



By 2/24/06
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2339/P2 P3

DAK:wlj:ch

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stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS:
**** NOTES
Should be
deleted.

REGENERATE

1 AN ACT *to renumber and amend* 51.40 (2) (b) 2. a., 51.40 (2) (b) 2. b., 51.40 (2)
2 (b) 2. c. and 51.40 (2) (b) 2. d.; *to amend* 46.27 (6g) (c), 51.01 (14), 51.05 (2), 51.13
3 (4) (h) 2., 51.20 (1) (c), 51.20 (9) (a) 3., 51.20 (18) (d), 51.22 (4), 51.37 (5) (c), 51.40
4 (1) (e), 51.40 (2) (intro.), 51.40 (2) (a), 51.40 (2) (b) (intro.), 51.40 (2) (b) 2. (intro.),
5 51.40 (2) (g) 1. and 55.06 (8) (intro.); *to repeal and recreate* 51.40 (title), 51.40
6 (2) (f) and 880.06 (2); and *to create* 51.01 (4g), 51.01 (4r), 51.01 (14t), 51.20 (13)
7 (g) 4., 51.40 (1) (em), 51.40 (1) (im), 51.40 (1) (k), 51.40 (2) (b) 3. and 51.40 (2)
8 (g) 6. of the statutes; **relating to:** venue, county of responsibility, and
9 determination of county of residence for certain services, commitments,
10 protective placements, and protective services.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:

Residency, Venue, and County of Responsibility

Current law sets forth criteria to determine which county is responsible for the costs of services provided to an individual under chs. 46, 51, and 55.

The current criteria apply only to persons with a developmental disability or chronic mental illness. The bill replaces the term “chronic mental illness” with “serious and persistent mental illness,” to correspond to similar changes elsewhere in the bill. The bill also expands applicability of the criteria to individuals with “degenerative brain disorder” or “another like incapacity.”

The current criteria apply only to individuals in state facilities or nursing homes. The bill expands applicability of the criteria to individuals in any facility licensed or registered under ch. 50 of the statutes.

The bill specifies that the criteria apply to individuals receiving court-ordered protective services as well as placement; current law refers only to protective placement.

The bill specifies that for purposes of s. 51.40, “residence” has the meaning specified in s. 49.001 (6): “the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.”

The bill further specifies that for purposes of s. 51.40, “voluntary” has the meaning specified in s. 49.001 (8), and amends that definition to be: “according to a person’s free choice, if competent, or by choice of a guardian if incompetent, when the person is not subject to a court-ordered placement under ch. 55, or is not placed by an agency having a court-ordered involuntary commitment of the person under ch. 51 and is not involuntarily committed to the department of corrections or the department under ch. 971 or 980.”

The bill authorizes the court to make a specific finding of county of residence of a person who is under a court order of commitment under ch. 51 or an order for protective placement or services after notice and an opportunity to be heard has been given to all affected counties and parties, if there is no objection. Notice must be sent to the corporation counsel of each affected county by certified mail. If there is an objection to the proposed finding of a county of residence, the county or a party may request the department to make a determination of county of responsibility. Any transfer of venue must be suspended until the determination of county of responsibility is final.

Current law sets forth criteria to determine the residency of a person living in a nursing home. The bill specifies that determinations made pursuant to those criteria are presumptions that may be overcome by substantial evidence that clearly establishes residence in another county.

The bill specifies that placement of an individual by a county department or an agency of a county department into a facility outside the jurisdiction of the county does not transfer the individual’s legal residency to the county of the facility’s location. If a person is present in a county while being a resident of another county and is in need of immediate care, a county of appropriate venue may provide for the immediate needs of a person without being declared the person’s county of residence.

The bill specifies that if it is not contrary to the other statutory criteria concerning residency, an individual residing in a facility who is incapable of indicating intent is a resident of the county in which he or she last resided before entering the facility.

Current law provides that a ward in a state facility or nursing home whose parent or sibling serves as his or her guardian is a resident of the guardian’s county of residence if the state facility or nursing home is located in that county or if the guardian states in writing that the ward is expected to return to the guardian’s county of residence when the purpose of entering the state facility or nursing home has been accomplished or when needed care and services can be obtained in that county.

The bill substantially amends this provision as follows:

1. Amends the title of the provision to “Guardian’s authority to declare county of residence.”

2. Makes the provisions applicable to all guardians (not just guardians who are a parent or sibling of a ward) of wards in any facility (not just a state facility or nursing home).

3. Provides that if other criteria to determine residency do not apply, a guardian may declare a ward’s county of residence to be the county where the ward is physically present if all of the following apply:

The ward’s presence in the county is voluntary.

There is no ch. 55 order in effect and the ward is not under an involuntary commitment to the county, other than the county where the ward is physically present, or to the Department of Corrections.

The ward is living in a place of fixed habitation.

The guardian states in writing that it is the ward’s intent to remain in the county for the foreseeable future.

The bill also provides that a guardian may, for good cause shown, if in the ward’s best interests, clarify or change a ward’s county of residence by filing with the probate court having jurisdiction of the guardianship and protective placement a written statement declaring the ward’s domiciliary intent, subject to court approval, with notice and opportunity to appear by potentially affected counties and parties.

Current law provides a procedure for the department to make a determination of county of responsibility of an individual upon request. The bill specifies that any pending motion for change of venue shall be stayed until the department’s determination is final. The bill also expands notice requirements pertaining to the residency determination procedure.

The bill provides that the county found to be responsible for providing services ordered under ch. 46, 51, or 55 to an individual must reimburse any other county that provided services to the individual for all services provided to the individual beginning on the date of the initial order under ch. 46, 51, or 55. Full reimbursement by the responsible county must be made within 120 days of the department’s responsibility determination, or of the outcome of any appeal by the department’s determination that is brought under ch. 227, or on a date or pursuant to a schedule of two or more payments agreed to by both counties.

The bill specifies that to be eligible for protective placement or services, a person must be a resident of Wisconsin or be present in Wisconsin having a need for protective placement or services until such time as appropriate protective services can be established in the person’s place of residence.

Current law specifies that a petition under ch. 55 must be filed in the county of residence of the person sought to be protected. The bill provides that the petition may be filed in the county in which the person sought to be protected is physically present under extraordinary circumstances requiring medical aid or the prevention of harm to the person or others.

The bill provides that the court in which a petition under ch. 55 or 880 is filed must determine venue. The court must direct that proper notice be given to any potentially responsible or affected county. After all potentially responsible or affected counties and parties have been given an opportunity to be heard, if it is determined that venue lies in another county, the court must order the entire record certified to the proper court. A court in which a subsequent petition is filed must, upon being satisfied of an earlier filing in another court, summarily dismiss such petition. If any county or party objects to the court’s finding of venue, the issue must be referred to the department and the department must make a determination of county of responsibility pursuant to the procedure under current law. The court must suspend ruling on the motion for change of venue until the department’s determination is final.

The bill provides that the county department under s. 51.42 or 51.437 to which an individual is involuntarily committed for treatment under ch. 51 retains responsibility for the person when the person voluntarily moves to another county until venue for the person is transferred to the county where the person is residing or until the person is no longer a proper subject of continued commitment.

The bill specifies that the residence of a person who is committed under ch. 51 and who is placed in a facility in another county by a county developmental disabilities board does not transfer to the county of the facility's location while the person is under commitment.

SECTION 1. 46.27 (6g) (c) of the statutes is amended to read:

46.27 (6g) (c) For a person living in a nursing home, ~~except a state-operated long-term care facility, whose legal residence is established in another county, the county in which the legal of residence is established is the county of for purposes of~~ fiscal responsibility is determined under s. 51.40.

SECTION 2. 51.01 (4g) of the statutes is created to read:

51.01 (4g) "County of residence" means the county that is determined under s. 51.40 to be the county of residence.

***NOTE: Please see the ***Note under s. 51.01 (14).

SECTION 3. 51.01 (4r) of the statutes is created to read:

51.01 (4r) "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.

***NOTE: This term is used in the proposal, but no definition for the term exists in current law. I borrowed this definition from the ch. 55 proposal.

SECTION 4. 51.01 (14) of the statutes is amended to read:

51.01 (14) "Residence", ~~"legal residency" or "county of residence"~~ has the meaning given under s. 49.001 (6).

***NOTE: The proposal creates a definition of "residence" for s. 51.40; however, s. 51.01 (14), stats., already defines the term for the entire chapter. I have amended the definition, however, because the terms "legal residency" and "county of residence" are not defined under s. 49.001 (6), stats., to which the definition refers. I have made a separate definition for "county of residence" for ch. 51.

INSERT 4-1

1 **SECTION 5.** 51.01 (14t) of the statutes is created to read:

2 51.01 (14t) “Serious and persistent mental illness” means a mental illness that
3 is severe in degree and persistent in duration, that causes a substantially diminished
4 level of functioning in the primary aspects of daily living and an inability to cope with
5 the ordinary demands of life, that may lead to an inability to maintain stable
6 adjustment and independent functioning without long-term treatment and support,
7 and that may be of lifelong duration. “Serious and persistent mental illness” includes
8 schizophrenia as well as a wide spectrum of psychotic and other severely disabling
9 psychiatric diagnostic categories, but does not include degenerative brain disorder
10 or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

***NOTE: This term is used in the proposal, but no definition for the term exists
in current law. I borrowed this definition from the ch. 55 proposal.

11 **SECTION 6.** 51.05 (2) of the statutes is amended to read:

12 51.05 (2) ADMISSIONS AUTHORIZED BY COUNTIES. The department may not accept
13 for admission to a mental health institute any resident person, except in an
14 emergency, unless the county department under s. 51.42 in the county where the
15 person has legal ~~of residency~~ ^e ↓ of residence authorizes the care, as provided in s. 51.42 (3) (as).
16 Patients who are committed to the department under s. 975.01, 1977 stats., or s.
17 975.02, 1977 stats., or s. 971.14, 971.17, 975.06 or 980.06, admitted by the
18 department under s. 975.17, 1977 stats., or are transferred from a secured
19 correctional facility, a secured child caring institution or a secured group home to a
20 state treatment facility under s. 51.35 (3) or from a jail or prison to a state treatment
21 facility under s. 51.37 (5) are not subject to this section.

****NOTE: This provision corrects reference to the term “residence,” as defined; it
makes no other change.

22 **SECTION 7.** 51.13 (4) (h) 2. of the statutes is amended to read:

1 51.13 (4) (h) 2. Order the petition to be treated as a petition for involuntary
2 commitment and refer it to the court where the review under this section was held,
3 or if it was not held in the county of legal residence of the subject individual's parent
4 or guardian and hardship would otherwise occur and if the best interests of the
5 subject individual would be served thereby, to the court assigned to exercise
6 jurisdiction under chs. 48 and 938 in such county for a hearing under s. 51.20 or 51.45
7 (13).

8 **SECTION 8.** 51.20 (1) (c) of the statutes is amended to read:

9 51.20 (1) (c) The petition shall contain the names and mailing addresses of the
10 petitioners and their relation to the subject individual, and shall also contain the
11 names and mailing addresses of the individual's spouse, adult children, parents or
12 guardian, custodian, brothers, sisters, person in the place of a parent and person
13 with whom the individual resides or lives. If this information is unknown to the
14 petitioners or inapplicable, the petition shall so state. The petition may be filed in
15 the court assigned to exercise probate jurisdiction for the county where the subject
16 individual is present or the county of ~~the individual's legal residence~~ of the
17 individual. If the judge of the court or a circuit court commissioner who handles
18 probate matters is not available, the petition may be filed and the hearing under sub.
19 (7) may be held before a judge or circuit court commissioner of any circuit court for
20 the county. For the purposes of this chapter, duties to be performed by a court shall
21 be carried out by the judge of the court or a circuit court commissioner of the court
22 who is designated by the chief judge to so act, in all matters prior to a final hearing
23 under this section. The petition shall contain a clear and concise statement of the
24 facts which constitute probable cause to believe the allegations of the petition. The
25 petition shall be sworn to be true. If a petitioner is not a petitioner having personal

1 knowledge as provided in par. (b), the petition shall contain a statement providing
2 the basis for his or her belief.

3 **SECTION 9.** 51.20 (9) (a) 3. of the statutes is amended to read:

4 51.20 (9) (a) 3. If requested by the subject individual, the individual's attorney,
5 or any other interested party with court permission, the individual has a right at his
6 or her own expense or, if indigent and with approval of the court hearing the petition,
7 at the reasonable expense of the individual's county of legal residence, to secure an
8 additional medical or psychological examination and to offer the evaluator's personal
9 testimony as evidence at the hearing.

10 **SECTION 10.** 51.20 (13) (g) 4. of the statutes is created to read:

11 51.20 (13) (g) 4. The county department under s. 51.42 or 51.437 to which an
12 individual is committed under par. (a) 3. retains responsibility for the individual
13 when the individual voluntarily moves to another county until venue for the
14 individual is transferred to the county where the individual is residing or until the
15 individual is no longer a proper subject of continued commitment.

***Note: Is the responsibility that is retained *financial* responsibility?

16 **SECTION 11.** 51.20 (18) (d) of the statutes is amended to read:

17 51.20 (18) (d) If the subject individual has a legal residence in a county
18 individual's county of residence is other than the county from which he or she is
19 detained, committed or discharged, that county shall reimburse the county from
20 which the individual was detained, committed or discharged for all expenses under
21 pars. (a) to (c). The county clerk on each July 1 shall submit evidences of payments
22 of all such proceedings on nonresident payments to the department, which shall
23 certify such expenses for reimbursement in the form of giving credits to the
24 detaining, committing or discharging county and assessing such costs against the

1 county of legal residence or against the state at the time of the next apportionment
2 of charges and credits under s. 70.60.

*under involuntary commitment
or protectively placed*

3 SECTION 12. 51.22 (4) of the statutes is amended to read:

4 51.22 (4) If a patient is placed in a facility authorized by a county department
5 under s. 51.42 or 51.437 and such the placement is outside the jurisdiction of that
6 county department under s. 51.42 or 51.437, the placement does not transfer the
7 patient's legal residence to the county of the facility's location while such the patient
8 is under involuntary commitment or protective placement

or protective placement

~~NOTE: Should this provision be expanded to explicitly cover both mental health
commitments and protective placements?~~

9 SECTION 13. 51.37 (5) (c) of the statutes is amended to read:

10 51.37 (5) (c) No state treatment facility may accept for admission an individual
11 who is being transferred from a county jail under par. (a) or (b) without the approval
12 of the county department under s. 51.42 or 51.437 of the county in which the jail is
13 located. No state treatment facility may retain such an individual beyond 72 hours
14 without the approval of the county department under s. 51.42 or 51.437 of the county
15 where of residence of the transferred individual has legal residence.

16 SECTION 14. 51.40 (title) of the statutes is repealed and recreated to read:

17 51.40 (title) **Determination of residence for certain adults; county of
18 responsibility.**

19 SECTION 15. 51.40 (1) (e) of the statutes is amended to read:

20 51.40 (1) (e) "County of responsibility" means the county responsible for
21 funding the provision of care, treatment, or services under this chapter or ch. 46 or
22 55 to an individual.

*****NOTE: The current definition of "county of responsibility" is not applicable to ch.
51, stats., so I have amended it to make it so. Please note that this definition, together*

with this change, makes the proposed language under s. 51.42 about responsibility superfluous.

1 **SECTION 16.** 51.40 (1) (em) of the statutes is created to read:

2 51.40 (1) (em) “Facility” means a place, other than a hospital, that is licensed,
3 registered, certified, or approved by the department or a county under ch. 50 or 51.

****NOTE: Section 50.01 (1m), stats., defines “facility” to be a nursing home or community-based residential facility, so the wording of this definition, as proposed, would appear to be confined to those two types of facilities. The Prefatory Note indicates that this definition of facility is intended to be very broad; therefore, I have expanded the definition, both as to entities and to include ch. 51 facilities, assuming that you did not intend for a hospital to serve as a residence. Please review. (Note that the definition, as I have expanded it, would include treatment facilities under ch. 51, stats.)

4 **SECTION 17.** 51.40 (1) (im) of the statutes is created to read:

5 51.40 (1) (im) “Relative” has the meaning given in s. 48.02 (15) and includes
6 the spouse of an individual.

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9-6

7 **SECTION 18.** 51.40 (1) (k) of the statutes is created to read:

8 51.40 (1) (k) “Voluntary” has the meaning specified under s. 49.001 (8).

9 **SECTION 19.** 51.40 (2) (intro.) of the statutes is amended to read:

10 51.40 (2) DETERMINATION OF COUNTY OF RESIDENCE. (intro.) ~~For purposes of~~
11 ~~determining responsibility for funding the provision of services under chs. 46, 51 and~~
12 ~~55, the~~ The county of residence of individuals an individual aged 18 or older with a
13 ~~developmental disability or chronic, serious and persistent~~ mental illness in state
14 ~~facilities or nursing homes, degenerative brain disorder, or another like incapacity~~
15 who is residing in a facility is the county of responsibility for the individual. The
16 county of residence shall be determined as follows:

****NOTE: Please see the ****Note under s. 51.40 (1) (e), stats.; I have substituted the term “county of responsibility” for the words in the proposal that actually define the county of responsibility. Also, I have added “who is residing” to “in a facility,” to distinguish from an individual who is temporarily placed in such a facility. Lastly, I have explicitly stated that the county of residence is the county of responsibility, to tie in the DHFS’ determination of county of responsibility in s. 51.40 (2) (g) with the determination of county of residence elsewhere in s. 51.40 (2).

17 **SECTION 20.** 51.40 (2) (a) of the statutes is amended to read:

1 51.40 (2) (a) *Directed placement.* 1. ‘Commitment or ~~protection~~ protective
2 placement or protective services.’ If an individual is under a court order of
3 commitment under this chapter or protective placement or protective services under
4 ~~s. 55.06~~ ch. 55, the individual remains a resident of the county in which he or she has
5 residence at the time the initial commitment or initial order for protective placement
6 or protective services is made. If the court makes no specific finding of a county of
7 residence, the individual is a resident of the county in which the court is located. The
8 court may make a specific finding of a county of residence, after notice, including
9 notice to the corporation counsel of each affected county by certified mail, after
10 opportunity to be heard has been provided to all affected counties and parties, and
11 if there is no objection. If any affected county or party objects to the court’s proposed
12 finding of a county of residence, the county or party may request the department to
13 make a determination under par. (g) and any transfer of venue shall be suspended
14 until the determination is final.

15 2. ‘Placement by a county.’ Except for the provision of emergency services under
16 s. 51.15, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and or (12) or ~~55.06 (11)~~ emergency
17 protective services or emergency or temporary protective placement under ch. 55, if
18 a county department or an agency of a county department arranges places or makes
19 arrangements for placement of the individual into a state facility ~~or nursing home~~,
20 the individual is a resident of the county of that county department. Any agency of
21 the county department is deemed to be acting on behalf of the county department in
22 arranging placing or making arrangements for placement. Placement of an
23 individual by a county department or an agency of a county department into a facility
24 outside the jurisdiction of the county department or agency does not transfer the
25 individual’s legal residence to the county in which the facility is located. If a resident

1 of a county is physically present in another county and is in need of immediate care,
2 the county in which the individual is present may provide for the immediate needs
3 of a person under ss. 51.15, 51.20, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12), and
4 880.07 and ch. 55 without becoming the county of residence.

***NOTE: Because this bill is independent of the ch. 55 bill, I cannot reference ss. 55.13 and 55.135, which are created in that bill.

5 SECTION 21. 51.40 (2) (b) (intro.) of the statutes is amended to read:

6 51.40 (2) (b) *Other admissions.* (intro.) If par. (a) does not apply, one of the
7 following shall apply the county of residence shall be determined as follows:

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11-7

8 SECTION 22. 51.40 (2) (b) 2. (intro.) of the statutes is amended to read:

9 51.40 (2) (b) 2. 'Individuals in nursing homes.' (intro.) The following are
10 presumptions regarding the county of residence of an individual in a nursing home
11 that may be overcome by substantial evidence that clearly establishes other county
12 residence:

13 ag. An individual in a nursing home who was admitted under s. 50.04 (2r) to
14 the nursing home on or after August 1, 1987 the effective date of this subd. 2. ag.
15 [revisor inserts date], is a resident of the county which that approved the admission
16 under s. 50.04 (2r).

17 bg. An individual residing in a nursing home on or before August 1, 1987 the
18 effective date of this subd. 2. bg. [revisor inserts date], is presumed to be a resident
19 of the county in which the individual is physically present unless another county
20 accepts the individual as a resident. The presumption of residence may be overcome
21 by substantial evidence which clearly establishes residence in another county in one
22 of the following ways:

***NOTE: I have amended both s. 51.40 (2) (b) 2. ag. and bg. to bring the August 1, 1987, date to the date of the bill; additionally, I have added "or before" to s. 51.40 (2)

(b) 2. bg.; otherwise, I'm not sure that it would apply to anyone—generally, a nursing home stay is two years.

1 **SECTION 23.** 51.40 (2) (b) 2. a. of the statutes is renumbered 51.40 (2) (b) 2. cg.
2 and amended to read:

3 51.40 (2) (b) 2. cg. ~~The~~ If the individual had an established residence in another
4 county prior to entering the nursing home; the individual or the individual's
5 guardian, if any, indicates an intent that the individual will return to that county
6 when the purpose of entering the nursing home has been accomplished or when
7 needed care and services can be obtained in ~~the other~~ that county; and the individual,
8 when capable of indicating intent, or a guardian for the individual, has made no
9 clearly documented expression to a court or county department of an intent to
10 establish residence elsewhere since leaving that county, the individual is a resident
11 of that county.

12 **SECTION 24.** 51.40 (2) (b) 2. b. of the statutes is renumbered 51.40 (2) (b) 2. dg.
13 and amended to read:

14 51.40 (2) (b) 2. dg. ~~The~~ If the individual is incapable of indicating intent as
15 determined by the county department, has no guardian, ordinarily resides in
16 another county, and is expected to return to that county within one year, the
17 individual is a resident of that county.

18 **SECTION 25.** 51.40 (2) (b) 2. c. of the statutes is renumbered 51.40 (2) (b) 2. eg.
19 and amended to read:

20 51.40 (2) (b) 2. eg. ~~Another~~ If another county has accepted responsibility for or
21 provided services to the individual prior to ~~August 1, 1987~~ the effective date of this
22 subd. 2. eg. [revisor inserts date], the individual is a resident of that county.

1 **SECTION 26.** 51.40 (2) (b) 2. d. of the statutes is renumbered 51.40 (2) (b) 2. fg.
2 and amended to read:

3 51.40 (2) (b) 2. fg. ~~The~~ If the individual is incapable of indicating intent; the
4 individual was living in another county outside of a nursing home or state facility on
5 December 1, 1982 the effective date of this subd. 2. fg. [revisor inserts date], or
6 under circumstances which that established residence in that county after December
7 1, 1982 the effective date of this subd. 2. fg. [revisor inserts date]; and that county
8 was the last county in which the individual had residence while living outside of a
9 nursing home or state facility, the individual is a resident of that county.

***NOTE: I have renumbered s. 51.40 (2) (b) 2. a. to d. and have amended these provisions to make their sentence structure parallel to the provisions created in the amendment of s. 51.40 (2) (b) 2. (intro.). I also have updated the dated references. Please review.

10 **SECTION 27.** 51.40 (2) (b) 3. of the statutes is created to read:

11 51.40 (2) (b) 3. ‘Individuals in facilities.’ If subd. 1. or 2. does not apply, an
12 individual who is incapable of indicating intent and is residing in a facility is a
13 resident of the county in which the individual resided before admittance to the
14 facility.

***NOTE: I have numbered this provision 51.40 (2) (b) 3. and have amended it to refer to s. 51.40 (2) (b) 1. and 2. because s. 51.40 (2) (b) (intro.) already uses the words, “If par. (a) does not apply ...”

15 **SECTION 28.** 51.40 (2) (f) of the statutes is repealed and recreated to read:

16 51.40 (2) (f) *Guardian’s authority to declare county of residence.* A guardian
17 may declare any of the following, under any of the following conditions:

18 1. The ward’s county of residence is the guardian’s county of residence, if pars.
19 (a) and (b) do not apply, if the guardian’s ward is in a facility and is incapable of
20 indicating intent, and if the guardian is a resident of the county in which the facility
21 is located or states in writing that the ward is expected to return to the guardian’s

1 county of residence when the purpose of entering the facility has been accomplished
2 or when needed care and services can be obtained in the guardian's county of
3 residence.

4 2. The ward's county of residence is the county in which the ward is physically
5 present, if pars. (a) and (b) do not apply and if all of the following apply:

6 a. The ward's presence in the county is voluntary.

7 b. There is no current order under ch. 55 in effect with respect to the ward, and
8 the ward is not under an involuntary commitment order to the department of
9 corrections or to a county other than the county in which the ward is physically
10 present.

11 c. The ward is living in a place of fixed habitation.

12 d. The guardian states in writing that it is the ward's intent to remain in the
13 county for the foreseeable future.

14 3. The ward's county of residence is the county specified by the guardian,
15 regardless if a previous determination of county of residence has been made,
16 notwithstanding pars. (a) and (b) for good cause shown, if, in the ward's best interest,
17 the guardian files with the probate court having jurisdiction of the guardianship and
18 protective placement a written statement declaring the ward's domiciliary intent,
19 subject to court approval, and if notice and opportunity to be heard are provided to
20 all affected counties and parties. Notice under this subdivision shall be sent to the
21 corporation counsel of each affected county by certified mail.

22 **SECTION 29.** 51.40 (2) (g) 1. of the statutes is amended to read:

23 51.40 (2) (g) 1. An individual, an interested person on behalf of the individual,
24 or any county may request that the department make a determination of the county
25 of responsibility of the individual. Any motion for change of venue pending before

1 the court of jurisdiction shall be stayed until the determination under this paragraph
2 is final. Within 10 days after receiving the request, the department shall provide
3 written notice to the individual, to the individual's guardian, guardian ad litem, and
4 counsel, if any,; to the individual's immediate family members, if they can be located;
5 and to all potentially responsible counties that a determination of county of
6 responsibility shall be made and that written information and comments may be
7 submitted within 30 days after the date on which the notice is sent.

8 **SECTION 30.** 51.40 (2) (g) 6. of the statutes is created to read:

9 51.40 (2) (g) 6. The county that is determined to be the county of responsibility
10 shall reimburse any other county for all care, treatment, and services provided by the
11 other county to the individual under ch. 46, 51, or 55. Full reimbursement by the
12 county that is determined to be the county of responsibility shall be made within 120
13 days following the date of the department's determination of the county of
14 responsibility or within 120 days after the date of the outcome of any appeal of the
15 department's determination that is brought under ch. 227, or by a date or under a
16 schedule of 2 or more payments that is agreed to by both parties.

NOTE: Please see the ~~****Notes under the treatment of s. 51.40 (1) (e) and (2)~~
(intro.)

INSERT 15-16

17 **SECTION 31.** 55.06 (8) (intro.) of the statutes is amended to read:

18 55.06 (8) (intro.) Before ordering the protective placement of any individual,
19 the court shall direct a comprehensive evaluation of the person in need of placement,
20 if such an evaluation has not already been made. The court may utilize available
21 multidisciplinary resources in the community in determining the need for
22 placement. The board designated under s. 55.02 or an agency designated by it shall
23 cooperate with the court in securing available resources. Where applicable by reason

1 filing in another court, summarily dismiss the subsequent petition. If any
2 potentially responsible or affected county or party objects to the court's finding of
3 venue, the court may refer the issue to the department for a determination of the
4 county of residence under s. 51.40 (2) (g) and may suspend ruling on the motion for
5 change of venue until the determination under s. 51.40 (2) (g) is final.

INSERT 16-19

6 **SECTION 8** 880.06 (1) of the statutes is amended to read:

7 880.06 (1) ORIGINAL PROCEEDING. The court ~~wherein~~ in which a petition is first
8 filed shall determine venue. The court shall direct that proper notice be given to any
9 potentially responsible or affected county. Proper notice is given to a potentially
10 responsible or affected county if written notice of the proceeding is sent by certified
11 mail to the county's clerk and corporation counsel. After all potentially responsible
12 or affected counties and parties have been given an opportunity to be heard, the court
13 shall determine that venue lies in the county in which the petition is filed under sub.
14 (2) or in another county, as appropriate. If it is determined that venue lies in another
15 county, the court shall order the entire record certified to the proper court. A court
16 wherein in which a subsequent petition is filed shall, upon being if it is satisfied of
17 that an earlier filing took place in another court, summarily dismiss such the
18 petition. If any potentially responsible or affected county or party objects to the
19 court's finding of venue, the court may refer the issue to the department for a
20 determination of the county of residence under s. 51.40 (2) (g) and may suspend
21 ruling on the motion for change of venue until the determination under s. 51.40 (2)
22 (g) is final.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.06; 1977 c. 449; 1999 a. 85.

23 **SECTION 8** 880.06 (2) of the statutes is amended to read:

1 of the particular disability, the appropriate board designated under s. 55.02 or an
 2 agency designated by it ~~having responsibility for the place of legal residence of the~~
 3 ~~individual as provided in s. 49.001 (6)~~ individual's county of residence shall make a
 4 recommendation for placement. If the court is considering placement of the
 5 individual in a center for the developmentally disabled, the court shall request a
 6 statement or testimony from the department regarding whether the placement is
 7 appropriate for the person's needs and whether it is consistent with the purpose of
 8 the center under s. 51.06 (1). If the individual has a developmental disability and
 9 the court is considering placement of the individual in an intermediate facility or a
 10 nursing facility, the court shall request a statement or testimony from the county
 11 department of the individual's county of residence that is participating in the
 12 program under s. 46.278 as to whether the individual's needs could be met in a
 13 noninstitutional setting, except that, if s. 46.279 (4m) applies to the individual, the
 14 court shall request the statement or testimony from the department, rather than the
 15 county department. A copy of the comprehensive evaluation shall be provided to the
 16 guardian, the guardian ad litem, and to the individual or attorney at least 96 hours
 17 in advance of the hearing to determine placement. The court or the cooperating
 18 agency obtaining the evaluation shall request appropriate information which shall
 19 include at least the following:

No fr
 If ~~s. 51.40~~ (2) (a) or
 (b) does not
 apply,
 a

INSERT 16-19

20 **SECTION 32.** 880.06 (2) of the statutes is repealed and recreated to read:

21 880.06 (2) CHANGE OF RESIDENCE OF WARD BY GUARDIAN. ~~A~~ guardian for good
 22 cause shown may change a ward's county of residence by filing with the court a
 23 written statement as specified in s. 51.40 (2) (f).

***NOTE: This provision, taken from the ch. 55 bill, is not congruent with s. 51.40 (2) (f), as affected by this bill. Section 51.40 (2) (f), under this bill, applies only if s. 51.40 (2) (a) and (b) does not; this provision lacks that qualification and appears to allow the

guardian to change the county of residence at will. Section 51.40 (2) (f) does not have a good cause requirement, as this provision does, and says nothing about filing a written statement with the court. How do you want this handled? Should this provision be changed to make it match s. 51.40 (2) (f), or vice versa, or some combination in between?

1

(END)

INSERT 17-1 →

INSERT 4-1

2

1 SECTION ~~1~~ 46.266 (4) (b) of the statutes is amended to read:
2 46.266 (4) (b) If Notwithstanding s. 51.40 (1), if the department is unable to
3 determine the county of residence under par. (a), the county department of the county
4 in which is located the facility where the person resided on the date of the finding by
5 the federal health care financing administration or the department.

History: 1987 a. 27, 399; 1989 a. 31; 1991 a. 39; 1993 a. 16, 212; 1999 a. 9.

INSERT 9-6

6 SECTION ~~2~~ 51.40 (1) (hm) of the statutes is created to read:
7 51.40 (1) (hm) "Other like incapacities" means those conditions incurred at any
8 age that are the result of accident, organic brain damage, mental or physical
9 disability, or continued consumption or absorption of substances, producing a
10 condition that substantially impairs an individual from adequately providing for his
11 or her care or custody.

INSERT 11-7

12 SECTION ~~3~~ 51.40 (2) (b) 1. of the statutes is amended to read:
13 51.40 (2) (b) 1. 'Individuals in state facilities.' An individual who is in a state
14 facility is a resident of the county in which he or she was a resident at the time the
15 admission to the state facility was made. This subdivision may not be applied to
16 change residence from a county, other than the county in which the facility is located,
17 which that has accepted responsibility for or provided services to the individual prior
18 to August 1, 1987 before the effective date of this subdivision ... [revisor inserts date].

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

INSERT 15-16

19 SECTION ~~4~~ 55.06 (1) (a) of the statutes is amended to read:

1 55.06 (1) (a) ~~The board designated under s. 55.02~~ department, the county
 2 department, or an agency designated by it with which the county department
 3 contracts under s. 55.02 (2), a guardian, or an interested person may file a petition
 4 for appointment of a guardian and for protective services or protective placement for
 5 the individual. The department shall provide for a schedule of reimbursement for the
 6 cost of ~~such~~ the proceedings based upon the ability to pay of the proposed ward or
 7 ~~person~~ individual to be protected.

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

8 ~~SECTION 5.~~ 55.06 (3) (c) of the statutes is amended to read:

9 55.06 (3) (c) ~~The~~ A petition under sub. (1) shall be filed in the county of
 10 residence of the ~~person~~ individual to be protected, as determined under s. 51.40 or
 11 by the individual's guardian or where the individual is physically present due to
 12 circumstances including those specified under s. 51.22 (4).

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

13 ~~SECTION 6.~~ 55.06 (3) (d) of the statutes is created to read:

14 55.06 (3) (d) The court in which a petition is first filed under par. (c) shall
 15 determine venue. The court shall direct that proper notice be given to any potentially
 16 responsible or affected county. Proper notice is given to a potentially responsible or
 17 affected county if written notice of the proceeding is sent by certified mail to the
 18 county's clerk and corporation counsel. After all potentially responsible or affected
 19 counties and parties have been given an opportunity to be heard, the court shall
 20 determine that venue lies in the county in which the petition is filed under par. (c)
 21 or in another county, as appropriate. If the court determines that venue lies in
 22 another county, the court shall order the entire record certified to the proper court.
 23 A court in which a subsequent petition is filed shall, upon being satisfied of an earlier

1 880.06 (2) CHANGE OF RESIDENCE OF WARD OR GUARDIAN. If s. 51.40 (2) (a) or (b)
 2 ^{does} ~~do not apply and if~~ a guardian removes from the county where appointed to another
 3 county within the state or a ward removes from the county in which he or she has
 4 resided to another county within the state, the circuit court for the county in which
 5 the ward resides may appoint a new guardian as provided by law for the appointment
 6 of a guardian. Upon verified petition of the new guardian, accompanied by a certified
 7 copy of appointment and bond if the appointment is in another county, and upon the
 8 notice prescribed by s. 879.05 to the originally appointed guardian, unless he or she
 9 is the same person, and to any other persons that the court shall order, the court of
 10 original appointment may order the guardianship accounts settled and the property
 11 delivered to the new guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.06; 1977 c. 449; 1999 a. 85.

12 ~~SECTION 9.~~ 880.33 (2) (a) 3. of the statutes is amended to read:

INSERT
164
17-1

13 880.33 (2) (a) 3. If the person is an adult who is indigent, the county of legal
 14 settlement residence as determined under s. 51.40 (2) shall be the county liable for
 15 any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08,
 16 for any legal fees due the person's legal counsel. If the person is a minor, the person's
 17 parents or the county of legal settlement shall be liable for any fees due the guardian
 18 ad litem as provided in s. 48.235 (8).

History: 1973 c. 284; 1975 c. 393, 421; 1977 c. 29, 187; 1977 c. 203 s. 106; 1977 c. 299, 318, 394, 418, 447; 1979 c. 110, 356; 1981 c. 379; 1987 a. 366; Sup. Ct. Order, 151 Wis. 2d xxii, xxxiv; 1989 a. 200; Sup. Ct. Order, 153 Wis. 2d xxim xxv (1989); 1991 a. 32, 39; 1993 a. 16, 316; 1995 a. 27 s. 9126 (19); Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 237.

Kennedy, Debora

From: Rose, Laura
Sent: Monday, February 27, 2006 10:26 AM
To: Kennedy, Debora
Subject: RE: LRB 2339/P3

No, I just want to get in introduced. Thanks!

Laura

From: Kennedy, Debora
Sent: Monday, February 27, 2006 10:21 AM
To: Rose, Laura
Subject: RE: LRB 2339/P3

Do you want to add to any of the Leg Council Notes in the bill before it's redrafted to be introducible?

From: Rose, Laura
Sent: Monday, February 27, 2006 10:19 AM
To: Kennedy, Debora
Subject: LRB 2339/P3

Hi Debora,

I finished reviewing LRB 2339/P3, the Leg. Council bill relating to venue, county of responsibility and determination of residence for certain services, commitments, protective placements, and protective services. This bill is ready for jacketing.

THANKS!!!!!!!!!!!!

Laura



TODAY, if possible
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2339/P3

DAK:wlj:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to renumber and amend* 51.40 (2) (b) 2. a., 51.40 (2) (b) 2. b., 51.40 (2)
2 (b) 2. c. and 51.40 (2) (b) 2. d.; *to amend* 46.266 (4) (b), 46.27 (6g) (c), 51.01 (14),
3 51.05 (2), 51.13 (4) (h) 2., 51.20 (1) (c), 51.20 (9) (a) 3., 51.20 (18) (d), 51.22 (4),
4 51.37 (5) (c), 51.40 (1) (e), 51.40 (2) (intro.), 51.40 (2) (a), 51.40 (2) (b) (intro.),
5 51.40 (2) (b) 1., 51.40 (2) (b) 2. (intro.), 51.40 (2) (g) 1., 55.06 (1) (a), 55.06 (3) (c),
6 55.06 (8) (intro.), 880.06 (1) and 880.33 (2) (a) 3.; *to repeal and recreate* 51.40
7 (title), 51.40 (2) (f) and 880.06 (2); and *to create* 51.01 (4g), 51.01 (4r), 51.01
8 (14t), 51.20 (13) (g) 4., 51.40 (1) (em), 51.40 (1) (hm), 51.40 (1) (k), 51.40 (2) (b)
9 3., 51.40 (2) (g) 6. and 55.06 (3) (d) of the statutes; **relating to:** venue, county

1 of responsibility, and determination of county of residence for certain services,
2 commitments, protective placements, and protective services.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:

Residency, Venue, and County of Responsibility

Current law sets forth criteria to determine which county is responsible for the costs of services provided to an individual under chs. 46, 51, and 55.

The current criteria apply only to persons with a developmental disability or chronic mental illness. The bill replaces the term “chronic mental illness” with “serious and persistent mental illness,” to correspond to similar changes elsewhere in the bill. The bill also expands applicability of the criteria to individuals with “degenerative brain disorder” or “~~an~~ other like incapacity.”

The current criteria apply only to individuals in state facilities or nursing homes. The bill expands applicability of the criteria to individuals in any facility licensed or registered under ch. 50 of the statutes.

The bill specifies that the criteria apply to individuals receiving court-ordered protective services as well as placement; current law refers only to protective placement.

The bill specifies that for purposes of s. 51.40, “residence” has the meaning specified in s. 49.001 (6): “the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.”

The bill further specifies that for purposes of s. 51.40, “voluntary” has the meaning specified in s. 49.001 (8), and amends that definition to be: “according to a person’s free choice, if competent, or by choice of a guardian if incompetent, when the person is not subject to a court-ordered placement under ch. 55, or is not placed by an agency having a court-ordered involuntary commitment of the person under ch. 51 and is not involuntarily committed to the department of corrections or the department under ch. 971 or 980.”

The bill authorizes the court to make a specific finding of county of residence of a person who is under a court order of commitment under ch. 51 or an order for protective placement or services after notice and an opportunity to be heard has been given to all affected counties and parties, if there is no objection. Notice must be sent to the corporation counsel of each affected county by certified mail. If there is an objection to the proposed finding of a county of residence, the county or a party may request the department to make a determination of county of responsibility. Any transfer of venue must be suspended until the determination of county of responsibility is final.

Current law sets forth criteria to determine the residency of a person living in a nursing home. The bill specifies that determinations made pursuant to those criteria are presumptions that may be overcome by substantial evidence that clearly establishes residence in another county.

The bill specifies that placement of an individual by a county department or an agency of a county department into a facility outside the jurisdiction of the county does

*This bill is explained in the ^(CS)NOTES provided by the
Joint Legislative Council in the bill
FE - S/L*

not transfer the individual's legal residency to the county of the facility's location. If a person is present in a county while being a resident of another county and is in need of immediate care, a county of appropriate venue may provide for the immediate needs of a person without being declared the person's county of residence.

The bill specifies that if it is not contrary to the other statutory criteria concerning residency, an individual residing in a facility who is incapable of indicating intent is a resident of the county in which he or she last resided before entering the facility.

Current law provides that a ward in a state facility or nursing home whose parent or sibling serves as his or her guardian is a resident of the guardian's county of residence if the state facility or nursing home is located in that county or if the guardian states in writing that the ward is expected to return to the guardian's county of residence when the purpose of entering the state facility or nursing home has been accomplished or when needed care and services can be obtained in that county.

The bill substantially amends this provision as follows:

1. Amends the title of the provision to "Guardian's authority to declare county of residence."

2. Makes the provisions applicable to all guardians (not just guardians who are a parent or sibling of a ward) of wards in any facility (not just a state facility or nursing home).

3. Provides that if other criteria to determine residency do not apply, a guardian may declare a ward's county of residence to be the county where the ward is physically present if all of the following apply:

The ward's presence in the county is voluntary.

There is no ch. 55 order in effect and the ward is not under an involuntary commitment to the county, other than the county where the ward is physically present, or to the Department of Corrections.

The ward is living in a place of fixed habitation.

The guardian states in writing that it is the ward's intent to remain in the county for the foreseeable future.

The bill also provides that a guardian may, for good cause shown, if in the ward's best interests, clarify or change a ward's county of residence by filing with the probate court having jurisdiction of the guardianship and protective placement a written statement declaring the ward's domiciliary intent, subject to court approval, with notice and opportunity to appear by potentially affected counties and parties.

Current law provides a procedure for the department to make a determination of county of responsibility of an individual upon request. The bill specifies that any pending motion for change of venue shall be stayed until the department's determination is final. The bill also expands notice requirements pertaining to the residency determination procedure.

The bill provides that the county found to be responsible for providing services ordered under ch. 46, 51, or 55 to an individual must reimburse any other county that provided services to the individual for all services provided to the individual beginning on the date of the initial order under ch. 46, 51, or 55. Full reimbursement by the responsible county must be made within 120 days of the department's responsibility determination, or of the outcome of any appeal by the department's determination that is brought under ch. 227, or on a date or pursuant to a schedule of two or more payments agreed to by both counties.

The bill specifies that to be eligible for protective placement or services, a person must be a resident of Wisconsin or be present in Wisconsin having a need for protective placement or services until such time as appropriate protective services can be established in the person's place of residence.

Current law specifies that a petition under ch. 55 must be filed in the county of residence of the person sought to be protected. The bill provides that the petition may be filed in the county in which the person sought to be protected is physically present

under extraordinary circumstances requiring medical aid or the prevention of harm to the person or others.

The bill provides that the court in which a petition under ch. 55 or 880 is filed must determine venue. The court must direct that proper notice be given to any potentially responsible or affected county. After all potentially responsible or affected counties and parties have been given an opportunity to be heard, if it is determined that venue lies in another county, the court must order the entire record certified to the proper court. A court in which a subsequent petition is filed must, upon being satisfied of an earlier filing in another court, summarily dismiss such petition. If any county or party objects to the court's finding of venue, the issue must be referred to the department and the department must make a determination of county of responsibility pursuant to the procedure under current law. The court must suspend ruling on the motion for change of venue until the department's determination is final.

The bill provides that the county department under s. 51.42 or 51.437 to which an individual is involuntarily committed for treatment under ch. 51 retains responsibility for the person when the person voluntarily moves to another county until venue for the person is transferred to the county where the person is residing or until the person is no longer a proper subject of continued commitment.

The bill specifies that the residence of a person who is committed under ch. 51 and who is placed in a facility in another county by a county developmental disabilities board does not transfer to the county of the facility's location while the person is under commitment.

1 **SECTION 1.** 46.266 (4) (b) of the statutes is amended to read:

2 46.266 (4) (b) If Notwithstanding s. 51.40 (2), if the department is unable to
3 determine the county of residence under par. (a), the county department of the county
4 in which is located the facility where the person resided on the date of the finding by
5 the federal health care financing administration or the department.

6 **SECTION 2.** 46.27 (6g) (c) of the statutes is amended to read:

7 46.27 **(6g)** (c) For a person living in a nursing home, ~~except a state-operated~~
8 ~~long-term care facility, whose legal residence is established in another county, the~~
9 ~~county in which the legal of residence is established is the county of~~ for purposes of
10 fiscal responsibility is determined under s. 51.40.

11 **SECTION 3.** 51.01 (4g) of the statutes is created to read:

12 51.01 **(4g)** "County of residence" means the county that is determined under
13 s. 51.40 to be the county of residence.

14 **SECTION 4.** 51.01 (4r) of the statutes is created to read:

1 51.01 (4r) “Degenerative brain disorder” means the loss or dysfunction of brain
2 cells to the extent that the individual is substantially impaired in his or her ability
3 to provide adequately for his or her own care or custody or to manage adequately his
4 or her property or financial affairs.

5 **SECTION 5.** 51.01 (14) of the statutes is amended to read:

6 51.01 (14) “Residence”, ~~“legal residency” or “county of residence”~~ has the
7 meaning given under s. 49.001 (6).

8 **SECTION 6.** 51.01 (14t) of the statutes is created to read:

9 51.01 (14t) “Serious and persistent mental illness” means a mental illness that
10 is severe in degree and persistent in duration, that causes a substantially diminished
11 level of functioning in the primary aspects of daily living and an inability to cope with
12 the ordinary demands of life, that may lead to an inability to maintain stable
13 adjustment and independent functioning without long-term treatment and support,
14 and that may be of lifelong duration. “Serious and persistent mental illness” includes
15 schizophrenia as well as a wide spectrum of psychotic and other severely disabling
16 psychiatric diagnostic categories, but does not include degenerative brain disorder
17 or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

18 **SECTION 7.** 51.05 (2) of the statutes is amended to read:

19 51.05 (2) ADMISSIONS AUTHORIZED BY COUNTIES. The department may not accept
20 for admission to a mental health institute any resident person, except in an
21 emergency, unless the county department under s. 51.42 in the county ~~where the~~
22 ~~person has legal residency of residence~~ authorizes the care, as provided in s. 51.42
23 (3) (as). Patients who are committed to the department under s. 975.01, 1977 stats.,
24 or s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06 or 980.06, admitted by the
25 department under s. 975.17, 1977 stats., or are transferred from a secured

1 correctional facility, a secured child caring institution or a secured group home to a
2 state treatment facility under s. 51.35 (3) or from a jail or prison to a state treatment
3 facility under s. 51.37 (5) are not subject to this section.

4 **SECTION 8.** 51.13 (4) (h) 2. of the statutes is amended to read:

5 51.13 (4) (h) 2. Order the petition to be treated as a petition for involuntary
6 commitment and refer it to the court where the review under this section was held,
7 or if it was not held in the county of legal residence of the subject individual's parent
8 or guardian and hardship would otherwise occur and if the best interests of the
9 subject individual would be served thereby, to the court assigned to exercise
10 jurisdiction under chs. 48 and 938 in such county for a hearing under s. 51.20 or 51.45
11 (13).

12 **SECTION 9.** 51.20 (1) (c) of the statutes is amended to read:

13 51.20 (1) (c) The petition shall contain the names and mailing addresses of the
14 petitioners and their relation to the subject individual, and shall also contain the
15 names and mailing addresses of the individual's spouse, adult children, parents or
16 guardian, custodian, brothers, sisters, person in the place of a parent and person
17 with whom the individual resides or lives. If this information is unknown to the
18 petitioners or inapplicable, the petition shall so state. The petition may be filed in
19 the court assigned to exercise probate jurisdiction for the county where the subject
20 individual is present or the county of ~~the individual's legal residence~~ of the
21 individual. If the judge of the court or a circuit court commissioner who handles
22 probate matters is not available, the petition may be filed and the hearing under sub.
23 (7) may be held before a judge or circuit court commissioner of any circuit court for
24 the county. For the purposes of this chapter, duties to be performed by a court shall
25 be carried out by the judge of the court or a circuit court commissioner of the court

1 who is designated by the chief judge to so act, in all matters prior to a final hearing
2 under this section. The petition shall contain a clear and concise statement of the
3 facts which constitute probable cause to believe the allegations of the petition. The
4 petition shall be sworn to be true. If a petitioner is not a petitioner having personal
5 knowledge as provided in par. (b), the petition shall contain a statement providing
6 the basis for his or her belief.

7 **SECTION 10.** 51.20 (9) (a) 3. of the statutes is amended to read:

8 51.20 (9) (a) 3. If requested by the subject individual, the individual's attorney,
9 or any other interested party with court permission, the individual has a right at his
10 or her own expense or, if indigent and with approval of the court hearing the petition,
11 at the reasonable expense of the individual's county of legal residence, to secure an
12 additional medical or psychological examination and to offer the evaluator's personal
13 testimony as evidence at the hearing.

14 **SECTION 11.** 51.20 (13) (g) 4. of the statutes is created to read:

15 51.20 (13) (g) 4. The county department under s. 51.42 or 51.437 to which an
16 individual is committed under par. (a) 3. retains financial responsibility for the
17 individual when the individual voluntarily moves to another county until venue for
18 the individual is transferred to the county where the individual is residing or until
19 the individual is no longer a proper subject of continued commitment.

20 **SECTION 12.** 51.20 (18) (d) of the statutes is amended to read:

21 51.20 (18) (d) If the subject individual ~~has a legal residence in a county~~
22 individual's county of residence is other than the county from which he or she is
23 detained, committed or discharged, that county shall reimburse the county from
24 which the individual was detained, committed or discharged for all expenses under
25 pars. (a) to (c). The county clerk on each July 1 shall submit evidences of payments

1 of all such proceedings on nonresident payments to the department, which shall
2 certify such expenses for reimbursement in the form of giving credits to the
3 detaining, committing or discharging county and assessing such costs against the
4 county of legal residence or against the state at the time of the next apportionment
5 of charges and credits under s. 70.60.

6 **SECTION 13.** 51.22 (4) of the statutes is amended to read:

7 51.22 (4) If a patient is placed under involuntary commitment or protectively
8 placed in a facility authorized by a county department under s. 51.42 or 51.437 and
9 such the placement or protective placement is outside the jurisdiction of that county
10 department under s. 51.42 or 51.437, the placement or protective placement does not
11 transfer the patient's legal residence to the county of the facility's location while such
12 the patient is under involuntary commitment or protective placement.

13 **SECTION 14.** 51.37 (5) (c) of the statutes is amended to read:

14 51.37 (5) (c) No state treatment facility may accept for admission an individual
15 who is being transferred from a county jail under par. (a) or (b) without the approval
16 of the county department under s. 51.42 or 51.437 of the county in which the jail is
17 located. No state treatment facility may retain such an individual beyond 72 hours
18 without the approval of the county department under s. 51.42 or 51.437 of the county
19 where of residence of the transferred individual ~~has legal residence~~.

20 **SECTION 15.** 51.40 (title) of the statutes is repealed and recreated to read:

21 **51.40 (title) Determination of residence for certain adults; county of**
22 **responsibility.**

23 **SECTION 16.** 51.40 (1) (e) of the statutes is amended to read:

1 51.40 (1) (e) “County of responsibility” means the county responsible for
2 funding the provision of care, treatment, or services under this chapter or ch. 46 or
3 55 to an individual.

4 **SECTION 17.** 51.40 (1) (em) of the statutes is created to read:

5 51.40 (1) (em) “Facility” means a place, other than a hospital, that is licensed,
6 registered, certified, or approved by the department or a county under ch. 50 or 51.

7 **SECTION 18.** 51.40 (1) (hm) of the statutes is created to read:

8 51.40 (1) (hm) “Other like incapacities” means those conditions incurred at any
9 age that are the result of accident, organic brain damage, mental or physical
10 disability, or continued consumption or absorption of substances, producing a
11 condition that substantially impairs an individual from adequately providing for his
12 or her care or custody.

13 **SECTION 19.** 51.40 (1) (k) of the statutes is created to read:

14 51.40 (1) (k) “Voluntary” has the meaning specified under s. 49.001 (8).

15 **SECTION 20.** 51.40 (2) (intro.) of the statutes is amended to read:

16 51.40 (2) DETERMINATION OF COUNTY OF RESIDENCE. (intro.) ~~For purposes of~~
17 ~~determining responsibility for funding the provision of services under chs. 46, 51 and~~
18 ~~55, the~~ The county of residence of individuals an individual aged 18 or older with a
19 developmental disability ~~or chronic, serious and persistent~~ mental illness in state
20 facilities ~~or nursing homes, degenerative brain disorder, or another like incapacity~~
21 who is residing in a facility is the county of responsibility for the individual. The
22 county of residence shall be determined as follows:

23 **SECTION 21.** 51.40 (2) (a) of the statutes is amended to read:

24 51.40 (2) (a) *Directed placement.* 1. ‘Commitment or ~~protection~~ protective
25 placement or protective services.’ If an individual is under a court order of

1 commitment under this chapter or protective placement or protective services under
2 s. ~~55.06~~ ch. 55, the individual remains a resident of the county in which he or she has
3 residence at the time the initial commitment or initial order for protective placement
4 or protective services is made. If the court makes no specific finding of a county of
5 residence, the individual is a resident of the county in which the court is located. The
6 court may make a specific finding of a county of residence, after notice, including
7 notice to the corporation counsel of each affected county by certified mail, after
8 opportunity to be heard has been provided to all affected counties and parties, and
9 if there is no objection. If any affected county or party objects to the court's proposed
10 finding of a county of residence, the county or party may request the department to
11 make a determination under par. (g) and any transfer of venue shall be suspended
12 until the determination is final.

13 2. 'Placement by a county.' Except for the provision of emergency services under
14 s. 51.15, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and or (12) or ~~55.06-(11)~~ emergency
15 protective services or emergency or temporary protective placement under ch. 55, if
16 a county department or an agency of a county department arranges places or makes
17 arrangements for placement of the individual into a state facility or nursing home,
18 the individual is a resident of the county of that county department. Any agency of
19 the county department is deemed to be acting on behalf of the county department in
20 arranging placing or making arrangements for placement. Placement of an
21 individual by a county department or an agency of a county department into a facility
22 outside the jurisdiction of the county department or agency does not transfer the
23 individual's legal residence to the county in which the facility is located. If a resident
24 of a county is physically present in another county and is in need of immediate care,
25 the county in which the individual is present may provide for the immediate needs

1 of a person under ss. 51.15, 51.20, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12), and
2 880.07 and ch. 55 without becoming the county of residence.

3 **SECTION 22.** 51.40 (2) (b) (intro.) of the statutes is amended to read:

4 51.40 (2) (b) *Other admissions.* (intro.) If par. (a) does not apply, one of the
5 following shall apply the county of residence shall be determined as follows:

6 **SECTION 23.** 51.40 (2) (b) 1. of the statutes is amended to read:

7 51.40 (2) (b) 1. ‘Individuals in state facilities.’ An individual who is in a state
8 facility is a resident of the county in which he or she was a resident at the time the
9 admission to the state facility was made. This subdivision may not be applied to
10 change residence from a county, other than the county in which the facility is located,
11 which that has accepted responsibility for or provided services to the individual prior
12 to August 1, 1987 before the effective date of this subdivision [revisor inserts date].

13 **SECTION 24.** 51.40 (2) (b) 2. (intro.) of the statutes is amended to read:

14 51.40 (2) (b) 2. ‘Individuals in nursing homes.’ (intro.) The following are
15 presumptions regarding the county of residence of an individual in a nursing home
16 that may be overcome by substantial evidence that clearly establishes other county
17 residence:

18 ag. An individual in a nursing home who was admitted under s. 50.04 (2r) to
19 the nursing home on or after August 1, 1987 the effective date of this subd. 2. ag.
20 [revisor inserts date], is a resident of the county which that approved the admission
21 under s. 50.04 (2r).

22 bg. An individual residing in a nursing home on or before August 1, 1987 the
23 effective date of this subd. 2. bg. [revisor inserts date], is presumed to be a resident
24 of the county in which the individual is physically present unless another county
25 accepts the individual as a resident. The presumption of residence may be overcome

1 by substantial evidence which clearly establishes residence in another county in one
2 of the following ways:

3 **SECTION 25.** 51.40 (2) (b) 2. a. of the statutes is renumbered 51.40 (2) (b) 2. cg.
4 and amended to read:

5 51.40 (2) (b) 2. cg. ~~The~~ If the individual had an established residence in another
6 county prior to entering the nursing home; the individual or the individual's
7 guardian, if any, indicates an intent that the individual will return to that county
8 when the purpose of entering the nursing home has been accomplished or when
9 needed care and services can be obtained in ~~the other~~ that county; and the individual,
10 when capable of indicating intent, or a guardian for the individual, has made no
11 clearly documented expression to a court or county department of an intent to
12 establish residence elsewhere since leaving that county, the individual is a resident
13 of that county.

14 **SECTION 26.** 51.40 (2) (b) 2. b. of the statutes is renumbered 51.40 (2) (b) 2. dg.
15 and amended to read:

16 51.40 (2) (b) 2. dg. ~~The~~ If the individual is incapable of indicating intent as
17 determined by the county department, has no guardian, ordinarily resides in
18 another county, and is expected to return to that county within one year, the
19 individual is a resident of that county.

20 **SECTION 27.** 51.40 (2) (b) 2. c. of the statutes is renumbered 51.40 (2) (b) 2. eg.
21 and amended to read:

22 51.40 (2) (b) 2. eg. ~~Another~~ If another county has accepted responsibility for or
23 provided services to the individual prior to ~~August 1, 1987~~ the effective date of this
24 subd. 2. eg. [revisor inserts date], the individual is a resident of that county.

1 **SECTION 28.** 51.40 (2) (b) 2. d. of the statutes is renumbered 51.40 (2) (b) 2. fg.
2 and amended to read:

3 51.40 (2) (b) 2. fg. The If the individual is incapable of indicating intent; the
4 individual was living in another county outside of a nursing home or state facility on
5 ~~December 1, 1982~~ the effective date of this subd. 2. fg. [revisor inserts date], or
6 under circumstances ~~which~~ that established residence in that county after ~~December~~
7 ~~1, 1982~~ the effective date of this subd. 2. fg. [revisor inserts date]; and that county
8 was the last county in which the individual had residence while living outside of a
9 nursing home or state facility, the individual is a resident of that county.

10 **SECTION 29.** 51.40 (2) (b) 3. of the statutes is created to read:

11 51.40 (2) (b) 3. ‘Individuals in facilities.’ If subd. 1. or 2. does not apply, an
12 individual who is incapable of indicating intent and is residing in a facility is a
13 resident of the county in which the individual resided before admittance to the
14 facility.

15 **SECTION 30.** 51.40 (2) (f) of the statutes is repealed and recreated to read:

16 51.40 (2) (f) *Guardian’s authority to declare county of residence.* A guardian
17 may declare any of the following, under any of the following conditions:

18 1. The ward’s county of residence is the guardian’s county of residence, if pars.
19 (a) and (b) do not apply, if the guardian’s ward is in a facility and is incapable of
20 indicating intent, and if the guardian is a resident of the county in which the facility
21 is located or states in writing that the ward is expected to return to the guardian’s
22 county of residence when the purpose of entering the facility has been accomplished
23 or when needed care and services can be obtained in the guardian’s county of
24 residence.

1 2. The ward's county of residence is the county in which the ward is physically
2 present, if pars. (a) and (b) do not apply and if all of the following apply:

3 a. The ward's presence in the county is voluntary.

4 b. There is no current order under ch. 55 in effect with respect to the ward, and
5 the ward is not under an involuntary commitment order to the department of
6 corrections or to a county other than the county in which the ward is physically
7 present.

8 c. The ward is living in a place of fixed habitation.

9 d. The guardian states in writing that it is the ward's intent to remain in the
10 county for the foreseeable future.

11 3. The ward's county of residence is the county specified by the guardian,
12 regardless if a previous determination of county of residence has been made,
13 notwithstanding pars. (a) and (b) for good cause shown, if, in the ward's best interest,
14 the guardian files with the probate court having jurisdiction of the guardianship and
15 protective placement a written statement declaring the ward's domiciliary intent,
16 subject to court approval, and if notice and opportunity to be heard are provided to
17 all affected counties and parties. Notice under this subdivision shall be sent to the
18 corporation counsel of each affected county by certified mail.

19 **SECTION 31.** 51.40 (2) (g) 1. of the statutes is amended to read:

20 51.40 (2) (g) 1. An individual, an interested person on behalf of the individual,
21 or any county may request that the department make a determination of the county
22 of responsibility of the individual. Any motion for change of venue pending before
23 the court of jurisdiction shall be stayed until the determination under this paragraph
24 is final. Within 10 days after receiving the request, the department shall provide
25 written notice to the individual, to the individual's guardian, guardian ad litem, and

1 counsel, if any; to the individual's immediate family members, if they can be located;
2 and to all potentially responsible counties that a determination of county of
3 responsibility shall be made and that written information and comments may be
4 submitted within 30 days after the date on which the notice is sent.

5 **SECTION 32.** 51.40 (2) (g) 6. of the statutes is created to read:

6 51.40 (2) (g) 6. The county that is determined to be the county of responsibility
7 shall reimburse any other county for all care, treatment, and services provided by the
8 other county to the individual under ch. 46, 51, or 55. Full reimbursement by the
9 county that is determined to be the county of responsibility shall be made within 120
10 days following the date of the department's determination of the county of
11 responsibility or within 120 days after the date of the outcome of any appeal of the
12 department's determination that is brought under ch. 227, or by a date or under a
13 schedule of 2 or more payments that is agreed to by both parties.

14 **SECTION 33.** 55.06 (1) (a) of the statutes is amended to read:

15 55.06 (1) (a) ~~The board designated under s. 55.02 department, the county~~
16 ~~department,~~ or an agency designated by it with which the county department
17 contracts under s. 55.02, a guardian, or an interested person may file a petition for
18 appointment of a guardian and for protective services or protective placement for the
19 individual. The department shall provide for a schedule of reimbursement for the
20 cost of such the proceedings based upon the ability to pay of the proposed ward or
21 ~~person~~ individual to be protected.

22 **SECTION 34.** 55.06 (3) (c) of the statutes is amended to read:

23 55.06 (3) (c) The A petition under sub. (1) shall be filed in the county of
24 residence of the ~~person~~ individual to be protected, as determined under s. 51.40 or

1 by the individual's guardian or where the individual is physically present due to
2 circumstances including those specified under s. 51.22 (4).

3 **SECTION 35.** 55.06 (3) (d) of the statutes is created to read:

4 55.06 (3) (d) The court in which a petition is first filed under par. (c) shall
5 determine venue. The court shall direct that proper notice be given to any potentially
6 responsible or affected county. Proper notice is given to a potentially responsible or
7 affected county if written notice of the proceeding is sent by certified mail to the
8 county's clerk and corporation counsel. After all potentially responsible or affected
9 counties and parties have been given an opportunity to be heard, the court shall
10 determine that venue lies in the county in which the petition is filed under par. (c)
11 or in another county, as appropriate. If the court determines that venue lies in
12 another county, the court shall order the entire record certified to the proper court.
13 A court in which a subsequent petition is filed shall, upon being satisfied of an earlier
14 filing in another court, summarily dismiss the subsequent petition. If any
15 potentially responsible or affected county or party objects to the court's finding of
16 venue, the court may refer the issue to the department for a determination of the
17 county of residence under s. 51.40 (2) (g) and may suspend ruling on the motion for
18 change of venue until the determination under s. 51.40 (2) (g) is final.

19 **SECTION 36.** 55.06 (8) (intro.) of the statutes is amended to read:

20 55.06 (8) (intro.) Before ordering the protective placement of any individual,
21 the court shall direct a comprehensive evaluation of the person in need of placement,
22 if such an evaluation has not already been made. The court may utilize available
23 multidisciplinary resources in the community in determining the need for
24 placement. The board designated under s. 55.02 or an agency designated by it shall
25 cooperate with the court in securing available resources. Where applicable by reason

1 of the particular disability, the appropriate board designated under s. 55.02 or an
2 agency designated by it ~~having responsibility for the place of legal residence of the~~
3 ~~individual as provided in s. 49.001 (6)~~ individual's county of residence shall make a
4 recommendation for placement. If the court is considering placement of the
5 individual in a center for the developmentally disabled, the court shall request a
6 statement or testimony from the department regarding whether the placement is
7 appropriate for the person's needs and whether it is consistent with the purpose of
8 the center under s. 51.06 (1). If the individual has a developmental disability and
9 the court is considering placement of the individual in an intermediate facility or a
10 nursing facility, the court shall request a statement or testimony from the county
11 department of the individual's county of residence that is participating in the
12 program under s. 46.278 as to whether the individual's needs could be met in a
13 noninstitutional setting, except that, if s. 46.279 (4m) applies to the individual, the
14 court shall request the statement or testimony from the department, rather than the
15 county department. A copy of the comprehensive evaluation shall be provided to the
16 guardian, the guardian ad litem, and to the individual or attorney at least 96 hours
17 in advance of the hearing to determine placement. The court or the cooperating
18 agency obtaining the evaluation shall request appropriate information which shall
19 include at least the following:

20 **SECTION 37.** 880.06 (1) of the statutes is amended to read:

21 880.06 (1) ORIGINAL PROCEEDING. The court ~~wherein in which~~ a petition is first
22 filed shall determine venue. The court shall direct that proper notice be given to any
23 potentially responsible or affected county. Proper notice is given to a potentially
24 responsible or affected county if written notice of the proceeding is sent by certified
25 mail to the county's clerk and corporation counsel. After all potentially responsible

1 or affected counties and parties have been given an opportunity to be heard, the court
2 shall determine that venue lies in the county in which the petition is filed under sub.
3 (2) or in another county, as appropriate. If it is determined that venue lies in another
4 county, the court shall order the entire record certified to the proper court. A court
5 wherein in which a subsequent petition is filed shall, ~~upon being~~ if it is satisfied of
6 that an earlier filing took place in another court, summarily dismiss such the
7 petition. If any potentially responsible or affected county or party objects to the
8 court's finding of venue, the court may refer the issue to the department for a
9 determination of the county of residence under s. 51.40 (2) (g) and may suspend
10 ruling on the motion for change of venue until the determination under s. 51.40 (2)
11 (g) is final.

12 **SECTION 38.** 880.06 (2) of the statutes is repealed and recreated to read:

13 880.06 (2) CHANGE OF RESIDENCE OF WARD BY GUARDIAN. If s. 51.40 (2) (a) or (b)
14 does not apply, a guardian for good cause shown may change a ward's county of
15 residence by filing with the court a written statement as specified in s. 51.40 (2) (f).

16 **SECTION 39.** 880.33 (2) (a) 3. of the statutes is amended to read:

17 880.33 (2) (a) 3. If the person is an adult who is indigent, the county of legal
18 settlement residence as determined under s. 51.40 (2) shall be the county liable for
19 any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08,
20 for any legal fees due the person's legal counsel. If the person is a minor, the person's
21 parents or the county of legal settlement shall be liable for any fees due the guardian
22 ad litem as provided in s. 48.235 (8).

23 (END)

Kennedy, Debora

From: Rose, Laura
Sent: Tuesday, February 28, 2006 8:27 AM
To: Kennedy, Debora
Subject: LRB 2339/1

Hi Debora,

I got this draft in hard copy, but don't seem to have any email with jacketing instructions. We are ready to have this jacketed.

THANKS!!!

Laura

Basford, Sarah

From: Rose, Laura
Sent: Tuesday, February 28, 2006 8:46 AM
To: LRB.Legal
Subject: Draft Review: LRB 05-2339/1 Topic: Residency, venue, and county of responsibility

Please Jacket LRB 05-2339/1 for the ASSEMBLY.