

1973 Assembly Bill 1300

Date published:  
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## CHAPTER 284, Laws of 1973

AN ACT to repeal chapter 55 (title) and 880.11; to renumber 55.01, 55.02, 880.01 (1), (2), (4) and (5), 880.07 and 880.33; to renumber and amend 880.01 (3); to amend 6.03 (1) (a), chapter 47 (title), 223.10, 880.04 (1), 880.08 (1), 880.09 (2), 880.215 and 880.26 (1) (a); and to create 46.03 (19), subchapters I (title) and II (title) of chapter 47, 51.095, chapter 55, subchapters I to IV (titles) of chapter 880, 880.01 (1), (2), (5), (6) and (8), 880.07 (2), 880.09 (6) and (7) and 880.33 to 880.38 of the statutes, relating to establishment of a protective services program for the developmentally disabled, aged infirm and certain other persons, various changes in guardianship laws, and granting rule-making authority.

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

SECTION 1. 6.03 (1) (a) of the statutes is amended to read:

6.03 (1) (a) Any person under guardianship, non compos mentis, or insane, except that a court determination under s. 880.33 (3) is required in the case of a limited guardianship;

SECTION 2. 46.03 (19) of the statutes is created to read:

46.03 (19) PROTECTIVE SERVICES. Administer the statewide program of protective services under ch. 55.

SECTION 3. Chapter 47 (title) of the statutes is amended to read:

### CHAPTER 47 VOCATIONAL REHABILITATION AND; RELIEF OF ~~BLIND AND DEAF PERSONS~~ THE HANDICAPPED

SECTION 4. Subchapters I (title) and II (title) of chapter 47 of the statutes are created to read:

#### CHAPTER 47 SUBCHAPTER I RELIEF AND REHABILITATION OF THE HANDICAPPED (to precede s. 47.01) SUBCHAPTER II VOCATIONAL REHABILITATION (to precede s. 47.40)

SECTION 5. 51.095 of the statutes is created to read:

**51.095 Alternate procedure.** Upon filing of an application or petition under s. 51.01 or 51.09, the court may elect to treat the petition as an application for protective service or placement under ch. 55 if commitment is not warranted.

SECTION 6. Chapter 55 (title) of the statutes is repealed.

SECTION 7. 55.01 of the statutes, as affected by chapter 90, laws of 1973, is renumbered 47.40.

SECTION 8. 55.02 of the statutes, as affected by chapter 12, laws of 1973, is renumbered 47.41.

SECTION 9. Chapter 55 of the statutes is created to read:

**CHAPTER 55  
PROTECTIVE SERVICES**

**55.001 Declaration of policy.** The legislature recognizes that there are many citizens of the state who, because of the infirmities of aging, mental retardation, other developmental disabilities or like incapacities incurred at any age, are in need of protective services. Such services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect.

**55.01 Definitions.** In this chapter:

(1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a community developmental disability services board under s. 51.437 or community board established pursuant to s. 51.42.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely and substantially impairs the individual from adequately providing for his own care or custody.

(3) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care or custody.

(4) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with his welfare.

(5) "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 own care or custody.

**55.02 Protective service system; establishment.** The department shall develop a statewide system of protective service for mentally retarded and other developmentally disabled persons, for aged infirm persons and for persons with other like incapacities incurred at any age in accordance with regulations and standards established by the department. The system shall utilize the planning and advice of agencies as defined in s. 55.01 (1) and of the community boards under s. 51.42 or 51.437, as appropriate.

The department and such boards shall cooperate in developing a coordinated system of services. With respect to this program, the department shall provide direct services and enter into contracts with any responsible agency, public or private, for provision of protective services.

**55.03 Status of guardian.** No agency acting as a guardian appointed under ch. 880 shall be a provider of protective services or placement for its ward under this chapter. Nothing in this chapter shall be construed to prohibit the transfer of guardianship and legal custody under s. 48.43.

**55.04 Program responsibilities.** (1) The department shall have the following responsibilities in the administration of this chapter:

(a) *Protective services.*

1. Outreach;
2. Identification of persons in need of services;
3. Counseling and referral for services;
4. Coordination of services for individuals;
5. Tracking and follow-up;
6. Provision of social services;
7. Case management;
8. Legal counseling or referral;
9. Guardianship referral; and
10. Diagnostic evaluation;
11. Such other responsibilities as the department deems appropriate.

(b) *Protective placement.* Evaluation, monitoring and provision of protective placements.

(2) All agencies providing protective services shall make such reports as the department may require.

(3) If service is obtained by order of a court, the provider of service shall make reports under sub. (2) as the court may direct.

**55.05 Protective services.** (1) **PREFERENCE.** The department in administering the protective services program may contract with community boards under s. 51.42 or 51.437 and other agencies as defined in s. 55.01 (1). In contracting for protective services, the department and the community boards under s. 51.42 or 51.437 shall give preference to agencies with consumer and other citizen representation. The department shall provide services only if no other suitable agency is available. Courts shall adhere to the same preferences in ordering protective services.

(2) **CONDITIONS REQUIRED.** The department or an agency providing protective services under s. 55.04 may provide such services under any of the following conditions:

(a) The person who needs or believes he needs protective service may seek such service.

(b) Any interested person may request protective services on behalf of a person in need of services.

(c) The department may provide protective services on behalf of any person in need of such services.

(d) The court may order such services.

(3) **VOLUNTARY SERVICES PREFERRED.** An individual shall receive protective services voluntarily unless ordered by the court, requested by a guardian or provided in accordance with sub. (4).

(4) **EMERGENCY SERVICES.** (a) Emergency services may be provided for not more than 72 hours where there is probable cause to believe that if the services are not provided, the person entitled to the services or others will incur a substantial risk of serious physical harm or deterioration.

(b) Where it is necessary to forcibly enter a premises, the representative of an agency may make the entry accompanied by a sheriff, police officer or member of a fire department.

(c) Where emergency services are rendered, a report of the exact circumstances including the time, place, date, factual basis for the need for such services and the exact services rendered shall be made and forwarded to the appropriate community board under s. 51.42 or 51.437 or to the department if no board exists, within 14 days of the time that rendering of services is completed.

**55.06 Protective placement.** (1) A protective placement under this section is a placement of a ward for the primary purpose of providing care and custody. No protective placement may be ordered unless there is a determination of incompetency in accordance with ch. 880 and a finding of a need for protective placement in accordance with sub. (2) except as provided in subs. (11) and (12).

(2) The department, an agency, or a guardian may petition the county court to provide protective placement for an individual who:

(a) Has a primary need for full-time residential care and custody;

(b) Has either been determined to be incompetent by a county court or has had submitted on his behalf a petition for a guardianship;

(c) As a result of developmental disabilities, infirmities of aging or other like incapacities, is so totally incapable of providing for his own care or custody that his condition creates a substantial risk of serious harm to himself or others. Serious harm may be occasioned by overt acts or acts of omission; and

(d) Has a disability which is permanent or likely to be permanent.

(3) (a) The petition shall state with particularity the factual basis for the allegations specified in sub. (2).

(b) A petition may be signed by an employe of the department, a representative of an agency, a guardian, or a person who has applied for guardianship.

(c) The petition under sub. (2) shall be based on personal knowledge of the individual alleged to need protective placement.

(4) A petition for guardianship under sub. (2) (b) must be heard prior to application under this section. If incompetency has been determined under s. 880.33 more than one year preceding the filing of an application for protective placement, the court shall review the finding of incompetency.

(5) Notice of a petition for placement shall be served upon the person sought to be placed by personal service at least 10 days prior to the time set for a hearing. Upon

service of the notice the person sought to be protected shall be the informed of the complete contents of the notice. The person serving the notice shall return a certificate to the county judge verifying that the petition has been delivered and notice given. The notice shall include the names of all petitioners. Notice shall also be served upon the person's guardian ad litem, legal counsel, and upon parents, children or other persons who have physical custody of the person to be protected whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private body or group from whom the person to be protected is known to be receiving aid and to such other persons or entities as the court may require. The incompetent or proposed incompetent is presumed able to attend the hearing unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend.

(6) Section 880.33 (2) applies to all hearings under this chapter.

(7) Except for emergency placement or temporary placement under subs. (11) and (12), before placement may be ordered under this chapter the court or jury must find by clear and convincing evidence that the individual to be placed is in need of placement as provided in sub. (2).

(8) Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The department and the community boards under s. 51.42 or 51.437 shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate community board under s. 51.42 or 51.437 having responsibility for the place of legal settlement of the individual shall make a recommendation for placement. A copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or his attorney. The court or the cooperating agency obtaining the evaluation shall request appropriate information which shall include at least the following:

(a) The address of the place where the person is residing and the person or agency who is providing services at present, if any.

(b) A resume of professional treatment and services provided to the person by the department or agency, if any, in connection with the problem creating the need for placement.

(c) A medical, psychological, social, vocational and educational evaluation and review, where necessary, and any recommendations for or against maintenance of partial legal rights as provided in s. 880.33. Such evaluation and review shall include recommendations for placement consistent with the least restrictive environment required.

(9) The court, on the basis of the evaluation and other relevant evidence shall order placement in the least restrictive environment consistent with the needs of the person to be placed. Placement under this section does not replace commitment of a person in need of acute psychiatric treatment under s. 51.01 or 51.09. Placement may be made to such facilities as nursing homes, personal medical institutions, colonies, foster care services and other home placements, or to other appropriate facilities but may not be made to facilities for the acutely mentally ill.

(10) The department or any agency which is responsible for a protective placement shall review the status of each person placed at least once every 12 months from the date of admission. The court in its order of placement may, however, require

that such review be conducted more frequently. The review shall include in writing an evaluation of the physical, mental and social condition of each such person, and shall be made a part of the permanent record of such person. The review shall include recommendations for discharge or placement in services which place less restrictions on personal freedom, where appropriate. The results of the review shall be furnished to the department in such form as the department may require.

(11) (a) When from personal observation of a sheriff, police officer or fireman, it appears probable that an individual will suffer irreparable injury or death as a result of developmental disabilities, infirmities of aging or other like incapacities if not immediately placed, the person making such observation may take into custody and transport an individual to an appropriate medical or protective services facility.

(b) Upon detention, a petition shall be filed under sub. (2) and a preliminary hearing shall be held within 72 hours to establish probable cause to believe the grounds for protective placement under sub. (2).

(c) Upon a finding of probable cause under par. (b), the court may order temporary placement up to 14 days pending the hearing for a permanent placement.

(12) When a ward lives with his guardian, the guardian may make temporary placement of the ward. Placement may be made to provide the guardian with a vacation or to temporarily release the guardian for a family emergency. Such placement may be made for not more than 18 days but the court may upon application grant an additional period not to exceed 30 days. The application shall include such information as the court may reasonably deem necessary. When reviewing the application, the court shall provide the least restrictive placement which is consistent with the needs of the ward.

(13) Reasonable expenses for the evaluations required by this section shall be assumed by the department from the appropriation under s. 20.435 (2) (a). The department shall seek appropriate federal reimbursement for such evaluations. Payment and collections for protective services provided in public facilities specified in s. 46.10 shall be governed in accordance with that section. Where applicable by reason of the nature of the disability and county of legal settlement, the appropriate board under s. 51.42 or 51.437 shall be charged for the cost of care and custody resulting from placement under this section. Such charges shall be determined in the manner provided in s. 51.42 or 51.437, whichever is applicable.

(14) Prior to discharge from the protective placement of the department or an agency appointed to provide protective placement under this section, the department or agency shall review the need for continued protective services after discharge, including the necessity for a guardian or limited guardian. Such recommendation shall be made to the appropriate board under s. 51.22 (4) and (5) and the court where appropriate.

(15) A guardian of a ward placed under this section shall have the duty to take reasonable steps to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise his legal rights. Notice of discharge under s. 51.22 (4) and (5) shall be given to the guardian.

(16) Placements to colonies and discharges from such institutions shall be in compliance with s. 51.22 (4) and (5).

(17) Any records of the department or other agency pertaining to a person who is protected under this chapter or for whom application has ever been made for such protection are not open to public inspection. Information contained in such records may not be disclosed publicly in such a manner as to identify individuals, but the record shall be available on application for cause to persons approved by the court.

(18) Any person may request voluntary protective placement under this chapter. No legal rights are relinquished as a result of such placement.

SECTION 10. 223.10 of the statutes is amended to read:

**223.10 Domestic corporations as fiduciaries.** Except as provided in ~~section ss.~~ 222.21 and 880.35, no court of this state shall appoint any corporation as trustee, executor, administrator, guardian, assignee, receiver, or in any other fiduciary capacity unless such corporation is organized under ~~sections ss.~~ 223.01 to 223.09 or is a state bank entitled under ~~section s.~~ 221.04 (6) to exercise fiduciary powers, or is a national bank with authority to exercise such powers.

SECTION 11. Subchapters I to IV (titles) of chapter 880 of the statutes are created to read:

CHAPTER 880  
SUBCHAPTER I  
GENERAL PROVISIONS  
(to precede s. 880.01)

SUBCHAPTER II  
UNIFORM VETERANS GUARDIANSHIP ACT  
(to precede s. 880.60, as renumbered)

SUBCHAPTER III  
UNIFORM GIFTS TO MINORS ACT  
(to precede s. 880.61)

SUBCHAPTER IV  
SECURITIES OWNERSHIP ACTS  
(to precede s. 880.75)

SECTION 12. 880.01 (1) of the statutes is renumbered 880.01 (3).

SECTION 13. 880.01 (1) of the statutes is created to read:

880.01 (1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a community developmental disability services board under s. 51.437 or community board established pursuant to s. 51.42.

SECTION 14. 880.01 (2) of the statutes is renumbered 880.01 (7).

SECTION 15. 880.01 (2) of the statutes is created to read:

880.01 (2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely and substantially impairs the individual from adequately providing for his own care or custody.

SECTION 16. 880.01 (3) of the statutes is renumbered 880.01 (4) and amended to read:

880.01 (4) "Incompetent" means a person adjudged by a court of record to be substantially incapable of managing his property or caring for himself by reason of ~~mental illness, deficiency or infirmity, chronic inebriety~~ infirmities of aging, developmental disabilities, drug addiction or other like incapacity incapacities.

SECTION 17. 880.01 (4) of the statutes is renumbered 880.01 (9).

SECTION 18. 880.01 (5) of the statutes is renumbered 880.01 (10).

SECTION 19. 880.01 (5) and (6) of the statutes are created to read:

880.01 (5) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care or custody.

(6) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with his welfare.

SECTION 20. 880.01 (8) of the statutes are created to read:

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

SECTION 21. 880.04 (1) of the statutes is amended to read:

880.04 (1) EMANCIPATION OF MARRIED MINORS. Upon Except for minors found to be incompetent, upon marriage, a minor shall no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the estate of a minor ward to him upon his marriage. Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34.

SECTION 22. 880.07 of the statutes is renumbered 880.07 (1).

SECTION 23. 880.07 (2) of the statutes is created to read:

880.07 (2) A petition for guardianship may also include an application for protective placement pursuant to ch. 55.

SECTION 24. 880.08 (1) of the statutes is amended to read:

880.08 (1) INCOMPETENTS. Notice of a petition for appointment or change of a guardian shall be served upon the proposed incompetent ward by personal service at least 10 days before the time set for hearing, or if such proposed incompetent ward is in custody or confinement, such service shall be made by registered or certified mail on the proposed incompetent's custodian who shall forthwith serve the same on the

proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that he served said and informed the proposed incompetent and returned said the certificate and notice to the county judge. The notice shall include the names of all persons who are petitioning for guardianship and specific allegations of the grounds of incompetency. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend. Such notice shall also be given by mail at least 10 days before the hearing to his ~~presumptive or apparent adult heirs~~ counsel, if any, guardian ad litem, parents, children or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court orders may require. ~~Notice shall be given to the proposed incompetent, as herein provided, and to such others as the court orders before appointment of a successor guardian.~~

SECTION 25. 880.09 (2) of the statutes is amended to read:

880.09 (2) (title) PARENTS PREFERRED. If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian.

SECTION 26. 880.09 (6) and (7) of the statutes are created to read:

880.09 (6) TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship under s. 880.33 by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian.

(7) ANTICIPATORY NOMINATION; PREFERENCE. Any person other than a minor may, at such time as he has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating a person to be appointed as guardian of his person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

SECTION 27. 880.11 of the statutes is repealed.

SECTION 28. 880.215 of the statutes is amended to read:

**880.215 Lis pendens, void contracts.** A copy of the petition and order for hearing provided for in ss. 880.07 and 880.08 may be filed in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of property made by such insane or incompetent person or spendthrift, after the filing of a copy of such petition and order as aforesaid, shall be void. The validity of a contract made by a person under limited guardianship is not void, however, unless the determination is made by the court in its finding under s. 880.33 (3) that the ward is incapable of exercising the power to make contracts.

SECTION 29. 880.26 (1) (a) of the statutes is amended to read:

880.26 (1) (a) When a minor ward attains his majority, unless the minor is incompetent.

SECTION 30. 880.33 of the statutes is renumbered 880.60.

SECTION 31. 880.33 to 880.38 of the statutes are created to read:

**880.33 Incompetency; appointment of guardian.** (1) The condition of incompetency must be certified by at least one licensed physician and one licensed psychologist.

(2) (a) The proposed incompetent has the right to counsel whether or not he is present at the hearing on determination of competency. The court shall in all cases require the appointment of a guardian ad litem and may in addition require representation by full legal counsel if the guardian ad litem or the proposed incompetent requests or if the interests of justice so require. If the person requests but is unable to obtain counsel, the court shall appoint counsel and if the person is indigent, the county of legal settlement shall be liable for attorneys fees. If an attorney is appointed, he shall be allowed reasonable compensation as is customarily charged by attorneys in this state for comparable services.

The person shall have the right to a trial by a jury of 6 persons, if demanded by the person, his attorney or his guardian ad litem. Any decision of the court is subject to the right of appeal to the supreme court on proper application.

(b) If requested by the person or anyone on his behalf, the person has the right at his own expense, or if indigent at the expense of his county of legal settlement, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(c) The duties of a guardian ad litem shall include:

1. A personal interview with the proposed incompetent.
2. Notification to the proposed incompetent both orally and in writing, of the rights to a jury trial and appeal and the rights to counsel and an independent medical or psychological examination, at county expense if the person is indigent.

(3) Any finding of limited incompetency shall specifically state which legal rights the person is incompetent to exercise. Guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. No person determined to be incompetent in accordance with this subchapter shall be deprived of any legal rights, including the right to vote, to marry, to obtain a motor vehicle operator's license, to testify in any judicial or administrative proceeding, to make a will, to hold or convey property and to contract, except upon specific finding of the court. Such findings must be based upon clear and convincing evidence of the need for such limitations.

(4) When it appears by clear and convincing evidence that the person is incompetent, the court shall appoint a guardian.

(5) In appointing a guardian, the court shall take into consideration the opinions of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision.

(6) All court records pertinent to the finding of incompetency shall be available to the proposed incompetent and his attorney.

(7) A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with s. 55.06.

**880.34 Duration of guardianship; review.** (1) Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or until terminated by the court. Upon reaching the age of majority, an incompetent subject to guardianship under this chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. The court shall make a specific finding of any rights under s. 880.33 (3) which the individual is incompetent to exercise at the time.

(2) The court shall review and may terminate the guardianship of the person of an incompetent upon marriage to any person who is not subject to a guardianship.

(3) A ward of the age of 18 or over, any interested person on his behalf, or his guardian may petition the court which made such appointment or the court in his county of residence to have the guardian discharged and a new guardian appointed, or to have the guardian of his property designated as a limited guardian.

(4) A ward who is 18 years of age or older, any interested person acting on his behalf, or his guardian may petition for a review of incompetency. Upon such a petition for review, the court shall conduct a hearing at which the ward shall be present and shall have the right to a jury trial, if demanded. The ward shall also have the right to counsel and the court shall appoint counsel if he is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of his county of legal settlement.

(5) After a hearing under sub. (4) or on its own motion, a court may terminate or modify a guardianship of an incompetent.

**880.35 Nonprofit corporation as guardian.** A private nonprofit corporation organized under ch. 181 that is actively conducting a program for individuals in need of protective services is qualified to act as guardian of the person or of the property or both, of an individual found to be in need of guardianship under s. 880.33, provided that the department of health and social services, under rules established pursuant to ch. 55, finds the corporation a suitable agency to perform such duties.

**880.36 Standby guardianship.** (1) A petition for the appointment of a standby guardian of the person or property or both of a minor or person found incompetent under s. 880.08 may be brought at any time.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or property whose appointment shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court.

(3) A standby guardianship of a minor is not applicable so long as a person has living one of his natural or adoptive parents who is willing and capable of exercising legal guardianship. Upon the death of the surviving parent, or upon a determination that the parents or surviving parent are incapable of exercising legal guardianship of the person, the standby guardian of the person or property or both shall automatically assume the duties of guardian, subject only to confirmation by the court within 60 days following assumption of his duties of office.

(4) A standby guardianship of a minor becomes inoperative at the age of 18 unless there is a further determination of incompetency at that time.

**880.37 Application for limited guardianship of property.** (1) An incompetent person who is 18 years of age or older may apply to a court for a limited guardianship of property. Consonant with the least restrictive limitation of rights, when such person demonstrates to the satisfaction of the court that he is capable of being wholly or substantially self-supporting by means of his wages or earnings, the court may appoint a limited guardian of such person's property, or in the event one person is appointed or serving as both guardian of the person and of the property of said person, a guardian of the person with limited powers as guardian of the property. Such limited guardianship shall be used until the person has established himself as reasonably capable of managing his own affairs without supervision.

(2) A limited guardian of the property shall receive, manage, disburse and account for all property, both real and personal, of the person not resulting from wages or earnings.

(3) The person of 18 years of age or over for whom a limited guardian of the property has been appointed shall have the right to:

(a) Receive and expend any and all wages or other earnings from his employment; and

(b) Contract and legally bind himself for any sum of money not exceeding \$300 or one month's wages or earnings, whichever is greater.

(4) The appointment of a limited guardian of property shall have no bearing on any of the rights specified in s. 880.33 (3) except upon specific finding of the court based upon clear and convincing evidence of the need for such limitations. In no event shall the appointment of a limited guardian constitute evidence of or a presumption as to the incompetence of the ward in any area not mentioned in the court order.

**880.38 Guardian of the person of incompetent.** A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or his property, or to represent him in any legal proceedings pertaining to his property, unless the guardian of the person is also the guardian of the property. The guardian of the person has the power to apply for placement under s. 55.06 and for commitment under s. 51.01 or 51.09. It is the duty of the guardian of the person to take care of the person of the ward, to treat him humanely and to obtain necessary services on his behalf.

**SECTION 32. Cross reference changes.** In the sections listed below in column A, the cross references shown in column B are changed to the cross references shown in column C:

A	B	C
Statute Section	Old Cross References	New Cross References
15.221 (intro.)	55.01	47.40
20.435 (4) (b)	55.01	47.40
20.435 (5) (j)	55.01 (6) (e)	47.40 (6) (e)
20.435 (5) (kz)	55.01 (12) (d)	47.40 (12) (d)
37.11 (14)	ch. 55	subch. II of ch. 47

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A	B	C
Statute Section	Old Cross References	New Cross References
38.30 (1) (b)	55.01	47.40
46.03 (12)	ch. 55	subch. II of ch. 47
880.13 (1)	880.33 (9)	880.60 (9)

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