of lifelong duration. “Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence. §55.01(6v)

“Degenerative brain disorder" means the loss or dysfunction of brain cells to the extent that the individual is substantially impaired in his or her ability to provide adequately for his or her own care or custody or to manage adequately his or her property or financial affairs.

§55.01(1v)

“Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, which has continued or can be expected to continue indefinitely, substantially impairs an individual from adequately providing for his or her own care or custody, and 5. constitutes a substantial handicap to the afflicted individual. The term does not include dementia that is primarily caused by degenerative brain disorder.

§55.01(2)

“Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from adequately providing for his or her care or custody. §55.01(5)

#### APS Scope of services

###### Reports:

* + The adult-at-risk is 18 years old or older.
  + The adult-at-risk is a resident or physically present in the county jurisdiction.
  + The adult-at-risk is believed to be either over 60 years old or is believed to have impairments listed in #3.
  + The report alleges that either abuse or neglect as defined in #2 is occurring or will likely occur.
  + The impairment prevents the adult-at-risk from protecting themselves from the alleged abuse or neglect.

###### Consultations:

* + Are requests for information related to adults-at-risk.
  + May or may not meet the above report criteria.
  + Do not involve making other calls to better understand the situation.
  + Can come from individuals or professionals.
  + Can be requests for information not related to an adult-at-risk.
  + Can be related to a specific adult-at-risk. These consultations can include:
    - Information on resources available
    - Suggestions on how to approach a situation
    - Ideas on ways of mitigating risk
    - Information about potential legal avenues as related to APS
    - Historical information regarding an adult-at-risk

###### Non-emergent requests for guardianship criteria:

* + The referent is 17 years old and nine months or older.
  + The impairment ispermanent or likely to be permanent.
  + Without the guardianship, the referent is likely to suffer abuse or neglect.
  + Other means of risk reduction have been tried and failed or no other means exist.
  + The referent is alleged to have an impairment related to:
* Degenerative Brain Disorder
* Developmental disabilities
* Serious and Persistent Mental Illness
* Other like incapacities
* No advance directives exist or the advance directives are not able to be used. Reasons for this may include:
  + The agent and any listed standby are unwilling or unable to act.
  + The power of attorney document does not contain the language needed or does not grant the authority necessary to meet the principal’s needs.
  + Petitioners may be referred to seek private counsel based on each county’s financial criteria.

###### Non-emergent requests for protective placement criteria:

* + The referent is under guardianship or is eligible for guardianship as listed above.
  + The referent is to be or has been placed in a facility with more than 16 beds for a period of time exceeding 60 days.

#### Taking the Report

Each county has their own system of intake personnel. The following are minimum guidelines for the intake workers.

###### Triaging the report

* + Reports involving imminent risks to life and limb, law enforcement will be contacted.
  + Reports of urgent nature should be given directly to APS or supervisor including but not limited to:
    - Essential services are imminently ending for Adult-At-Risk.
    - Law enforcement or first responder requesting assistance.
    - Caregiver crisis.

###### Engaging the referent

* + Intake will gather information necessary to locate the Adult-At-Risk, the alleged abuse or neglect, any risks to the investigator, and information regarding an alleged perpetrator if one exists.
  + Each county may use their own intake information form.
  + Referent will be given general information about process and confidentiality.
  + Anonymous calls will be accepted, but wherever possible, the referent will be encouraged to disclose their identity.
  + Referents will be told that the law protects their identity unless they give permission to disclose their name to the Adult-At-Risk.

## Response and Investigation

###### Legal Authority

Wis. Stat. §46.90(5) Wis. Stats.

###### Purpose

The purpose of Response and Investigation policy is to evaluate the nature of the report and determine the best course of action to meet the needs identified by the caller. The investigator must balance the risks and benefits of initiating an investigation. Factors to consider may be least-intrusive response, likelihood that the investigator has means to resolve the needs identified by the caller, reliability of the information provided by the caller, and whether the information provided is comprehensive. In situations where insufficient evidence is provided to determine if an investigation is needed, the investigator should initiate an investigation.

**Confidentiality** §46.90 (6) (ac), 51.30, 55.043 (6) (b) Wis. Stat.

Any information from APS case files may not be disclosed orally or in writing to anyone outside of the respective agency except as permitted by law. The release of oral information should follow the Minimum Necessary Standard. Information should not be used or disclosed when it is not necessary for an investigation/ assessment/ report. *(see appendix B)*

#### Non-investigative responses

###### Consultations

* + These are requests for collaboration or information on a particular client or issue.
  + They do not require additional phone calls to gather more information on the situation.

###### Non-emergent guardianships/ protective placements

Agency and community members may request guardianship and protective placement services that are not urgent. *(Each county may have its own policies regarding financial eligibility for county involvement.)* This may include:

* + Individuals with disabilities turning 18 years-old.
  + Individuals under guardianship entering a facility requiring protective placement.
  + Any other circumstance where a guardianship is needed but there are no imminent issues requiring a prompt timeframe.

###### Referral

Reports that warrant referral to other agencies for investigation include but are not limited to:

* + Law enforcement.
  + Wisconsin Department of Health Services Bureau of Assisted Living.
  + Mental health department, Alcohol and Other Drug department, or crisis response service.
  + Private or public legal resources.

**Investigations** §46.90(5)(b) Wis. Stat.

To investigate means to conduct a systematic, methodical, and detailed inquiry and examination of all components, circumstances, and relationships pertaining to a reported situation. As information is gathered during the life of the case, it is used to determine the truth of the allegations, determine who the perpetrator is, if possible / applicable, and used to determine the immediate service needs of the adult-at-risk.

Throughout the course of the investigation, the investigator screens not only for the reported allegations but other situations of abuse and neglect of adults-at-risk involved in the investigation. In some cases, the alleged perpetrator is also an adult-at-risk.

In cases where the client refuses services and/ or interventions that would otherwise mitigate risk, the investigator may make a determination of the individual’s capacity to refuse services using the Assessment for Everyday Decision-Making Tool (ACED) *(see appendix C*).

It may also be determined that the client is not in need of services. Investigations may include:

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)](https://docs.legis.wisconsin.gov/document/statutes/705.01(3)) Wis. Stat.; by an entity, as defined in s. §[50.065](https://docs.legis.wisconsin.gov/document/statutes/50.065) Wis. Stat.; 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:
   1. 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.
   2. Under a lawful order of a court of record.

###### Plan the Investigation

A well-planned visit with the adult-at-risk will make the visit more effective and increases safety of the investigator.

Review of Existing Information

The investigator may gather more information by utilizing the resources in these areas:

* + Review of agency case files
  + Search of the adult-at-risk/ alleged perpetrator on the Wisconsin Circuit Court Access.
  + Review of land records (determine the owner of the property and if property taxes are paid)
  + Contact with reporter to gather more information. (*see Adult-At-Risk Addendum Questionnaire appendix D)*
  + Research information relevant to the culture of the adult-at risk (i.e. Amish, Jehovah Witness), nature of the allegation (i.e. commodities fraud), the alleged impairment of the adult-at-risk or any other unique area that may be relevant to the report.
  + In cases where criminal activity is alleged, law enforcement should be contacted to determine if either; it is more appropriate for them to do the initial interview and evidence gathering, it is best to conduct the investigation in conjunction with law enforcement, or for the investigator to conduct the investigation alone. If it is determined that law enforcement will not be part of the initial investigation, then seek guidance on collecting forensic evidence. (*see Forensic Markers of Abuse Appendix E)*

Preparing for the Visit

The investigator should review the report to engage reasonable safety measures and come to the interview prepared.

* + In all cases, ensure that at least one person is aware of the location of the investigation(s) and the approximate times for travelling to the next location or return.
  + Review allegations to ensure that appropriate resource information or forms are brought to the interview.
  + Arrange for law enforcement to be in the area if dangerousness exists but it is decided that law enforcement will not be physically present.
  + In extremely rural areas, it may be helpful to view a satellite map of the property and entry point to strategize how to enter and where to park.
  + Be aware that in rural locations, amenities may not exist (gas, food, restrooms). Plan accordingly.
  + Best practice to wear a name tag identifying the agency you are from.

###### Investigator Safety

The intention of this policy to is to ensure the safety of all staff and to act affirmatively to protect staff in those situations that pose potential danger.

* + When any investigator believes that a situation may endanger their physical safety through injury, assault, or exposure to communicable disease, and the worker cannot resolve these concerns through their own actions, he/ she should consider alternatives. Alternatives could include assistance of a coworker or supervisor, law enforcement, health professionals or other appropriate persons.
  + An investigator may call for the assistance or collaboration of a supervisor or an investigator of another county to determine alternate means of investigating the allegation while providing safety for the investigator.
  + In the absence of a supervisor or like professional, the investigator will not be held responsible for any decision made based on clear and reasonable worker safety concerns.

Safety Threats

* + - Physical injury, threats, or intimidations in the course of professional duties. In the case of injury, appropriate and timely treatment (if necessary) will be the priority and obtained as soon as possible.
    - Verbal/ written threat or verbal/ written intimidations in the course of professional duties. The worker is encouraged to preserve and document any evidence of a threat.
    - Threats to safety may include, but are not limited to exposures to communicable disease, infection, hazardous conditions or materials, pests, property damage, attempted forced entry, or any other environmental threats to safety.

Safety Threat Protocol

* + - In the event of a safety threat, the investigator’s direct supervisor should be notified as soon as possible.
    - Were applicable, law enforcement should be contacted to assure safety and gather evidence.
    - Use of the APS Safety Incident Report (*see appendix F*) may be used as a means of ensuring all necessary information is gathered.

**Law Enforcement collaboration** §46.90(5)(c)(d)(e) Wis. Stat.

* + 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.
  + If a person interferes with the response or investigation under this subsection or interferes with the delivery of protective services under ch. [55](https://docs.legis.wisconsin.gov/document/statutes/ch.%2055) of the Wis. Stat. to the elder adult at risk, the elder-adult-at-risk agency investigator or worker may apply for an order under s.

§[813.123](https://docs.legis.wisconsin.gov/document/statutes/813.123) Wis. Stat. prohibiting the interference.

* + 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](https://docs.legis.wisconsin.gov/document/statutes/ch.%2055) of Wis. Stat. or contact law enforcement or another public agency, as appropriate.

###### Balancing the need for a face-to-face interview with the safety of the adult-at-risk where allegations of domestic violence exist

There are times when there is sufficient evidence to believe that the investigator’s presence may cause harmful retaliation to the adult-at-risk by the alleged perpetrator. In these situations, it is important to consider the benefits of completing a thorough investigation versus the potential danger to the adult-at-risk. A tool in determining level of risk in domestic abuse situations may be helpful in determining dangerousness. (*see appendix G)*

In addition to the level of dangerousness, areas of consideration in making this determination can include:

* + Are there other ways to get information to the adult-at-risk about services and options available to them?
  + How physically capable is the adult-at-risk? Would they be able to self-protect in a situation of retaliation?
  + How likely is it that the adult-at-risk will accept help? Is there a history of repeated refusals for intervention by the adult-at-risk when offered by friends, family, community members and/ or the investigating agency?
  + How isolated is the adult-at-risk? Are there other supports in the situation that could report/ act if the adult-at-risk requests help?
  + Are there individuals who could act as intermediaries to set up a private meeting with the adult-at-risk?
  + Does the adult-at-risk have means of communication such as a private use of a phone or computer?
  + Are there other locations that the adult-at-risk frequents where they could be interviewed alone such as the beauty parlor, doctor’s office or place of worship?
  + Is there a place where the adult-at-risk could safely go if they felt that the interview has put them in jeopardy? Can one be set up for this purpose?
  + Is there a question of capacity on the part of the adult-at-risk to make decisions about his or her own safety?

###### Initial face-to-face contact

This section is to outline boundaries of the investigator during the initial contact. The purpose of this section is to ensure that all investigators operate under the same boundaries of conduct. It is best practice to conduct the initial face-to-face contact unannounced.

Entry

* + Factors to consider when choosing where to park their vehicle.
    - Do not park in a location where the vehicle could be blocked from exiting.
    - The condition of the property (poor traction for exiting, potential damage to the landscaping of the property, and condition of the path from the vehicle to the entryway of the home.) If the investigator finds that no safe location exists for parking a vehicle, options include:
      * Consulting with supervisor.
      * Collaborating with a coworker who may have a vehicle capable of handling the terrain that can be safely parked.
      * Contacting law enforcement for transportation to the home of the adult-at- risk.
  + Investigator should survey the scene for hazards before exiting the vehicle. Hazards could include loose pets, individuals with weapons, or other environmental hazards. In these circumstances, the investigator must use their professional judgment as to whether they can safely exit the vehicle. If the investigator feels that exiting is not safe they may either call law enforcement for assistance or leave the scene to collaborate with supervisor.
  + All investigators shall indicate their name and the agency that they are from.
  + All investigators will only enter the dwelling of an adult-at-risk if permission is given either actively or passively by the adult-at risk, their alternate decision-maker, another resident of the location, or anyone else who is legally able to provide consent to enter the dwelling.
  + If the investigator is denied entry, or there is no one available to provide consent, and there is probable cause to believe that imminent risk exists to the adult-at-risk or others, the investigator may do the following:
    - Call emergency services. If this is not possible due to time, lack of cell reception, or other imminent factors, the investigator may also:
      * Enter the property.
      * Make contact with a neighbor to see if they or someone they know has a key.

Opening statements and how much to reveal about the allegations

It is not uncommon for the reporter to be someone who provides much needed support in the adult-at-risk’s life. Often they are the only support in that person’s life. Although the reporter’s names are not revealed, the specificity of the allegation can be just as telling about who made the report. If there is a likelihood that the adult-at-risk will resent/ cut off the reporter, the investigator has made the situation worse, not better. How the purpose of the visit is presented and what allegations are revealed must be a carefully considered clinical judgement.

Interview

(see Trauma-Informed Interviewing Appendix H & Gathering the Information Brief Appendix K)

* + Once in the home, the investigator should ask if anyone else is in the home. If there are others in the home that may pose a risk to the adult-at-risk or the investigator either during the visit or through retaliation, the investigator may make an excuse to leave and plan to return at another time.
  + While it is recognized that all situations do not warrant it, it is best practice to meet with the individual alone.
  + The investigator will ask permission before seating themselves (*provided that there is a safe location to sit*).
  + The investigator will consider ability to exit and the adult-at-risk’s ability to hear when choosing where to sit.
  + The investigator will not reveal the name of the reporter unless they were authorized to do so.
  + The investigator will foster a conversation that promotes the adult-at-risk providing unprompted information about their life and circumstances.
  + The investigator will take note of the individual’s physical condition and appearance as well as their surroundings by sight, sound, and smell.
  + During the interview, the investigator will attempt to ascertain if there are needs in the areas of:
    - Protection from abuse or exploitation
    - Supports
    - Alternate decision-making
    - Supervision needs
    - Mental Health Needs--tools may be helpful (s*ee appendix I GAD-7 & appendix J PHQ-1 for brief tools)*
    - Ability to communicate urgent needs with others
    - Ability to exit the home
    - Ability for emergency personnel to enter the home
    - Housing
    - Medical care
    - Mobility
    - Nutrition (preparing, shopping, special dietary needs)
    - Toileting
    - Medications
    - Finances (having enough and ability to manage)
  + Investigator will attempt to ascertain names and contact information of other supports. While their information may not be needed at this time, if there are issues in the future, that information can be very useful.

###### Determination of Capacity to refuse services. Use of the Assessment of Capacity for Everyday Decision Making (ACED)

In cases of abuse, neglect and self-neglect it is necessary to determine if the individual is able to fully understand the risks and benefits to refusing services or intervention to mitigate risk. In these circumstances, the APS investigator may use the ACED (*see appendix C*) tool to determine the individual’s ability to understand their choice. This section does not infer that this tool is the only means for determining capacity or that every situation will warrant the use of this tool.

###### Good Faith Effort to Contact

In investigations where a face-to-face contact is needed, there must be a “good faith effort” to make contact with the adult-at-risk. In these circumstances, a “good faith effort” can include:

* Making 2 or more visits to the client’s reported location during different times of the day during the timeframe for initiation.
* Interviewing neighbors or known relatives who might have information as to the location of the client.
* Calling the referent to verify reported information and to attempt to obtain additional information.
* Researching on Wisconsin Circuit Court Access for last known addresses.
* Calling other individuals, as appropriate, listed on the referral to obtain information on the client.
* Contacting local, county and state law enforcement agencies to check their records for information about the client.
* Researching previous APS records.
* Researching local directories for address information.
* Contacting the landlord, if applicable.

###### Interviews with Collateral Sources

In the course of an investigation, it is often necessary to interview relatives, community members, agency personnel, medical providers, legal decision-makers and alleged perpetrator(s) (*see Gathering the Information K*) .

* + The investigator shall follow the “minimum information necessary” guideline when conducting interviews.
  + In many circumstances, interviews occur over the phone.
  + In cases of a face-to-face interview, the investigator may consider choosing a location with ample public or private oversight.
  + Individual privacy policies and systems exist for each county when gathering information through email.

###### Review of Documents

Documentary evidence is any type of record such as medical records, cancelled checks, bank statement, ATM records, “overdue notices”, business records, legal documents, letters, computer files, receipts, law enforcement reports, and hospital records.

The investigator will determine the type of documents needed to provide information to support or refute the occurrence of the allegation; support the determination of vulnerable adult status; support the determination of the alleged perpetrator; and support the decision-making capacity conclusion.

###### Investigations in facilities licensed by or approved by the Wisconsin Department of Health Services.

Reports requiring investigation made regarding resident-to-resident abuse may be investigated by APS. Reports made regarding community members toward residents shall be investigated by APS. Reports made regarding employees of the facility against one or more residents shall be referred to the Division of Quality Assurance and/ or an Ombudsman once safety is assured. Assuring safety may consist of:

* + Call to the funding agency to verify the existence of or provide guidance on an adequate safety plan.
  + Call to the facility to verify the existence of or provide guidance on an adequate safety plan.
  + Call to the individual or their alternate decision-maker to ascertain details regarding the allegation in order to verify or secure an adequate safety plan.
  + On-site visit to verify the existence of or provide guidance on an adequate safety plan.
  + Referral to law enforcement.
  + Referral for adult-at-risk or alternate decision-maker to legal resources.
  + Referral for the adult-at-risk or legal decision-maker to the Aging & Disability Resource Center for Information and Assistance.

###### Interference with an investigation

There are times when individuals may interfere with the investigator’s ability to conduct an investigation into allegations of abuse and neglect. This may be the alleged perpetrator or other individuals who may be harmed physically, financially or relationally by the outcome of an investigation. This interference may come in the form of:

* + Refusing to allow access to the adult-at-risk
  + Refusing to allow investigator to interview the adult-at-risk alone
  + Threats made to the adult-at-risk to discourage cooperation
  + Interference with the delivery of services necessary to conduct the investigation
  + Interference with placement necessary to conduct the investigation

Remedies may include:

* + - Engagement of law enforcement with the investigation
    - Petition for a court order for forcible entry
    - Petitioning for an Adult-At-Risk restraining order §55.043(3) Wis. Stat. Restraining order; injunction. If a person interferes with the response or investigation under sub. §[(1r)](https://docs.legis.wisconsin.gov/document/statutes/55.043(1r)) or interferes with the delivery of protective services under this chapter to the adult at risk, the adult-at-risk agency investigator or worker may apply for an order under s. §[813.123](https://docs.legis.wisconsin.gov/document/statutes/813.123) Wis. Stat. prohibiting the interference.

**Emergency Protective Placement/ Placement** §55.135 Wis. Stat.

If during the course of the investigation, it becomes evident that the adult-at-risk meets the criteria for protective placement/ services and without the provision of immediate placement or services, the adult-at-risk would suffer imminent harm to person or property, the investigator may forcibly detain or provide services for a period of up to 72 hours excluding weekends and legal holidays.

Protective placement; eligibility

The investigator must have evidence to believe that adult-at-risk has a primary need for residential care and custody and is incapable of weighing the benefits and risks of accepting or denying services as a result of a permanent incapacity caused by serious and persistent mental illness, intellectual disability, degenerative brain disorder or other like incapacity.

Protective Services; eligibility

The individual has been determined to be incompetent or, as a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual will incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to other is protective services are not provided.

Emergency and temporary protective placement

*(see appendix L SafetyNetWorks memo #16 February 2014)*

1. If, from personal observation of, or a reliable report made by a person who identifies himself or herself to, a sheriff, police officer, firefighter, guardian, if any, or authorized representative of a county department or an agency with which it contracts under s. §[55.02](https://docs.legis.wisconsin.gov/document/statutes/55.02(2))
2. Wis. Stat., it appears probable that an individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious physical harm to himself or herself or others as a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities if not immediately placed, the individual who personally made the observation or to whom the report is made may take into custody and transport the individual to an appropriate medical or protective placement facility. The person making emergency protective placement shall prepare a statement at the time of detention providing specific factual information concerning the person's observations or reports made to the person and the basis for emergency placement. The statement shall be filed with the director of the facility and with any petition under s.

§[55.075](https://docs.legis.wisconsin.gov/document/statutes/55.075) Wis. Stat. At the time of emergency protective placement the individual shall be informed by the director of the facility or the director's designee, orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family and the right to have an attorney provided at public expense, as provided under s. §[55.105](https://docs.legis.wisconsin.gov/document/statutes/55.105). The director or designee shall also provide the individual with a copy of the statement by the person making emergency protective placement.

1. When an individual is detained under this section, a petition shall be filed under s. §[55.075](https://docs.legis.wisconsin.gov/document/statutes/55.075) Wis. Stat. by the person making the emergency protective placement and a preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, to establish probable cause to believe the grounds for protective placement under s. §[55.08 (1)](https://docs.legis.wisconsin.gov/document/statutes/55.08(1)) Wis. Stat. The sheriff or other person making emergency protective placement under sub.
   1. shall provide the individual with written notice and orally inform him or her of the time and place of the preliminary hearing. If the detainee is not under guardianship, a petition for guardianship shall accompany the protective placement petition, except in the case of a minor who is alleged to have a developmental disability. In the event that protective placement is not appropriate, the court may elect to treat a petition for protective placement as a petition for commitment under s. [51.20](https://docs.legis.wisconsin.gov/document/statutes/51.20) or [51.45 (13).](https://docs.legis.wisconsin.gov/document/statutes/51.45(13))

Emergency protective services.

1. Emergency protective services may be provided for not more than 72 hours when there is reason to believe that, if the emergency protective services are not provided, the individual entitled to the services or others will incur a substantial risk of serious physical harm.
2. If the county department or agency with which the county department contracts under s.

§[55.02 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.02(2)) Wis. Stat. that is providing emergency protective services to an individual under sub. [(1)](https://docs.legis.wisconsin.gov/document/statutes/55.13(1)) has reason to believe that the individual meets the criteria for protective services under s. §[55.08 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.08(2)) Wis. Stat., the county department or agency may file a petition under s.

§[55.075](https://docs.legis.wisconsin.gov/document/statutes/55.075) Wis. Stat.. If a petition is filed, a preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays, and legal holidays, to establish probable cause that the criteria under s. §[55.08 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.08(2)) Wis. Stat. are present. The county department or agency shall provide the individual with written notice and orally inform the individual of the time and place of the preliminary hearing. If the individual is not under guardianship, a petition for guardianship shall accompany the petition under s. §[55.08 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.08(2)) Wis. Stat., except in the case of a minor who is alleged to have a developmental disability.

1. Upon finding probable cause under sub. [(2)](https://docs.legis.wisconsin.gov/document/statutes/55.13(2)), the court may order emergency protective services to continue to be provided for up to 60 days pending the hearing on protective services under s. §[55.10](https://docs.legis.wisconsin.gov/document/statutes/55.10) Wis. Stat.
2. If it is necessary to enter a premises forcibly to provide or investigate the need for emergency protective services, the staff member of a county department shall obtain a court order authorizing entry and shall make the entry accompanied by a sheriff, police officer, or member of a fire department. When it appears probable that substantial physical harm, irreparable injury, or death may occur to an individual, the police officer, firefighter, or sheriff may enter a premises without a court order if the time required to obtain such an order would result in greater risk of physical harm to the individual.
3. If a forcible entry is made under sub. [(4)](https://docs.legis.wisconsin.gov/document/statutes/55.13(4)), a report of the exact circumstances, including the date, time, place, factual basis for the need of the entry, and the exact services rendered, shall be made and forwarded to the court within 14 days after entry by the person making the entry.

**Transportation by APS** §46.90(5)(br) Wis. Stat.

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:
   1. The elder/ adult at risk has no guardian or agent under an activated power of attorney for health care.
   2. 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.
   3. The examination is authorized by order of a court.

**Conflicts of interest** §46.90(5)(a)2 and 55.043(1r)(a)2 Wis. Stat.

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](https://docs.legis.wisconsin.gov/document/statutes/46.215), [46.22](https://docs.legis.wisconsin.gov/document/statutes/46.22), [51.42](https://docs.legis.wisconsin.gov/document/statutes/51.42), or [51.437](https://docs.legis.wisconsin.gov/document/statutes/51.437) Wis. Stat. 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)](https://docs.legis.wisconsin.gov/document/statutes/46.90(5)(b)) to [(f)](https://docs.legis.wisconsin.gov/document/statutes/46.90(5)(f)) and sub. [(6).](https://docs.legis.wisconsin.gov/document/statutes/46.90(6))

###### Courtesy investigations

Counties may agree to do a courtesy investigation for another county should a conflict of interest exist. *(see appendix M memorandum of understanding for Interagency Agreement between Counties for Independent Investigations of Adult-At-Risk Reports.*)

* The investigator or investigator’s supervisor may contact another county to see if they are willing and have the capacity to perform a courtesy investigation.
* The county of origin will fill out the Adults-At-Risk Reporting form to Provide Information Needed by the Transfer County (*see appendix N.)*
* The results of the investigation shall be shared with the county of origin.
* The recommendations of the investigation shall be acted upon by the requesting county.
* Once the investigation is completed, the county of origin will assume responsibility for follow-up program coordination, service delivery and the initiation of judicial proceeding as required.
* Financial responsibility will remain with the county of origin.

**Civil Liabilities of APS** §46.90(5)(h) Wis. Stat.

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.

**Needs and Risk Assessment**

###### Legal Authority

§46.90 (5m) (br) Wis. Stat.

###### Purpose

Needs and risk assessments help investigators develop plans to ensure the adult-at-risk’s safety and reduce future risk.

A needs assessment is a systematic process for determining the needs, or “gaps” in an individual’s life that make up the discrepancy between their current condition and their standard of optimal health, wellbeing and financial security. Needs assessments allow the investigator to target the right services at the right time to those in the greatest need.

A risk assessment is an analysis that uses information from investigations, research, and practice experience to: make initial determinations on safety and risk, characterize the nature and magnitude of risks, and determine what specific areas in an adult-at-risk’s life have the greatest potential for harm. Risk assessments allow for prioritizing cases, allocating time, and distributing resources.

###### Risk Assessments

Risk assessments can be done multiple times during the course of the investigation and subsequent service planning. Risk Assessments completed prior to the investigation can determine how quickly to investigate and what method of investigation is initially needed. Risk assessments during the fact-finding portion of the investigation help determine if immediate protective actions should be taken. Risk assessments during the service planning portion of the case can help verify that risks are reduced and give guidance on case closure.

*In cases of alleged domestic violence, refer to the “Domestic Violence Safety Assessment Tool in appendix G.*

###### Part I: Domains of Risk Factors

The first part of determining risk is to identify the adult-at-risk’s current strengths and weaknesses in the following domains:

* Health and functional status
* Mental health status and capacity
* Living environment
* Financial
* Social (including risk posed by others)

###### Part II: Magnitude of Risk

The second part of a risk assessment is to determine its magnitude. Not all risk identified requires the same level of attention and resources.

It is helpful to determine the level of risk by measuring the magnitude in these three areas: certainty that harm will occur, the level of severity the harm caused would be, and how quickly the projected harm would occur.

* ***Low:*** When there is some evidence that there are danger factors present or are likely to be present, but the potential harm caused is within an acceptable level according to the

adult-at-risk’s values, culture and history.

* + Low risk indicates that there is a low risk that harm *will occur*, will be *severe*

and/or that it will happen *immediate*ly.

* ***Moderate:*** When there is a reasonable likelihood that danger factors are present or are likely to be present, and the potential harm caused is greater than the acceptable level according to the adult-at-risk’s values, culture and history.
  + Moderate risk indicates that there is a moderate risk harm *will occur*, will be

*severe* and/or will happen *immediate*ly.

* ***High:*** When there is a high likelihood that significant harm is being caused or will be caused without urgent intervention.
  + High risk indicates that there is a high risk that harm *will occur*, will be *severe*, and/or will happen *immediate*ly.

###### Self-Neglect due to cognitive impairment

When individuals have impairments due to dementia, traumatic brain injury, intellectual disabilities and mental illness, the investigator must make a determination of how the impairment will affect the adult-at-risk’s ability to protect themselves from harm.

Members of the community often make sweeping assumptions about the abilities of individuals with particular diagnoses. For instance, community members may believe that: all persons with dementia need 24-hour care, all individuals with intellectual disabilities cannot live on their own, or that all persons with mental illness pose a risk to themselves and others. In reality, a more valid approach to assessing risk is to thoroughly investigate the strengths and weaknesses of each situation.

\*When making recommendations, investigators honor the rights of every individual to take risks. Once a specific risk(s) are identified, consider these factors:

* The nature of the impairment:
  + What is known about adults with this impairment? What is the prognosis?
  + To what extent is the impairment limiting? Do we have evidence or clues such as IQ, stage of dementia, extent of the brain injury or the mental health diagnosis?
* Is there a history of this risk occurring?
  + Are the current circumstances similar?
  + What was the outcome/ how was it resolved?
* Is there a change in circumstances that would make a previously safe situation now risky?
  + Loss of support
  + New setting
  + More access by alleged perpetrator(s)
  + Progression of current impairment or new impairment

###### Safety Decisions

Safety determinations are based on the current danger factors identified, the adult-at-risk’s willingness to accept recommended interventions and the adult-at-risk’s ability to understand the situation. When conducting a safety assessment, the projected outcome may be measured by the level of safety likely to be achieved.

* ***Safe:*** When there are no danger factors present and based on the currently available information, the adult-at-risk is not likely to be at risk of serious harm.
* ***Conditionally safe:*** When there are one or more danger factors present, the alleged victim has accepted services necessary to mitigate the risk.
* ***Unsafe:*** When there are one or more danger factors present and the adult-at-risk refuses services or lacks the capacity to refuse services that would mitigate risk.

**Needs Assessments** *(see appendix Q for Needs Assessment Tool and appendix R for Services and Resources in the Home)*

An investigator may find it helpful to conduct a needs assessment as the first part in developing a service plan. A needs assessment differs from a risk assessment in that it identifies the specific problem or deficit rather than make a prediction on the outcome. Assessing solely for risk does not assist investigators in determining who needs services and which services might be of most benefit. Need is not a static construct and is best viewed as dynamic and evolving. With this view, the investigator can take a strength-based approach in assessing need. Needs can be identified:

* By the adult-at-risk. *Sample question*, “What would you say is the hardest thing about living with your condition.”
* By the caregiver or support network if one exists. *Sample question* “What do you think would make his/ her life better?”
* By the investigator via risk assessment, assessment tools, observation and/ or interview.

No needs assessment is complete without a review of the assets of the individual. They can include things such as humor, faith community, ability to call for help, access to institutional systems, or any abilities or supports in the domains listed above. Reference in the “Response and Investigation Policy”, the methods of identifying supports through conversations about things in the home such as religious artifacts or family photos.

**Legal Authority**

# Case Findings

Wisconsin Department of Health Services "WITS Training for Experienced Users" 2007 accessible on the Adult Protective Services (APS) Professionals home page on the Wisconsin Department of Health Services Website.

###### Purpose

Findings are a reflection of the investigation and the information gathered pertaining to the essential defining elements of the alleged abuse or neglect. They are based upon the investigator's evaluation of credible information gathered as to whether or not the abuse or neglect has occurred. They are based on community standards rather than the adult-at- risk's perspective in determining self-neglect.

The purpose of having consistent measures of findings is to maintain the integrity of data gathered by individual counties. Consistent measures and definition ensure that investigators are able to collaborate using the same language and standards of operation.

###### Incident Result

The findings of investigations are to be recorded in the Wisconsin Incident Tracking System (WITS) data-based system. The findings are labeled as:

* Substantiated
* Unsubstantiated
* Unable to be substantiated

###### Substantiation

A finding of substantiated is when the investigation shows by preponderance of the evidence that the adult-at-risk has been hurt or harmed, and is in need of intervention for abuse, neglect or financial exploitation.

Each allegation made must be reviewed separately to determine the validity. There are times when there is evidence that other abuse or neglect may have occurred that was not part of the original report. If any abuse or neglect is believed to be true based upon the preponderance of the evidence, the investigation result is substantiated.

###### Unsubstantiated

A finding of unsubstantiated indicates that the preponderance of the evidence does not show that the abuse or neglect took place. Investigators must rely on evidence not "gut feelings" that the alleged abuse or neglect took place.

###### Unable to Substantiate

This term is not a "catch-all," but should be used only when these or other similar circumstances prevent an initial response to the referral:

* The adult-at-risk refused all contact
* The adult-at-risk cannot be located
* The adult-at-risk has moved out of state
* The adult-at-risk died before the response began

###### Types of Evidence

Investigators rely on similar measures of evidence to reach their findings.

* Adult-At-Risk statements
  + In general, investigators believe the adult-at-risk especially when he/ she recounts abuse suffered. However, a caveat to believing the adult-at-risk is when he/ she may be trying to protect the suspected abuser or is being unduly influenced.
* Corroborating evidence from other witnesses
* Medical records
* Financial records
* Police records/ Wisconsin Circuit Court Access Records
* Circumstantial evidence (*unobserved/ third party suspicions*)
* History (*previous reports, previous similar patterns of behaviors*)
* Physical evidence (*injuries, condition of the home, lack of utilities)*

###### Findings are not

* Tied to services, i.e. you do not have to have a confirmed or inconclusive finding to offer services
* Subject to determining or proving the intent of the suspected abuser
* Dependent on identification of the abuser
* Subject to county's or agency's culture
* Influenced by law enforcement response
* Dependent on a finding of incompetence by psychological or other testing results.

*(Investigators should document reasons that led them to their findings.)*

### Service Planning and Monitoring

**Legal Authority** §46.90(5m) Wis. Stats.

1. 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,](http://docs.legis.wisconsin.gov/document/statutes/ch.%20804) [49,](http://docs.legis.wisconsin.gov/document/statutes/54.68(2)(g)) [51,](https://docs.legis.wisconsin.gov/document/statutes/244.16(1)(f)) [54](http://docs.legis.wisconsin.gov/document/statutes/54.68(2)(h)), or [55.](https://docs.legis.wisconsin.gov/document/statutes/ch.%2055) From the appropriation under s. [20.435 (1) (dh),](https://docs.legis.wisconsin.gov/document/statutes/244.16(1)) 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.
2. 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).](https://docs.legis.wisconsin.gov/document/statutes/244.16(1)(i))

(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](http://docs.legis.wisconsin.gov/document/statutes/54.68(5)) or contact an investigative agency, as appropriate.
  2. Take appropriate emergency action, including emergency protective placement under s. [55.135](http://docs.legis.wisconsin.gov/document/statutes/155.60(4)(a)), 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),](https://docs.legis.wisconsin.gov/document/statutes/46.90(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),](https://docs.legis.wisconsin.gov/document/statutes/244.16(1)(h)) under chs. [440](https://docs.legis.wisconsin.gov/document/wicourtofappeals/15-0777) to [460](http://docs.legis.wisconsin.gov/document/statutes/155.60(4)(a)2).

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](http://docs.legis.wisconsin.gov/document/statutes/54.22) or [202.14](https://docs.legis.wisconsin.gov/document/statutes/202.14).

* 1. Bring a petition for a guardianship and protective services or protective placement under ch. [55](https://docs.legis.wisconsin.gov/document/statutes/ch.%2055) 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.

1. An elder/ adult at risk may refuse to accept services unless a guardian authorizes the services. The elder/ adult-at-risk agency or other provider agency shall notify the elder adult at risk of this right to refuse before providing services.

###### Purpose

The goal of a service plan is to make the adult-at-risk safer, prevent continued abuse, and improve his/ her quality of life. Regular monitoring of the service plan through face-to- face contact occurs as needed to persue the continued reduction or elimination of risk of abuse, neglect, self-neglect or exploitation of an adult-at-risk.

###### Ethical Guidelines

* 1. Respect the integrity and authority of victims to make their own life choices.
  2. Hold perpetrators, not victims, accountable for the abuse and for stopping their behavior.
  3. Take in to consideration victims' concepts of what safety and quality of life mean
  4. Recognize resilience and honor the strategies that victims have used in the past to protect themselves
  5. Redefine success-success is defined by the adult-at-risk, not what professionals think is right or safe.

###### When to Service Plan

It is often the default of investigators to start service planning the minute they receive the report.

Such pre-conceived plans can inhibit the investigator from getting a full picture of the individual and their perspectives. It is important for the investigator to withhold solutions to the extent possible until the full situation is assessed.

The exception to this is when there are immediate interventions identified. Once immediate needs are met, a fuller assessment of the strengths and needs of the individual can occur to create a more comprehensive, individualizes service plan.

**Considerations when Developing a Service Plan**

There are important considerations to be made when embarking on service planning

* the adult-at-risk's and investigator's perception of the problem, including the conditions that contributed to current dangers or that appear to be the underlying cause of abuse, neglect, or financial exploitation;
* Incorporation of cultural competency by accepting the positive aspects of the adult-at-risk's culture in meeting challenges;
* Use of informal supports to the extent possible;
* the adult-at-risk’s and caregiver’s areas of strength and areas of need and including family and friends in the service planning;
* Least-restrictive/ least-intrusive intervention
* the client’s motivation and capacity to address the problem;
* the resources available.

To the extent that the adult-at-risk is able to participate, the investigator involves him or her in developing the action plan.

###### Voluntary Service Planning

There are general areas of service that the investigator offers in the service planning and monitoring stage of the investigation. These are:

* + - Offers of action, services or both
    - Locating and coordinating services
    - Referrals to other units and agencies
    - Evaluating effectiveness of the service plan
    - Modifying existing services
    - Legal interventions
    - Temporary emergency services
    - Coordinating and facilitating meetings of family/ friends
    - Medical coordination
    - General safety planning and planning for likely threats
      * Environmental
      * Domestic or other abuse (*see appendix G The VIGOR Protective Strategies that may help in Safety Planning)*

###### Reasonable Efforts

It is recognized that investigators cannot remedy all situations. The adult-at-risk's choices can limit the effectiveness of a service plan, and resources are limited. Actions taken by the investigator that would constitute Reasonable Efforts may include:

* + - Searching for solutions outside of the investigator's immediate area
    - Consulting with like professionals for alternative solutions
    - Use of public and private charitable funds when available
    - Modifying the service plan if the interventions fail
    - Monitoring the effectiveness of the service plan
    - If the adult-at-risk allows contact friends and family, enlist their support when adult-at- risk declines service plan.

Reasonable Efforts do not include:

* + - Keeping the case open indefinitely in the hopes that resources become available or the adult-at-risk will be more willing to accept options.
    - Making a positive outcome the absolute condition for closure.
    - Doing more for one adult-at-risk than would normally be done i.e. not complying with standard practice.

###### Involuntary Service Planning

Involuntary service planning occurs when the adult-at-risk lacks the capacity to give or refuse consent to a service plan that addresses their current and/ or probable risk of harm and the harm would be considered imminent, severe and certain. The decision to take legal action is made as a last resort after all considerations have been taken into account and all practical alternatives to legal action have been exhausted.

Any time there is reason to question whether or not a client is in imminent danger, careful review of the client's capacity to make decisions must be made. The specific authority requested and granted will be based on the needs of the adult-at-risk and on the level of danger.

Immediate threat of danger allows for the most intrusive legal action *(see appendix L SafetyNetWorks Memo #16)*. In the absence of immediate danger, less intrusive court intervention must be considered.

###### Assessing Capacity

Screening Tools:

There are a number of tools available that investigators are able to administer to provide information on an adult-at-risk's capacity. According to the International Journal of Medicine, of the paper-and-pencil tests, the Mini-Cog and Clock Drawing Test (CDT) *(see appendix O Mini-cog & CDT)*, provide the best information on executive functioning (Woodford, 2007). Reasons not to administer these tests can include the adult-at-risk's unwillingness to cooperate with the test, the potential disruption in rapport with the adult-at-risk, or the nature of the impairment.

**Assessment for Everyday Decision-Making (ACED)** *(see appendix C)*

While screening tools can be helpful in giving the investigator guidance as to whether to proceed to the next step of the legal intervention, the best practice is to assess the adult-at-risk's ability to make the decision regarding the ability to understand the choices for the particular situation. This is best assessed using the ACED. Basic elements of the ACED tool are:

1. The ability to understand the functional problem
   1. What made you believe they understood what was wrong?
2. The ability to appreciate the gravity of the problem
   1. What made you believe they understood how bad it is?
3. The ability to communicate their choice
   1. What makes you believe they are making a choice?
4. The ability to compare the options
   1. Can they say why their choice is better?
5. The ability to understand the options; their benefits and risks as well as likely consequences.
   1. What made you believe they understood what could be done to fix it and what would happen if they refuse or choose something else?

Sample quote:

He said, "I know I'm supposed to be taking my blood sugar, but I don’t want to. You want to send someone in here to help me, but I just would rather be alone. I'm 98 for Christ's sake, and I'm okay with dying."

*Understanding*—Need to take blood sugar.

*Appreciation*—knows it could result in death.

*Communication--*Does not want to take his blood sugar or have someone help him do it.

*Comparison*—having help versus not having help. Prefers privacy.

*Consequential reasoning*—knows having help may extend his life, but values privacy more.

\*\*Demonstrates decision-making capacity. No further testing needed.

Sample quote:

She said, "I don't have memory problems, and I don't see why you think I need help with my medications because I don't take any. I've never had diabetes, and I don't know why I was hospitalized. I think you’re making that part up anyway. Besides, my husband will be home any minute, and he'll help me."

*Understanding*—does not understand the problem. *Appreciation—*does not understand the gravity of the problem. *Communication*—is expressing a choice.

*Comparison—*cannot compare options. Husband not an option as he is deceased.

*Consequential reasoning—*cannot reason a consequence if does not understand the problem.

\*\*Does not demonstrate decision-making capacity. Needs further testing.

###### More on Decision-Making Capacity and the ACED

The ACED is a more useful tool for providing evidence that the adult-at-risk has capacity than it is for providing evidence that he/ she does not. One weakness of this tool is that the adult-at-risk must be willing to honestly discuss the issue. Additionally, the adult-at- risk's abilities often lie somewhere on the continuum and no clear determination can be made using the ACED.

The investigator is often left making a decision on whether to proceed with legal interventions based on many factors, and evidence of incapacity is only one factor.

###### Additional Factors in Determining Legal Interventions

The decision to pursue legal intervention comes through careful examination of all of the facts of the investigation including the Reasonable Efforts that were made for voluntary service planning. Along with the level of capacity for decision-making, the investigator considers:

* Level of risk as determined by structured decision-making.
  + Soon
  + Severe
  + Sure
* Previously expressed wishes of the adult-at-risk or patterns of behavior that would indicate the adult-at-risk's value system.
* Level of evidence to support a legal intervention
* The amount of improvement to the adult-at-risk's quality of life legal intervention would make given the available resources and the nature of the condition.
* The intrusiveness of the proposed intervention.
* The level of support (or disagreement) by the friends and family of the choice to pursue legal intervention
* Whether the proposed intervention would adequately address the root cause of the abuse, neglect or self-neglect.

###### Potential Legal Interventions

There are several different legal interventions that are available for assuring the safety of the adult-at-risk. The least-intrusive, least-restrictive intervention should be pursued first if feasible. The following are salient points of the potential interventions that may include an involuntary component:

* Adult-at-Risk Temporary Restraining orders. §813.123 Wis. Stat.
  + Can be used to proceed with an investigation or provision of services when alleged abuser is preventing it
  + Can be used to stop the continued abuse or neglect of an adult-at-risk by an alleged abuser.
  + Can be petitioned for by the investigator's county corporation counsel
  + Can be done without the individual’s consent, but may not be useful or appropriate if the adult-at-risk is not in agreement
* Appointment of a Representative Payee for Social Security and/or Fiduciary for the Veteran's Administration benefits.
  + Social Security is a federal program that does not automatically honor guardianships as they are a function of the state civil protection system.
  + Social Security requires form SSA-787 to be completed by a physician. The form must be the original and completed on a front & back single sheet of paper.
  + The Veteran's Administration has their own system for appointing a fiduciary. They do not recognize Powers of Attorney for finance or guardianships of the estate. Contact your local County Veteran Services Office for assistance.
* Powers of Attorney for Healthcare § 155 Wis. Stat.
  + Can be revoked by the principal at any time regardless of capacity status
  + Allow an agent to make decisions on behalf of the principal but does not give authority to the agent to override the principal's wishes regardless of capacity
  + Generally needs to be activated by two physicians or physician and psychologist for the agent to have authority
  + Does not give authority to agents to consent to involuntary psychiatric hospitalization.
  + Are accepted if they were created in other states, but only to the extent that they contain the language that would give the agent authority in Wisconsin
    - They often do not have the specific language needed to allow the agent to consent to the admission of a community-based residential facility (assisted living) or skilled nursing facility.
* Powers of Attorney for Finances §244 Wis. Stat.
  + Can be revoked at any time regardless of capacity status
  + Allow an agency to make decisions on behalf of the principal but does not give authority to the agent to override the principal's wishes regardless of capacity.
  + Can give authority the date the document is signed, can be valid only while the individual maintains capacity, or can be active only once the Power of Attorney for Healthcare is activated.
  + Specific rights and duties are entirely dependent on what is included on the document. A careful review of the document is needed to determine the agent's authority.
* Conservatorship §54.76 Wis. Stat.
  + Does not require a finding of incompetency
  + Can allow the conservator to have all of the authority that a guardian of the estate would have
  + Is voluntary but requires a court hearing before dismissal
* Petition for Examination §54.36(2)(3) Wis. Stat.
  + Orders the adult-at-risk to submit to an examination by a psychologist or physician.
* Guardianship of the Person §54 sub (I)(II)(III)(IV) Wis. Stat.
  + Can allow for the ward to retain many of his/ her rights
  + Has limitations on the ability to restrict contact with others or interfere with a sexual relationship
  + Does not contain the authority to consent to an involuntary psychiatric hospitalization or other placement long-term
* Guardianship of the Estate §54 Wis. Stat.
  + Can allow for the ward to retain many of their rights to manage their finances
* Spendthrift Guardianship §54.10
  + Does not require a finding of incompetency.
  + Is used in situations of wasteful spending often due to addictions that would otherwise impoverish the ward.
* Protective placement §55 Wis. Stat.
  + Used for placement in institutional (over 16-beds) placements or placements for a ward who is actively protesting.
* Emergency Detention and Three-Party Petitions §51.15 and §51.20
  + Requires reasonable belief of imminent risk to self or others
  + Requires reasonable belief that there is a treatable mental illness
    - Dementia alone is not a qualifying criteria.

**Legal interventions for suspected abuse or misconduct of decision- maker**

The decision to pursue legal interventions for suspected abuse or misconduct is made when all other means of rectifying the situation are tried or there is no other way to ensure the rights, comfort, and safety of the adult-at-risk. Efforts should be made to contact the guardian and provide them with the resources and support they need to complete their duties.

**Review of conduct of guardian** § 54.68 Wis Stat.

1. CONTINUING JURISDICTION OF COURT. The court that appointed the guardian or that granted a petition for acceptance and receipt of a foreign guardianship has continuing jurisdiction over the guardian. Within a reasonable period of time after granting a petition for receipt and acceptance of a foreign guardianship under s. [54.46 (1r),](https://docs.legis.wisconsin.gov/document/statutes/ch.%2047) the court shall review the provisions of the guardianship and, as part of its review, shall inform the guardian and ward of services that may be available to the ward.
2. CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if committed by a guardian with respect to a ward or the ward's income or assets, constitutes cause for a remedy of the court under sub. [(4)](http://docs.legis.wisconsin.gov/document/statutes/54.68(4)):
   1. Failing to file timely an inventory or account, as required under this chapter, that is accurate and complete.
   2. Committing fraud, waste, or mismanagement.
   3. Abusing or neglecting the ward or knowingly permitting others to do so.

(cm) Knowingly isolating a ward from the ward's family members or violating a court order under s. [50.085 (2).](http://docs.legis.wisconsin.gov/document/statutes/54.68(3))

* 1. Engaging in self-dealing.
  2. Failing to provide adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.
  3. Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and incapacities.
  4. Failing to act in the best interests of the ward.
  5. Failing to disclose conviction for a crime that would have prevented appointment of the person as guardian.
  6. Failing to disclose that the guardian is listed under s. [146.40 (4g) (a) 2.](https://docs.legis.wisconsin.gov/document/statutes/440.01(2)(a))
     1. Failing to disclose that the guardian is listed under s. [146.40 (4g) (a) 2.](https://docs.legis.wisconsin.gov/document/statutes/ch.%2051)
     2. Other than as provided in pars. [(a)](http://docs.legis.wisconsin.gov/document/statutes/54.68(6)) to [(i),](http://docs.legis.wisconsin.gov/document/statutes/54.68(2)(i)) failing to perform any duties of a guardian or performing acts prohibited to a guardian as specified in ss. [54.18,](http://docs.legis.wisconsin.gov/document/statutes/54.18) [54.19,](http://docs.legis.wisconsin.gov/document/statutes/54.68(4)(e)) [54.20,](http://docs.legis.wisconsin.gov/document/statutes/54.68(2)(c)) [54.22,](http://docs.legis.wisconsin.gov/document/statutes/54.68(2)) [54.25](http://docs.legis.wisconsin.gov/document/statutes/54.25), and [54.62.](http://docs.legis.wisconsin.gov/document/statutes/54.62)

1. PROCEDURE. Upon the filing of a petition for review of the conduct of a guardian, the court shall hold a hearing in not less than 10, nor more than 60, days and shall order that the petitioner provide notice of the hearing to the ward, the guardian, and any other persons as determined by the court. The court may authorize use by the petitioner of any of the methods of discovery specified in ch. [804](https://docs.legis.wisconsin.gov/document/statutes/ch.%20440) in support of the petition to review conduct of the guardian.
2. REMEDIES OF THE COURT. If petitioned by any party or on the court's own motion and after finding cause as specified in sub. [(2),](https://docs.legis.wisconsin.gov/document/statutes/ch.%2054) a court may do any of the following:
   1. Order the guardian to file an inventory or other report or account required of the guardian.
   2. Require the guardian to reimburse the ward or, if deceased, the ward's estate for losses incurred as the result of the guardian's breach of a duty to the ward.
   3. Impose a forfeiture of up to $10,000 on the guardian, or deny compensation for the guardian or both.
   4. Remove the guardian.
   5. Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties.
3. REMOVAL OF PAID GUARDIAN. The court may remove a paid guardian if changed circumstances indicate that a previously unavailable volunteer guardian is available to serve and that the change would be in the best interests of the ward.
4. FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. [(2)](http://docs.legis.wisconsin.gov/document/statutes/50.085(2)) or [(5),](http://docs.legis.wisconsin.gov/document/statutes/54.68(2)(j)) all of the following apply:
   1. The court may require the guardian to pay personally any costs of the proceeding, including costs of service and attorney fees.
   2. Notwithstanding a finding of incompetence, a ward who is petitioning the court under sub.

[(2)](http://docs.legis.wisconsin.gov/document/statutes/54.68(2)) may retain legal counsel, the selection of whom is subject to court approval, and contract for the payment of fees, regardless of whether or not the guardian consents or whether or not the court finds cause under sub. (2)

**Review of Conduct for Healthcare Powers of Attorney** §155.60 (4) (a) Wis. Stat.

1. Any interested party may petition the court assigned to exercise probate jurisdiction for the county where a principal is present or the county of the principal's legal residence to review whether the health care agent is performing his or her duties in accordance with the terms of the power of attorney for health care instrument executed by the principal. If the court finds after a hearing that the health care agent has not been performing in accordance with the terms of the instrument, the court may do any of the following:
   1. Direct the health care agent to act in accordance with the terms of the principal's power of attorney for health care instrument.
   2. Require the health care agent to report to the court concerning performance of the health care agent's duties at periods of time established by the court.
   3. Rescind all powers of the health care agent to act under the power of attorney for health care and the power of attorney for health care instrument.
2. If the principal has designated an alternate health care agent and if the powers of the first- designated health care agent are rescinded under par. [(a) 3.,](http://docs.legis.wisconsin.gov/document/statutes/155.60(4)(a)3) the alternate health care agent is the health care agent and par. [(a),](http://docs.legis.wisconsin.gov/document/statutes/54.68(2)(a)) except par. [(a) 3.,](http://docs.legis.wisconsin.gov/document/statutes/54.68(4)(c)) applies.

**Review of conduct for Durable Powers of Attorney** §244.16 (1) (2) Wis. Stat.

1. The following persons may petition the circuit court of the county where the principal is present or of the county of the principal's legal residence to construe a power of attorney or review the agent's conduct, and grant appropriate relief:
   1. The principal or the agent.
   2. A guardian, conservator, or other fiduciary acting for the principal.
   3. A person authorized to make health-care decisions for the principal.
   4. The principal's spouse, parent, or descendant.
   5. The principal's domestic partner.
   6. An individual who would qualify as a presumptive heir of the principal.
   7. A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate.
   8. A governmental agency having regulatory authority to protect the welfare of the principal.
   9. The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare.
   10. A person asked to accept the power of attorney.
2. Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

**History:** [2009 a. 319.](https://docs.legis.wisconsin.gov/document/acts/2009/319)

The relief granted under sub. (1) must fit the purpose of the action; it is not a broad invitation to the court to wade into the private attorney-client arrangements of the parties unless it is within the realm of construing a power of attorney or reviewing the conduct of an agent. The circuit court exceeded its authority under sub. (1) because the court's order limiting attorneys' fees was not aimed at remedying the attorney-in-fact's actions as attorney-in-fact. Kelly v. Brown, [2016](http://docs.legis.wisconsin.gov/document/statutes/54.68(4)) [WI App 31,](http://docs.legis.wisconsin.gov/document/statutes/54.68(4)) Wis. 2d , N.W.2d , [15-0777](https://docs.legis.wisconsin.gov/document/statutes/244.16(1)(a)).

H.J. Woodford, J. George; Cognitive assessment in the elderly: a review of clinical methods, *QJM: An International Journal of Medicine*, Volume 100, Issue 8, 1 August 2007, Pages 469–484,

# Case Closure

###### Legal Authority

§ 46.90 Wis. Stat.

###### Purpose

The goal Adult Protective Services (APS) intervention is to reduce or eliminate risk of abuse, neglect, or exploitation of a vulnerable adult. This is achieved through thorough risk assessment, presentation of options in a fashion that can be understood by the adult-at- risk and/ or their decision maker, and contact with necessary collaterals. Once these steps are completed the case can be considered for closure.

Closure is an important distinction to make in the life of an investigation. It signifies that the investigator is no longer assessing needs or risk, determining findings, or service planning. To the extent reasonable, the investigator has presented the recommended and available service options, if any, and determined that the adult-at-risk and/ or their decision-maker, if any, has the ability to evaluate and make a choice regarding these options. To the extent reasonable, the investigator has made the appropriate referrals to other agencies and resources.

###### Reasons for case closure

There are several reasons for case closure. The exact outcome of the investigation may not fit entirely into a particular category, so it is the clinical judgement of the investigator/ supervisor to determine whether enough of the following areas have been met.

1. Risk ameliorated or reduced
2. Needed services do not exist
3. Adult-at-risk with assessed capacity has refused
4. Referral made to another agency
5. Adult-at-risk unable to be found
6. Adult-at-risk is deceased

###### Process of Case Closure

While there is no standard timeline for case closure, there is a best practice guideline. Under normal circumstances, the investigator should attempt to close investigations that do not involve legal interventions within 30 to 60 days. However, circumstances exist that prohibit out timely case closure outside of the investigator’s control. These can include delays with referral agencies or existing services, delays in medical access, delays with informal supports, agency staffing issues, and others.

In best practice, case closure begins at the start of the relationship with the adult-at-risk and their support network. Clearly defining limits of the role of an APS investigator from the beginning can prevent unreasonable expectations from developing.

It is understood that in situations of self-neglect and potential abusers, being specific about the purpose of your role, at least initially, can be contraindicated. For instance, in many circumstances one would not open a conversation with, “I am here to see if you are competent enough to decide whether to live like this.” Likewise, it could be detrimental to say, “I am here to see if you are abusing the vulnerable adult.” However, this does not preclude one from speaking in generalities about the roles and limitations of the investigator.

Throughout the investigation, the adult-at-risk and their support network are given information about the plan and its eventual ending. At the end of the case, the adult-at-risk and/ or their support network are given information about who to contact should issues arise.

This may be different for each county and situation but could include:

* 1. The local Aging & Disability Resource Center
  2. The Managed Care Organization (if they are enrolled in one)
  3. The county social services agency
  4. The agency who made the referral
  5. The school
  6. Law enforcement
  7. Support networks and groups

###### Barriers to Case Closure

Case closure can be difficult for APS investigators because generally there is no concrete criteria for ending. In many other short-term social services relationships, the ending is clearly defined by outside factors such as eligibility and proscribed timeframes.

Because of this lack of clarity, it is important as an APS investigator to periodically reflect on existing caseloads to determine if the following barriers are preventing case closure.

1. Doing too much for the adult-at-risk (*difficulty with attachment*)
2. Doing too little for the client and risk is not reduced
3. Dealing with the family or community response
4. Fear of what will happen once case is closed
5. Lack of role clarity defined to the adult-at-risk/ supports

### Documentation

###### Legal Authority

§ 46.90, 54, 55 Wis. Stat.

###### Purpose

The purpose of documentation is to support findings, provide information should the case reoccur, and provide necessary information for continuity of care to referral agencies.

Documentation provides a detailed and reliable case history, baseline data, evidence for involvement (APS and/ or legal), and justification for staff and funding for program.

Documentation also provides valuable data for research into rising trends and evidence-based practice. Data collected can be used for advocacy, resource allocation, and public awareness.

###### Minimum Standards of Documentation

The test of a good APS Case Record is when any reasonable and prudent person can read and review the records and draw his/ her own conclusion as to what occurred, based on interview statements and supportive evidence. *–CWDA APS Guidelines to Supplement Regulations,*

*2.7: Guiding Principles for APS Case Documentation*

Things to consider when creating a case record are who will read it; where will it end up; how long it will take; and who benefits.

A complete case record should contain these elements as they are available, and should be located in either the WITS state reporting system or elsewhere in case record as indicated:

1. Names and available/ relevant contact information of all involved parties**: in case record/ WITS**
2. Relevant agency previous contact: **in case record**
3. If the report is screened out, reasons for doing so: **in WITS.**
4. Summary of contacts made during the investigation including documentation of “reasonable efforts” of no contact was made (*See Response and Investigation section titled “Reasonable Efforts”)*: **in case record.**
5. Documentation of options discussed, referrals made and/ or services provided: **in WITS**
   1. If none were made, documentation of the reasons why referrals were not made or services provided such as not warranted or not available: **in case record**
6. Documentation of any refusal of services including, if known, the reasons for refusal**: in WITS and case record**
   1. Evidence of capacity if in question: **in case record.**
7. Allegation findings**: in WITS**
8. Supporting evidence**: in case record.**

Conclusions drawn based on the preponderance of evidence including:

* 1. Agency history
  2. Quotations of statements made during the investigation
  3. Key differences in competing stories and credibility of the reporters
  4. Sight, sound, and smell information gathered at the scene
  5. Summary of documentation received
  6. Actions observed

1. Opening and closing dates**: in WITS**

Additionally, a complete case record would retain any documentation gathered such as:

* Photographic evidence (labeled)
* Written assessments/ reassessments
* Written service plans
* Police reports
* Medical records
* Financial records
* Agency generated reports
* Legal documentation
* Referral documents
* Copies of written correspondence

###### Reports versus Record

A case file refers to any documentation related to the response, investigation, assessment and disposition of the report.

A report refers the summary print out generated by the WITS reporting system.

There are different parameters of records release when referring to a report versus a case file. It is recommended that the investigator check with their corporation counsel/ supervisor before releasing either.

**Records; confidentiality**. §46.90 (6) Wis. Stat. (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)](http://docs.legis.wisconsin.gov/document/statutes/ch.%20975) 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)](http://docs.legis.wisconsin.gov/document/statutes/ch.%2054) 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.

1. 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).](http://docs.legis.wisconsin.gov/document/statutes/51.62) 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)](http://docs.legis.wisconsin.gov/document/statutes/ch.%2048), 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.

* 1. To law enforcement officials in accordance with the policy developed under sub. [(3) (a).](http://docs.legis.wisconsin.gov/document/statutes/46.90(5))
  2. 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.
  3. 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),](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(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.](http://docs.legis.wisconsin.gov/document/statutes/46.90(5)) to [10.,](http://docs.legis.wisconsin.gov/document/statutes/16.009) 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),](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(b)) [(bd)](http://docs.legis.wisconsin.gov/document/statutes/46.90(3)(a)), [(br),](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(br)) [(bv),](http://docs.legis.wisconsin.gov/document/statutes/46.90(5)(f)) and [(bw),](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(bt)) 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)](http://docs.legis.wisconsin.gov/document/statutes/46.90(3)(a)) or with investigations conducted under sub. [(5),](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(b)1) or a district attorney, for purposes of investigation or prosecution.

1. To the department, under s. [51.03 (2),](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(b)10) or for death investigations under s. [50.04 (2t)](http://docs.legis.wisconsin.gov/document/statutes/46.90(5m)) or [50.035](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(bd))

[(5)](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(bd)); or to a sheriff, police department, or district attorney for death investigations under s. [51.64 (2) (a).](http://docs.legis.wisconsin.gov/document/statutes/51.64(2)(a))

1. To an employee of a county department under s. [51.42](http://docs.legis.wisconsin.gov/document/statutes/46.90(5)) or [51.437](http://docs.legis.wisconsin.gov/document/statutes/51.03(2)) 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.
2. 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.
3. To the department, for management, audit, program monitoring, evaluation, billing, or collection purposes.
4. 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,](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(bw)) [51,](http://docs.legis.wisconsin.gov/document/statutes/51.42) [54](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(bv)), [55](http://docs.legis.wisconsin.gov/document/statutes/50.04(2t)), [813](http://docs.legis.wisconsin.gov/document/statutes/50.035(5)), [971](http://docs.legis.wisconsin.gov/document/statutes/ch.%20971), or [975](http://docs.legis.wisconsin.gov/document/statutes/ch.%2051) pertaining to the alleged victim.
5. 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.
6. To staff members of the protection and advocacy agency designated under s. [51.62](http://docs.legis.wisconsin.gov/document/statutes/51.437) and the board on aging and long-term care under s. [16.009.](http://docs.legis.wisconsin.gov/document/statutes/ch.%2055)
7. 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.
8. To a grand jury, if it determines that access to specified records is necessary for the conduct of its official business.
9. 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)](http://docs.legis.wisconsin.gov/document/statutes/ch.%20813) or from any departmental report form prior to its release under par. [(b).](http://docs.legis.wisconsin.gov/document/statutes/46.90(6)(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 nonrelease 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.

1. 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.
2. Any employee who violates this subsection may be subject to discharge or suspension without pay.

# Links for complete material

Appendix B Confidentiality of Information of Adults-At-Risk <https://www.dhs.wisconsin.gov/aps/confidentiality.pdf> Appendix C Assessment of Everyday Decision-Making <https://vimeo.com/92066094>

Appendix E Webinar recording for "Forensic Markers of Abuse" <https://vimeo.com/117597284>

Appendix G Domestic Violence Safety Assessment <https://www.ncjrs.gov/pdffiles1/jr000250e.pdf>

Appendix H Trauma-Informed Interviewing

<http://www.napsa-now.org/wp-content/uploads/2012/06/Trauma.pdf>

Appendix I GAD-7 <http://www.phqscreeners.com/sites/g/files/g10016261/f/201412/GAD-7_English.pdf>

Appendix J PHQ-1 [http://www.phqscreeners.com/sites/g/files/g10016261/f/201412/PHQ-9\_English.pdf](httap://www.phqscreeners.com/sites/g/files/g10016261/f/201412/PHQ-9_English.pdf)

Appendix L SafetyNetWorks Memo #16 February 2014 <https://www.dhs.wisconsin.gov/aps/sn16formgn4000.pdf>

#### Adult-at-Risk (AAR) Addendum Questionnaire

**Problem Assessment**

**What are the risks to health, safety, or personal property?**

**Self-Neglect Cases:**

1. What needs are not being met?
2. How long has this been going on?
3. Why are needs not being met?
4. How has AAR getting by before?
5. What prompted today's call?
6. Does AAR have any other supports? Contact

Info?

1. Has AAR seen a doctor? Who? When?
2. Activated POA/ Guardian?
3. When was the last time reporter saw AAR?
4. Are there immediate housing needs?
5. Can AAR get to the bathroom?
6. Immediate medical/ nutrition needs?

Cases where an alleged abuser is involved:

1. Is the AAR safe now? Why or Why

not?

1. What is the schedule of alleged abuser?
2. Is there a way to meet with the AAR alone?
3. What prompted you to call today?
4. When was the last time you saw AAR?
5. What is the full name of the alleged abuser and DOB or approx age?
6. Do you know if there is a history of violence or criminal record:
7. Are drugs/ alcohol involved?
8. Activated POA/ Guardian?
9. Does AAR want to make a change?

Visit Information:

1. When will the AAR be home?
2. Special instructions finding the home or the way in?
3. Safety risks (weapons/ dogs etc)?
4. How does the AAR communicate (hearing)?
5. How will the AAR react to an unannounced visit?
6. What is important to the AAR that may be preventing them from seeking help?

Any additional information:

#### Adult Protective Services (APS) Safety Incident Report

**APS Staff Name:**

**Today's Date:**

**Source of Threat:**

**Incident Date: Time:**

###### Nature of incident

**Physical attack** *(describe attack)***:**

**Injury?** Yes  No  **Medical Attention?** Yes  No

Description of Injury: Location:

**Threat** *(specific threat made)***:**

**Threat made via:** face-to-face  phone  written  third party  gesture 

Damage to Property:

**Accidental Injury (***Description***):**

**Medical Attention?** Yes  No  **Location: ** **Exposure:**

**Medical Attention?** Yes  No  **Location:**

###### Other Involvement

 **Witnesses** *(Name, contact info, relationship):*

 **Law enforcement involvement** *(Agency)***:**

## Gathering the evidence

Gathering evidence is necessary to support your findings. While the investigator may make an accurate clinical judgment, without concrete, factual evidence to support your findings, the investigator will not be able to legally support/ act on the findings.

The purpose of this document is to list evidence that could be gathered to support your findings.

Not everything will be readily apparent upon a first visit, and it is more important to maintain rapport. Pushing individuals in this situation can hamper future relationships or willingness to seek or accept help. Sometimes a second visit is warranted to gather the information because on the first visit, the individual is uncertain of your presence and purpose.

The investigator must make a clinical judgment as to how far to push the individual to gather necessary information. Investigators must weigh risk versus maintaining a cooperative relationship.

###### Pulling up to the home:

* Upkeep of the home and landscaping. Is this a new condition or long-term?
  + Are there holiday decorations? If so, a recent holiday?
  + Is the home in good repair, but the lawn not mowed?
  + Is the home in general disrepair from long-term neglect?
* Which path to the doorway looks used? Does it appear no one is going in/ out?
* Are there pets outside? How do they look? Is there food and water?
* Is there mail or newspapers piled up?
* If the car is visible, are there dents? (indicating difficulty driving)
* Is there an odor? (It is helpful to document if the odor can be smelled from the outside because it can be an indicator of the intensity of the smell)

###### At the door:

* + How was the door answered? Were you allowed entry without explanation?
  + How did the individual ambulate?
  + Make note of grooming (hair greasy and looking unwashed) clothes clean
  + Make note of the type of clothing based on the situation. Is it weather appropriate?
  + How hard was it for them to open the door?
  + If you can only see the inside through the doorway, if possible note:
    - Is there a clear path to the door? Clear enough for emergency personnel to enter if needed?
    - If it is notably cluttered, what is it cluttered with? Garbage, spoiled food, and soiled discarded clothing is an indicator of inability to care for self, but piled papers, knick knacks may indicate functional/ dysfunctional hoarding.
    - Is there an odor? What is it? Urine, spoiled food, unwashed clothing, feces, or body odor.

###### In the home:

* + Is the area functional? Can they use the kitchen, get to the rooms, bathroom useable?
  + Are plants and pets well cared for?
  + Are there pots/ pans in the sink? (this would indicate cooking with stove)
  + Can you see any food?
  + Is there mail out and opened or just in a pile unopened?
  + Is there a “command center”? This a chair with necessary items stacked around them such as the remote, food, water, phone, medications. (this may indicate difficulty getting around)
  + If you can see medications, are laying out or neatly organized?
  + Are there pictures of family members? (potential social support)
  + Religious artifacts? (May have a church community to provide support)

###### General Evidence During an Interview:

If There is an Alleged Perpetrator that is Present

* + Does the alleged perpetrator seem reluctant to leave investigator alone with the

adult-at-risk? If so, what evidence supports that assertion. For example, ask why, argue their presence is necessary, leave but stay within hearing distance.

* + Does the adult-at-risk look to the alleged perpetrator before answering?
  + What physical reactions does the adult-at-risk have to the alleged perpetrator?
  + Does the alleged perpetrator answer for the adult-at-risk or continually correct him/ her?
  + Be wary of any attempt to negate any allegations on the grounds that the victim does not have sufficient mental capacity to understand what has occurred or is confused about the situation and misrepresenting it.
    - Be prepared to challenge any explanations or assumptions regarding the mental capacity or physical incapacity of the victim (regardless of the source) without sufficient evidence to support it.

Interviewing the Adult-at-Risk

* + Who is in their life, how often to they see them and what do they do for them?
    - It may establish a collateral contact to verify the allegations in the interview.
    - It may establish a future reporter should the situation change.
  + Do they have means and capacity to contact someone in an emergency?
    - What would they do if the toilet overflowed or the power went out?
  + Who is their doctor/ clinic and when is the last time that they saw him/ her?
    - May establish contact to provide medical information
    - May establish a contact to complete a Report of Examining Physician if warranted.
  + If a criminal activity is disclosed,
    - Establish a timeframe and frequency. (May use holidays or seasons to verify or narrow the timeframe.)
    - Establish what harm was caused, for example bruising, amount of money or medication stolen.
    - Avoid leading questions. Best practice questions, “and then what happened? What else was going on around that time? Did you tell anyone else about this?”
    - Was there an obvious physical reaction to the subject?
  + Do their explanations for the alleged abuse/ neglect fit?

###### Allegations of Cognitive Impairment

Alleged Dementia Concerns

* + - Did the individual repeat themselves? How often and in what timeframe?
    - Word-finding difficulties?
    - Difficulty keeping on topic?
    - Disorientation – inability to tell date, time, location or event;
    - Inability to recall recent events or accurately report a recent newsworthy story;

Alleged Dementia/ Mental Health Concerns

* + - Disordered thought processes – paranoia, delusions, inability to answer questions coherently;
    - Inappropriate affect – unprovoked angry outbursts, unexplained laughter or tearfulness, depression / withdrawal from others;
    - Constant movement, repetitive actions, verbal or physical aggression;
    - Appearing to attend to other conversations or repeatedly looking same location where no one is at.

Alleged Intellectual Disabilities

* + - Was the individual concrete in their thinking? Cite an example.
    - Are they adequately able to communicate their needs?
    - Are they able to follow two or more step directions?
    - Do they understand the extent of their impairment? Unrealistic plans for instance.
    - Are they able to make and maintain friendships? With people of their own age group?
    - Did they maintain appropriate physical boundaries?
    - Who do they say is “in charge”?
    - Who do they talk to when they have a problem? How do they reach him/ her?
    - How do they define abuse and/ or neglect?
    - How much does a loaf of bread cost?

Alleged Substance Abuse Issues

* + - Cans/ Bottles
    - Self-report of how much they are drinking
    - Evidence of intoxication during the interview may include odor, slurred speech, bloodshot eyes, stumbling, or swaying while standing;
    - Evidence of chemical impairment may include jittery, hypervigilant behavior or nodding off during conversation.

In All Allegations of Impairment

* + - Inability to understand problems or medical conditions and consequences of failure to receive treatment for those conditions; quote statements to support this assertion.
    - Denial of problems or consequences of untreated medical conditions, failure to recognize problems or develop plans for dealing with them; Cite quotes
    - Failure to report or resist abuse, exploitation or neglect by others;
    - Thoughts of suicide, homicide or self-injury. (Ask if they are thinking about killing themselves--referral to crisis)