

1

SECTION 111. 55.05 (5) (d) of the statutes is renumbered 55.055 (6). ⁽⁵⁾

****NOTE: What does the term "facility" mean under this renumbered subsection?
Please also see my ****NOTE under s. 55.055 (3).

INSERT 68-1

Change to
"health care
facility" as
defined in
s.
50.01
(6)

2

SECTION 112. 55.055 (2) (c) of the statutes is created to read:

3

55.055 (2) (c) The guardian of a ward who has been found incompetent in a state
other than this state may consent to admission of the ward under par. (a) or (b) if the
ward is currently a resident of this state. A petition for guardianship and protective
placement shall be filed in this state within 60 days after the ward's admission under
this paragraph.

INSERT
68-7

8

SECTION 113. 55.055 (2) (d) of the statutes is created to read:

9

55.055 (2) (d) A resident of this state who is the guardian of a ward who has
been found incompetent in, and resides in, a state other than this state may consent
to an admission of the ward under par. (a) or (b) if the guardian intends to move the
ward to this state within 30 days after the consent to the admission. A petition for
guardianship and protective placement shall be filed in this state within 60 days
after a ward's admission under this paragraph.

INSERT 68-14

15

SECTION 114. 55.055 (3) of the statutes is created to read:

16

55.055 (3) (a) In this subsection, "facility" means any of the following:

17

1. A group home.

18

2. A foster home.

19

3. A community-based residential facility, as defined in s. 50.01 (1g).

20

4. An adult family home, as defined in s. 50.01 (1).

21

5. A nursing home, as defined in s. 50.01 (3).

22

(b) Whenever a petition for guardianship on the ground of incompetency is filed

23

with respect to an individual who resides in a facility licensed for 16 or more beds,

1 a petition for protective placement of the individual shall also be filed. The
 2 individual may continue to reside in the facility until the court issues a decision on
 3 the petition for guardianship and protective placement of the individual. Thereafter,
 4 the individual may continue to reside in the facility only if the court's order under s.
 5 55.12 specifies protective placement of the individual in a facility licensed for 16 or
 6 more beds.

NOTE: Specifies that a guardian may not consent to the continued residence of a person in a facility licensed for 16 or more beds. Specifies that whenever a petition for guardianship on the ground of incompetency is filed with respect to a person who resides in a facility licensed for 16 or more beds, a petition for protective placement of the person shall also be filed. Specifies that the person may continue to reside in the facility if the court orders placement of the person in a facility licensed for 16 or more beds and may continue to reside in the facility pending the court's decision on the placement petition.

***NOTE: Because the word "facility" is not defined, I have specified that this subsection applies to foster homes, group homes, community-based residential facilities, adult family homes, and nursing homes. Is that your intent? *yes*

7 **SECTION 115.** 55.06 (1) (intro.) of the statutes is renumbered 55.06 and
 8 amended to read:

9 **55.06 Protective services and protective placement; eligibility.** A
 10 ~~protective placement under this section is a placement of a ward for the primary~~
 11 ~~purpose of providing care and custody.~~ To be eligible for protective placement or
 12 ~~court-ordered~~ protective services, an individual shall be a resident of or present in
 13 the state and have a need for protective placement or protective services. The
 14 individual shall have attained the age of 18, but an individual who is alleged to be
 15 developmentally disabled may receive protective placement or protective services
 16 upon attaining the age of 14. ~~No protective~~ Protective placement under this section
 17 or protective services may be ordered unless under this chapter there is a
 18 determination of incompetency only for an individual who is determined to be
 19 incompetent in accordance with ch. 880, ~~except in the case of or for~~ a minor who is
 20 alleged to be developmentally disabled, and only if there is a finding of a need for

SECTION 115

5
5
court-ordered

1 protective placement in accordance with sub. (2) except as provided in subs. (11) and
 2 (12) under s. 55.12, and ss. 55.055 (4), 55.13, and 55.135 are inappropriate or do not
 3 apply. A procedure for adult protective placement or ~~court-ordered~~ protective
 4 services may be initiated 6 months prior to an individual's birthday at which he or
 5 she first becomes eligible for placement before a minor attains age 18.

***NOTE: Please check this entire section carefully; I eliminated the "until" phrase in the first sentence because it implies one is no longer eligible when services are provided; and the third sentence is drafted to avoid an exception within an exception. The last sentence only makes sense if "adult" protective placement or protective services is retained, but the problem is that I don't know what "adult" protective placement or protective services means; does my amendment capture your intent, or is the sentence to apply to 14-year-olds? If the latter is the case, "adult" should be stricken.

INSERT 70-5

6 SECTION 116. 55.06 (1) (a) of the statutes is renumbered 55.075 (1) and
 7 amended to read:

8 55.075 (1) The board designated under s. 55.02 department, the county
 9 department or an agency designated by it with which the county department
 10 contracts under s. 55.02 (2), a guardian, or an interested person may file a petition
 11 for appointment of a guardian and for protective services or protective placement for
 12 an individual. The department shall provide for a schedule of reimbursement for the
 13 cost of such the proceedings based upon the ability to pay of the proposed ward or
 14 person individual to be protected.

INSERT 70-14

15 SECTION 117. 55.06 (1) (b) of the statutes is renumbered 55.075 (4) (b) and
 16 amended to read:

17 55.075 (4) (b) If a person seeking to be the guardian of a proposed ward requests
 18 the assistance of a board designated under s. 55.02 county department or an agency
 19 designated by it with which it contracts under s. 55.02 (2) in petitioning for
 20 guardianship or for protective service or placement, such services or protective

1 placement, the assistance may be considered a service and may be charged for based
2 upon the ability of such the person to pay for the service.

****NOTE: As written in s. 55.075 (4) (a), this par. (b) is an exception to the requirement under par. (a) that the court must, unless it is inequitable, award payment of the petitioner's costs from the assets of the person sought to be provided protective placement or protective services. Therefore, it seems that the court can't have these petitioner's costs paid from the person's assets. Is that the result that you want?

INSERT
71-2

3 **SECTION 118.** 55.06 (1) (c) of the statutes is renumbered 55.02 (3) and amended
4 to read:

5 55.02 (3) CORPORATION COUNSEL. ~~If requested by the court, the~~ The corporation
6 counsel of the county in which the petition is brought may or, if requested by the
7 court, shall assist in conducting proceedings under this chapter.

****NOTE: Is my amendment concerning the county of the corporation counsel correct?

INSERT
71-7

8 **SECTION 119.** 55.06 (1) (d) of the statutes is renumbered 55.03 (4) and amended
9 to read:

10 55.03 (4) GUARDIAN AUTHORITY FOR MAKING PROTECTIVE PLACEMENT. No guardian
11 or temporary guardian may make a permanent protective placement of his or her
12 ward unless ordered by a court under ~~this section s. 55.12~~ but a guardian or
13 temporary guardian may admit a ward to certain residential facilities under s. 55.05
14 (5) 55.055 or make an emergency protective placement under s. 55.06 (11) 55.135.

****NOTE: This provision was proposed to be renumbered s. 55.075 (1) (b), but it does not seem to fit there (s. 55.075 (1) is entitled "Who may petition," whereas this provision is a limitation on the power of a guardian and a clarification of the guardian's authority. I have renumbered it, instead, into s. 55.03 (Status of guardian).

INSERT 71-14

15 **SECTION 120.** 55.06 (2) (intro.) of the statutes is repealed.

INSERT 71-15

16 **SECTION 121.** 55.06 (2) (a) of the statutes is renumbered 55.08 (1) (a) and
17 amended to read:

18 55.08 (1) (a) ~~Has~~ The individual has a primary need for residential care and
19 custody.

1 **SECTION 122.** 55.06 (2) (b) of the statutes is renumbered 55.08 (1) (b) and
2 amended to read:

3 55.08 (1) (b) Except in the case of a minor who is alleged to be developmentally
4 disabled, the individual has either been determined to be incompetent by a circuit
5 court or has had submitted on the minor's behalf a petition for a guardianship.

6 **SECTION 123.** 55.06 (2) (c) of the statutes is renumbered 55.08 (1) (c) and
7 amended to read:

8 55.08 (1) (c) As a result of developmental disabilities, ~~infirmities of aging,~~
9 ~~chronic degenerative brain disorder, serious and persistent mental illness,~~ or other
10 like incapacities, the individual is so totally incapable of providing for his or her own
11 care or custody as to create a substantial risk of serious harm to ~~oneself~~ himself or
12 herself or others. Serious harm may be ~~occasioned~~ evidenced by overt acts or acts
13 of omission; and.

INSERT 72-13

14 **SECTION 124.** 55.06 (2) (d) of the statutes is renumbered 55.08 (1) (d) and
15 amended to read:

16 55.08 (1) (d) ~~Has~~ The individual has a disability ~~which~~ that is permanent or
17 likely to be permanent.

18 **SECTION 125.** 55.06 (3) (a) of the statutes is renumbered 55.075 (2) (a) and
19 amended to read:

20 55.075 (2) (a) ~~The~~ A petition shall allege that the individual meets the
21 standards specified in s. 55.08 (1) or (2) and state with particularity the factual basis
22 for the allegations ~~specified in sub. (2).~~

23 **SECTION 126.** 55.06 (3) (b) of the statutes is renumbered 55.075 (2) (b) and
24 amended to read:

INSERT 73-9A

1 55.075 (2) (b) The petition ~~under sub. (2)~~ shall be based on personal knowledge
2 of the individual alleged to need protective placement or protective services.

3 SECTION 127. 55.06 (3) (c) of the statutes is renumbered 55.075 (5) (a) and
4 amended to read:

5 55.075 (5) (a) The A petition under sub. (1) shall be filed in the county of
6 residence of the ~~person~~ individual to be protected, except that the petition may be
7 filed in the county in which the individual is physically present ~~if extraordinary~~
8 ~~circumstances necessitate the prevention of harm to the individual or others or~~
9 ~~require medical care for the individual in that county.~~

keep plain period

or if individual has been committed to a facility that is not within the county of residence (see 51.02 (4))

INSERT 73-9B

***NOTE: Please review this paragraph carefully; I'm not sure what you intended here. Please see my Drafter's Note with respect to this paragraph.

10 SECTION 128. 55.06 (4) of the statutes is renumbered 55.075 (3) and amended
11 to read:

12 55.075 (3) A petition for guardianship ~~if required under sub. (2) (b)~~ must
13 described in s. 55.08 (1) (b) or (2) (a) shall be heard prior to ordering protective
14 placement under this section or protective services. If incompetency has been the
15 individual is determined incompetent under s. 880.33 more than ~~one year preceding~~
16 12 months before the filing of an application for protective placement or protective
17 services ~~is filed~~ on his or her behalf, the court shall review the finding of
18 incompetency.

***NOTE: Please review my change of the word "required" in this subsection; nowhere is a petition *required* to be brought. Secondly, please note that under the cross-references made under this subsection, s. 55.08 (1) (b) concerns an adult adjudicated incompetent or a minor for whom a guardianship petition is brought, *except* a developmentally disabled minor; and s. 55.08 (2) (a) concerns an adult adjudicated incompetent and *only* a minor for whom a guardianship petition is brought and who is developmentally disabled. Do these meet your intent? Yes

19 SECTION 129. 55.06 (5) of the statutes is renumbered 55.09 (1) and amended
20 to read:

1 55.09 (1) NOTICE TO INDIVIDUAL. Notice of a petition for protective placement
2 or protective services shall be served upon the person individual sought to be placed
3 protected, by personal service, at least 10 days prior to before the time set for a
4 hearing. ~~Upon service of the notice, the person sought to be protected shall be~~
5 ~~informed of the complete contents of the notice.~~ The person serving the notice shall
6 inform the individual sought to be protected of the complete contents of the notice
7 and shall return a certificate to the circuit judge verifying that the petition has been
8 delivered and notice given. The notice shall include the names of all petitioners.
9 ~~Notice shall also be served personally or by mail upon the person's guardian ad litem,~~
10 ~~legal counsel, guardian, if any, presumptive adult heirs, and upon other persons who~~
11 ~~have physical custody of the person to be protected whose names and addresses are~~
12 ~~known to the petitioner or can with reasonable diligence be ascertained, to any~~
13 ~~governmental or private body or group from whom the person to be protected is~~
14 ~~known to be receiving aid, and to such other persons or entities as the court may~~
15 ~~require. Notice shall also be served personally or by mail upon the department at~~
16 ~~least 10 days prior to the time set for hearing if the person sought to be protected may~~
17 ~~be placed in a center for the developmentally disabled. Notice shall also be served~~
18 ~~personally or by mail, at least 10 days before the time set for hearing, upon the county~~
19 ~~department that is participating in the program under s. 46.278 of the county of~~
20 ~~residence of the person sought to be protected, if the person has a developmental~~
21 ~~disability and may be placed in an intermediate facility or a nursing facility, except~~
22 ~~that, for a person sought to be protected to whom s. 46.279 (4m) applies, this notice~~
23 ~~shall instead be served on the department. The incompetent or proposed~~
24 ~~incompetent is presumed able to attend the hearing unless, after a personal~~

1 interview, the guardian ad litem certifies to the court that the person is unable to
2 attend.

INSERT
75-2

3 SECTION 130. 55.06 (5m) of the statutes is renumbered 55.10 (1) and amended
4 to read:

5 55.10 (1) TIME LIMITS. A petition for protective placement of a person who has
6 been admitted to a nursing home or a community-based residential facility under
7 s. 50.06 or protective services shall be heard within 60 days after it is filed unless an
8 extension of this time is requested by the petitioner, the individual sought to be
9 protected or the individual's guardian ad litem, or the county department, in which
10 case the court may extend the date for hearing by up to 45 days. If an individual
11 under s. 50.06 (3) alleges that an another individual is making a health care decision
12 under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual
13 or if the incapacitated individual verbally objects to or otherwise actively protests the
14 admission, the petition shall be heard as soon as possible within the 60-day period.

INSERT
75-14

15 SECTION 131. 55.06 (6) of the statutes is renumbered 55.10 (4) (b) and amended
16 to read:

17 55.10 (4) (b) Guardian ad litem; costs. ~~Section 880.33 (2) applies to all hearings~~
18 ~~under this chapter except for transfers of placement under sub. (9) (b), (c) and (e).~~
19 ~~A person to be protected shall have a~~ The court shall in all cases require the
20 appointment of an attorney as guardian ad litem who is an attorney appointed in
21 accordance with s. 757.48 (1) present at all hearings under this chapter if the person
22 does not have full legal counsel . The responsibilities and duties of a guardian ad
23 litem on behalf of a proposed ward or individual who is alleged incompetent specified
24 in s. 880.331 (4) apply to a guardian ad litem appointed in a proceeding for protective
25 services or protective placement on behalf of an individual sought to be protected.

✓ ⁴⁰⁹ If a guardian has been appointed for an individual who is the subject of a petition for court-ordered protective placement or protective services, the guardian ad litem shall interview the guardian.

1 The guardian ad litem shall be present at all hearings under this chapter if the
 2 individual sought to be protected does not have full legal counsel. The court may,
 3 however, excuse a personal appearance by a guardian ad litem based on information
 4 contained in a written report by the guardian ad litem to the court. If the person
 5 individual sought to be protected is an adult who is indigent, the county of legal
 6 settlement shall be liable for any fees due the guardian ad litem fees. If the person
 7 individual sought to be protected is a child, the person's minor, the minor's parents
 8 or the county of legal settlement in which the hearing is held shall be liable for any
 9 fees due the guardian ad litem fees as provided in s. 48.235 (8). ~~The subject~~
 10 ~~individual, attorney or guardian ad litem shall have the right to present and~~
 11 ~~cross-examine witnesses, including any person making an evaluation or review~~
 12 ~~under sub. (8) (c).~~

X

***NOTE: Because the wording of s. 55.06 (1), as affected by this draft, seems to assume that a determination of incompetency under ch. 880 has *already* been made ("No protective placement or protective services may be ordered in this chapter except for an individual who is determined to be incompetent under ch. 880 . . ."), I believe it's unnecessary and confusing for ss. 880.331 (4) (a), (b), (d), and (e) to be amended to include reference to an individual who is subject to a petition for protective placement or protective services. I have amended this paragraph to clarify that the duties under s. 880.331 (4) apply. Please review.

sk

INSERT
76-12

13 **SECTION 132.** 55.06 (7) of the statutes is renumbered 55.10 (4) (d) and amended
 14 to read:

15 55.10 (4) (d) *Standard of proof.* ~~Except for emergency placement or temporary~~
 16 ~~placement under subs. (11) and (12), before~~ Before protective placement or protective
 17 services may be ordered under ~~this chapter~~ s. 55.12, the court or jury must find by
 18 clear and convincing evidence that the individual to be placed protected is in need
 19 of protective placement as provided in sub. (2) because he or she meets all of the
 20 standards under s. 55.08 (1) or is in need of protective services because he or she
 21 meets all of the standards under s. 55.08 (2).

INSERT 76-21

*create
autoref BB*

1 **SECTION 133.** 55.06 (8) (intro.) of the statutes is renumbered 55.11 (1) (intro.)
2 and amended to read:

3 55.11 (1) (intro.) Before ordering the protective placement of or protective
4 services for any individual, the court shall ~~direct~~ require a comprehensive evaluation
5 of the ~~person in need of placement~~ individual sought to be protected, if such an
6 evaluation has not already been made. The court may utilize available
7 multidisciplinary resources in the community in determining the need for protective
8 placement or protective services. The ~~board designated under s. 55.02 or an agency~~
9 ~~designated by it~~ county department or an agency with which it contracts under s.
10 55.02 (2) shall cooperate with the court in securing available resources. Where
11 ~~applicable by reason of the particular disability, the appropriate board designated~~
12 ~~under s. 55.02 or an agency designated by it having responsibility for the place of~~
13 ~~legal residence of the individual as provided in s. 49.001 (6) shall make a~~
14 ~~recommendation for placement. If the court is considering placement of the~~
15 ~~individual in a center for the developmentally disabled, the court shall request a~~
16 ~~statement or testimony from the department regarding whether the placement is~~
17 ~~appropriate for the person's needs and whether it is consistent with the purpose of~~
18 ~~the center under s. 51.06 (1). If the individual has a developmental disability and~~
19 ~~the court is considering placement of the individual in an intermediate facility or a~~
20 ~~nursing facility, the court shall request a statement or testimony from the county~~
21 ~~department of the individual's county of residence that is participating in the~~
22 ~~program under s. 46.278 as to whether the individual's needs could be met in a~~
23 ~~noninstitutional setting, except that, if s. 46.279 (4m) applies to the individual, the~~
24 ~~court shall request the statement or testimony from the department, rather than the~~
25 ~~county department. A copy of the comprehensive evaluation shall be provided to the~~

1 ~~guardian, the guardian ad litem, and to the individual or attorney at least 96 hours~~
 2 ~~in advance of the hearing to determine placement.~~ The court or the cooperating
 3 agency obtaining the evaluation shall request appropriate information which shall
 4 include at least the following:

5 **SECTION 134.** 55.06 (8) (a) of the statutes is renumbered 55.11 (1) (a) and
 6 amended to read:

7 55.11 (1) (a) The address of the place where the ~~person~~ individual is residing
 8 and the person or agency who is providing services at present, if any.

9 **SECTION 135.** 55.06 (8) (b) of the statutes is renumbered 55.11 (1) (b) and
 10 amended to read:

11 55.11 (1) (b) A resume of any professional treatment and services provided to
 12 the ~~person~~ individual by the department or agency, ~~if any~~, in connection with the
 13 problem creating the need for protective placement or protective services.

14 **SECTION 136.** 55.06 (8) (c) of the statutes is renumbered 55.11 (1) (c) and
 15 amended to read: *create auto ref CC*

16 55.11 (1) (c) A medical, psychological, social, vocational, and educational
 17 evaluation and review, ~~where~~ if necessary, and any recommendations for or against
 18 maintenance of partial legal rights as provided in s. 880.33. ~~Such~~ The evaluation and
 19 review shall include recommendations for the individual's placement that are
 20 consistent with the ~~least restrictive environment required~~ requirements of s. 55.12
 21 (3), (4), and (5).

****NOTE: Please check this provision very carefully; I have tried to make it consistent with the language of s. 55.16 (5) (a) 1. Is it a problem if both s. 55.12 (3) and (4), as referenced, refer to available resources or funds? I suppose it is possible that the professional making the evaluation and review under this paragraph would not know the extent of the county's resources or available funds. *ole*

1 **SECTION 137.** 55.06 (9) (a) of the statutes is renumbered 55.12 (1) and amended
2 to read:

3 55.12 (1) ~~The court may order protective services under s. 55.05 (2) (d) as an~~
4 ~~alternative to placement. When ordering protective placement under the standards~~
5 ~~specified in s. 55.08 (1) or protective services under the standards specified in s. 55.08~~
6 ~~(2), the court, on the basis of the evaluation and other relevant evidence, shall order~~
7 ~~the appropriate board specified under s. 55.02 or an agency designated by it to~~
8 ~~protectively place county department or agency with which it contracts under s.~~
9 ~~55.02 (2) to provide protective placement or protective services to the individual.~~
10 Placement by the appropriate board or designated agency is

11 (3) Protective placement or protective services provided by a county
12 department or an agency with which it contracts under s. 55.02 (2) are subject to s.
13 46.279 and shall be made provided in the least restrictive environment and in the
14 least restrictive manner consistent with the needs of the person individual to be
15 placed protected and with the placement resources of the appropriate board specified
16 under s. 55.02 county department.

****NOTE: Note my addition of "least restrictive manner"; this language conforms
to ss. ~~55.16~~ (5) (a) 1. and 2. and 55.17 (3) (c) 1. and (4) (a) 1. and other provisions. *ole*

17 (4) Factors to be considered that a county department shall consider in making
18 providing protective placement or protective services shall include the needs of the
19 person individual to be protected for health, social, or rehabilitative services; the
20 level of supervision needed; the reasonableness of the placement or services given the
21 cost and the actual benefits in the level of functioning to be realized by the individual;
22 the limits of available state and federal funds and of county funds required to be
23 appropriated to match state funds; and the reasonableness of the protective

1 placement or protective services given the number or projected number of
2 individuals who will need protective placement or protective services and given the
3 limited funds available.

****NOTE: Note that I have changed the first sentence to be active, rather than
passive, and to give county departments the responsibility to consider these factors.

4 (5) Except as provided in s. 49.45 (30m), the county may not be required to
5 provide funding, in addition to its funds that are required to be appropriated to
6 match state funds, in order to ~~protectively place~~ provide protective placement or
7 protective services to an individual. Placement Protective placement under this
8 section does not replace commitment of ~~a person~~ an individual in need of acute
9 psychiatric treatment under s. 51.20 or 51.45 (13).

10 (2) Subject to s. 46.279, protective placement may be made to such facilities as
11 nursing homes, public medical institutions, centers for the developmentally disabled
12 under the requirements of s. 51.06 (3), foster care services and or other home
13 placements, or to other appropriate facilities, but may not be made to units for the
14 acutely mentally ill. An individual who is subject to an order for protective
15 placement or protective services may be detained on an emergency basis under s.
16 51.15 or involuntarily committed under s. 51.20 or may be voluntarily admitted to
17 a treatment facility for inpatient care under s. 51.10 (8). No individual who is subject
18 to an order for protective placement or services may be involuntarily transferred to,
19 detained in, or committed to a ~~psychiatric~~ facility for care except under s. 51.15 or
20 51.20. Protective placement in a locked unit shall require a specific finding of the
21 court as to the need for the action.

****NOTE: In the third sentence, I have changed the term "psychiatric facility"
(which is not defined) to "treatment facility" (which is defined). Does this meet your
intent?

treatment

1 (6) If the appropriate board or designated county department or agency with
 2 which it contracts under s. 55.02 (2) proposes to place provide protective placement
 3 to an individual who has a developmental disability in an intermediate facility or a
 4 nursing facility under an order under this paragraph section, the county department
 5 or agency, or, if s. 46.279 (4m) applies to the individual, the department or the
 6 department's contractor shall develop a plan under s. 46.279 (4) and furnish the plan
 7 to the board county department or agency and to the individual's guardian. The
 8 board county department or agency with which it contracts under s. 55.02 (2) shall
 9 place provide protective placement to the individual in a noninstitutional
 10 community setting in accord with the plan unless the court finds that protective
 11 placement in the intermediate facility or nursing facility is the most integrated
 12 setting, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the
 13 individual, taking into account information presented by all affected parties. The
 14 prohibition of placements in units for the acutely mentally ill does not prevent
 15 placement by a court for short-term diagnostic procedures under par. (d). Placement
 16 in a locked unit shall require a specific finding of the court as to the need for such
 17 action. A placement facility may transfer a patient from a locked unit to a less
 18 restrictive environment without court approval.

***NOTE: Was the repeal of the last sentence in sub. (6) intentional? Is it appropriate, in the first sentence, to refer to the agency with which the county department contracts as developing a plan under s. 46.279 (4), or should only the county department do that?

Laura R.
to look at
ok to refer to both

INSERT 81-18

19 ✓ SECTION 138. 55.06 (9) (b) of the statutes is repealed.

↪ create autoref DD

20 ✓ SECTION 139. 55.06 (9) (c) of the statutes is repealed.

↪ create autoref EE

INSERT 81-20

21 ✓ SECTION 140. 55.06 (9) (d) of the statutes is repealed.

↪ create autoref FF

22 ✓ SECTION 141. 55.06 (9) (e) of the statutes is repealed.

INSERT 81-22

↪ create auto ref GG

1 SECTION 142. 55.06 (10) (a) 1. of the statutes is renumbered 55.18 (1) (a) (intro.)
2 and amended to read:

3 55.18 (1) (a) (intro.) The county department or any agency which is responsible
4 for a protective placement of the individual's county of residence shall, except as
5 provided in sub. (1m), annually review the status of each person placed at least once
6 every 12 months from the date of admission. The court in its order of placement may,
7 however, require that such review be conducted more frequently individual who has
8 been provided protective placement. The review shall include in writing an a visit
9 to the individual and a written evaluation of the physical, mental and social
10 condition of each such person, and the individual and the service needs of the
11 individual. The review shall be made a part of the permanent record of such person.
12 The review shall include recommendations for discharge or placement in services
13 which place less restrictions on personal freedom, where appropriate. The results
14 of the review shall be furnished to the department in such form as the department
15 may require and shall be furnished to the court that ordered the placement and to
16 the person's guardian. the individual. The county department shall inform the
17 guardian of the individual of the review at the time the review is made and shall,
18 before completing a report of the review, invite the individual and the guardian to
19 submit comments or information concerning the individual's need for protective
20 placement or protective services. Not later than the first day of the 11th month after
21 the initial order is made for protective placement for an individual and, except as
22 provided in par. (b), annually thereafter, the county department shall do all of the
23 following:

****NOTE: Note that in both ss. 55.18 (1) (a) (intro.) and 55.19 (1) (a) (intro.) I
required that the review include a visit to the individual. Okay?

INSERT 82-23A

INSERT 82-23B

55.18(1)(a)

1 SECTION 143. 55.06 (10) (a) 2. of the statutes is renumbered 55.065 (1g).

***NOTE: I cannot ascertain what your intent is with regard to s. 55.06 (10) (a) 2. and consequently have not changed it. No s. 55.065 is created in the proposal. Note that there are cross-references to s. 55.06 (10) (a) 2. in ss. 46.279 (2) and (4) (d) and 49.45 (30m) (c) 2., stats., that must be changed.

INSERT 83-1

2 SECTION 144. 55.06 (10) (b) of the statutes is renumbered 55.17 (1) and
3 amended to read:

4 55.17 (1) PETITION. The An individual, the individual's guardian or guardian
5 ad litem, the department, an agency, a guardian or a ward a county department or
6 agency with it contracts under s. 55.02 (2), or any other interested person may file
7 a petition at any time petition the court for modification or for termination of a an
8 order for protective placement. A or protective services. The petition shall be served
9 on the individual; the individual's guardian; the individual's attorney and guardian
10 ad litem, if any; and the county department. The petition to terminate a protective
11 placement shall allege that the conditions which warranted placement as specified
12 in sub. (2) are no longer present. A petition shall be heard if a hearing has not been
13 held within the previous 6 months but a hearing may be held at any time in the
14 discretion of the court. The petition shall be heard within 21 days of its receipt by
15 the court individual no longer meets the standards under s. 55.08 (1) for protective
16 placement or under s. 55.08 (2) for court-ordered protective services.

✓
court-ordered ✓

INSERT 83-16

INSERT 83-17

17 SECTION 145. 55.06 (10) (c) of the statutes is repealed.

18 SECTION 146. 55.06 (11) (a) of the statutes is renumbered 55.135 (1) and
19 amended to read:

20 55.135 (1) If, from personal observation of, or a reliable report made to, a
21 sheriff, police officer, fire fighter, guardian, if any, or authorized representative of a
22 board designated under s. 55.02 or an agency designated by it county department or
23 an agency with which it contracts under s. 55.02 (2), it appears probable that an

***NOTE: Is this recreated anywhere else? If not, why not?

1 individual ~~will suffer irreparable injury or death or will present~~ is so totally
2 incapable of providing for his or her own care or custody as to create a substantial
3 risk of serious physical harm to himself or herself or others as a result of
4 developmental disabilities, ~~infirmities of aging, chronic~~ degenerative brain disorder,
5 serious and persistent mental illness, or other like incapacities if not immediately
6 placed, the person making the observation or to whom the report is made may take
7 into custody and transport the individual to an appropriate medical or protective
8 placement facility. The person making emergency protective placement shall
9 prepare a statement at the time of detention providing specific factual information
10 concerning the person's observations or reports made to the person and the basis for
11 emergency placement. The statement shall be filed with the director of the facility
12 and ~~shall also be filed~~ with any petition under ~~sub. (2)~~ s. 55.075. At the time of
13 emergency protective placement the individual shall be informed by the director of
14 the facility or the director's designee, ~~both~~ orally and in writing, of his or her right
15 to contact an attorney and a member of his or her immediate family and the right to
16 have an attorney provided at public expense, as provided under s. 967.06 and ch. 977,
17 if the individual is a ~~child~~ minor or is indigent. The director or designee shall also
18 provide the individual with a copy of the statement by the person making emergency
19 protective placement.

INSERT
84-19

****NOTE: Please note that I added "or to whom the report is made" in the first sentence. Does this meet your intent?

20 **SECTION 147.** 55.06 (11) (am) of the statutes is renumbered 55.135 (2) and
21 amended to read:

1 55.135 (2) Whoever signs a statement under ~~par. (a)~~ sub. (1) knowing the
2 information contained ~~therein~~ in the statement to be false is guilty of a Class H
3 felony.

4 **SECTION 148.** 55.06 (11) (ar) of the statutes is renumbered 55.135 (3) and
5 amended to read:

6 55.135 (3) A person who acts in accordance with this ~~subsection~~ section is not
7 liable for any actions performed in good faith.

8 **SECTION 149.** 55.06 (11) (b) of the statutes is renumbered 55.135 (4) and
9 amended to read:

10 55.135 (4) ~~Upon detention~~ When an individual is detained under this section,
11 a petition shall be filed under ~~sub. (2)~~ s. 55.075 by the person making such ~~the~~
12 emergency protective placement and a preliminary hearing shall be held within 72
13 hours, excluding Saturdays, Sundays and legal holidays, to establish probable cause
14 to believe the grounds for protective placement under ~~sub. (2)~~ s. 55.08 (1). The sheriff
15 or other person making emergency protective placement under ~~par. (a)~~ sub. (1) shall
16 provide the individual with written notice and orally inform him or her of the time
17 and place of the preliminary hearing. If the detainee is not under guardianship, a
18 petition for guardianship shall accompany the protective placement petition, except
19 in the case of a minor who is alleged to be developmentally disabled. In the event that
20 protective placement is not appropriate, the court may elect to treat a petition for
21 protective placement as a petition for commitment under s. 51.20 or 51.45 (13).

22 **SECTION 150.** 55.06 (11) (c) of the statutes is renumbered 55.135 (5) and
23 amended to read:

24 55.135 (5) Upon ~~a~~ finding of probable cause under ~~par. (b)~~ sub. (4), the court
25 may order temporary protective placement up to 30 days pending the hearing for a

1 permanent protective placement, or the court may order such protective services as
2 may be required. If the court orders under this subsection an individual who has a
3 developmental disability is ordered, under this paragraph, to be temporarily placed
4 receive temporary protective placement in an intermediate facility or in a nursing
5 facility, and if at the hearing for permanent protective placement the court orders
6 that the individual be ~~protectively placed~~ provide protective placement, the court
7 may, before commencement of permanent protective placement, extend the
8 temporary protective placement order for not more than 90 days if necessary for the
9 county department that is participating in the program under s. 46.278 or, if s. 46.279
10 (4m) applies, the department's contractor to develop the plan required under s.
11 46.279 (4).

12 SECTION 151. 55.06 (11) (d) of the statutes is renumbered 55.135 (6) and
13 amended to read:

14 55.135 (6) A law enforcement agency, fire department, or county department
15 ~~designated under s. 55.02 or an agency designated by that county department or~~
16 agency with which it contracts under s. 55.02 (2) shall designate at least one
17 employee authorized to take an individual into custody under ~~this subsection~~ section
18 who shall attend the in-service training on emergency detention and emergency
19 protective placement offered by a county department of community programs under
20 s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the
21 designated employee's jurisdiction offers an in-service training program.

22 ✓ SECTION 152. 55.06 (12) of the statutes is renumbered 55.055 (7) and amended
23 to read:

24 55.055 (7) ~~When~~ If a ward lives with the his or her guardian, the guardian may
25 make temporary protective placement of the ward. ~~Placement may be made, to~~

1 provide the guardian with a vacation or to temporarily release the guardian
2 temporarily for a family emergency. ~~Such~~ The temporary protective placement may
3 be made for not more than 30 days but the court may, upon application, grant an
4 additional period not to exceed 60 days in all. The application shall include such any
5 information as that the court may reasonably deem necessary. When reviewing the
6 application, the court shall provide the least restrictive temporary protective
7 placement ~~which~~ that is consistent with the needs of the ward.

8 **SECTION 153.** 55.06 (14) of the statutes is renumbered 55.175 and amended to
9 read:

10 **55.175 Discharge from protective placement.** Prior to discharge from a
11 protective placement, the ~~appropriate board which is responsible for placement~~
12 county department shall review the need for provision of continuing protective
13 services or for continuation of full or limited guardianship or provision for ~~such a~~
14 guardianship if the individual has no guardian. ~~Recommendation shall be made~~ The
15 county department shall make a recommendation to the court if the recommendation
16 includes a course of action for which court approval would be required. Prior to
17 discharge from any state institute or center for the developmentally disabled, the
18 department shall make ~~such~~ the review under s. 51.35. (7) ✓

***NOTE: In the last sentence, is "county department," rather than "department,"
appropriate?

LR will
look
at

INSET
87-19

19 **SECTION 154.** 55.06 (15) of the statutes is repealed.

20 **SECTION 155.** 55.06 (16) of the statutes is renumbered 55.21 and amended to
21 read:

1 **55.21 Centers for the developmentally disabled.** Placements Protective
2 placements to centers for the developmentally disabled and discharges from such
3 institutions shall be in compliance with s. 51.35 (4).

4 **SECTION 156.** 55.06 (17) of the statutes is renumbered 55.22 and amended to
5 read:

6 **55.22 Records.** (1) (intro.) ~~Any~~ No records of the court pertaining to protective
7 services or protective placement proceedings, including evaluations, reviews and
8 recommendations prepared under sub. (8) (e) s. 55.11 (1) (c), are ~~not~~ open to public
9 inspection but are any record is available to all of the following:

10 (a) The individual who is the subject of the proceedings and the subject's
11 individual's guardian at all times.

12 (b) The subject's individual's attorney or guardian ad litem, without the
13 subject's individual's consent and without modification of the records, in order to
14 prepare for any court proceedings relating to the subject's individual's protective
15 services or protective placement or relating to the subject's individual's
16 guardianship.

17 (c) Other persons only with the informed written consent of the subject
18 individual as provided in s. 51.30 (2) or under an order of the court that maintains
19 the records.

20 (2) If the subject individual is an adult who has been adjudged incompetent
21 under ch. 880 or is a minor, consent for release of information from and access to the
22 court records may be given only as provided in s. 51.30 (5).

23 (3) All treatment and service records pertaining to a person an individual who
24 is protected under this chapter or for whom application has been made for protection

1 under this chapter are confidential and ~~privileged to the subject~~. Section 51.30
2 governs access to treatment and service records.

3 **SECTION 157.** 55.06 (18) of the statutes is renumbered 55.20 and amended to
4 read:

5 **55.20 Appeals.** An appeal may be taken to the court of appeals from a final
6 judgment or final order under this ~~section~~ chapter within the time period specified
7 in s. 808.04 (3) and in accordance with s. 809.30 by the subject of the petition or the
8 individual's guardian, by any petitioner, or by the representative of the public.

***NOTE: Is this section amended as you wish? *yes*

9 **SECTION 158.** 55.07 of the statutes is renumbered 55.23, and 55.23 (1) and (2),
10 as renumbered, are amended to read:

11 55.23 (1) The rights and limitations upon rights, procedures for enforcement
12 of rights, and penalties prescribed in s. 51.61 apply to ~~persons~~ individuals who
13 receive services under this chapter, whether on a voluntary or involuntary basis.

14 (2) A parent who has been denied periods of physical placement under s. 767.24
15 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian with respect to
16 access to a ~~child's~~ minor's records under this chapter. ✓

17 **SECTION 159.** 55.075 of the statutes is created to read:

*Except as provided in s. 971.14
(6) (b):*

18 **55.075 Protective services or protective placement; petition.** (1) WHO
19 MAY PETITION.

20 (2) CONTENTS OF PETITION.

21 (3) PETITION FOR GUARDIANSHIP; REVIEW OF INCOMPETENCY.

22 (4) FEES AND COSTS OF PETITION. (a) Except as provided in par. (b), the court shall
23 award, from the assets of the individual sought to be protectively placed or
24 protectively served, payment of the petitioner's reasonable attorney fees and costs,

INSERT
89-2

1 unless the court finds, after considering all of the following, that it would be
2 inequitable to do so:

3 1. The petitioner's interest in the matter, including any conflict of interest that
4 the petitioner may have had in pursuing the guardianship or protective placement
5 or services.

6 2. The ability of the estate of the individual sought to be protectively placed or
7 protectively served to pay the petitioner's reasonable attorney fees and costs.

8 3. Whether the petition was contested and, if so, the nature of the contest.

9 4. Whether the individual sought to be protectively placed or protectively
10 served had executed a durable power of attorney under s. 243.07 or a power of
11 attorney for health care under s. 155.05 or had provided advance consent to nursing
12 home admission or engaged in other advance planning to avoid protective placement
13 or protective services.

INSERT material from p. 91 HERE

14 5. Any other factors that the court considers to be relevant.

15 (5) WHERE A PETITION MAY BE FILED; VENUE; COUNTY OF RESPONSIBILITY.

16 (b) The court in which a petition is first filed under par. (a) shall determine
17 venue. The court shall direct that proper notice be given to any potentially
18 responsible or affected county. After all potentially responsible or affected counties
19 and parties have been given an opportunity to be heard, the court shall determine
20 that venue lies in the county in which the petition is filed under par. (a) or in another
21 county, as appropriate. If the court determines that venue lies in another county, the
22 court shall order the entire record certified to the proper court. A court in which a
23 subsequent petition is filed shall, upon being satisfied of an earlier filing in another
24 court, summarily dismiss the subsequent petition. If any potentially responsible or
25 affected county or party objects to the court's finding of venue, the court shall refer

MOVE THIS TO
P. 90, line 18

~~1 the issue to the department for a determination under s. 51.40 (2) (g) and shall~~
~~2 suspend ruling on the motion for change of venue until the determination under s.~~
3 ~~51.40 (2) (g) is final~~ Proper notice is given to a potentially responsible or affected
4 county if written notice of the proceeding is sent by certified mail to the county's clerk
5 and corporation counsel.

***NOTE: Although this paragraph and the amendment to s. 880.06 (1), stats., suggest that venue is in the county of residence (see the ***NOTE under s. 55.06 (3) (c), as renumbered and amended) or, in some cases, physical presence, neither provision actually explicitly states that. I have explicitly required the court to determine that venue lies in the county in which the petition is filed unless the court determines another county is appropriate. I also have changed this paragraph to make it nearly identical to language in s. 880.06 (1), stats. Please review. Also, I don't understand the language about "the motion for change of venue." Does its use mean that that is the way a county or party "objects" to the court's finding? Please see my numerous other questions in the Drafter's Note.

DAK
review

INSERT
91-5

SECTION 160. 55.08 of the statutes is created to read:

55.08 Protective services or protective placement: standards. (1)

PROTECTIVE PLACEMENT. A court may under s. 55.12 order protective placement for an individual who meets all of the following standards:

***NOTE: I have removed language in s. 55.08 (1) (intro.) and (2) (intro.) that specifies what the petition must allege, because that more properly is in s. 55.075 (2) (a), which specifies what the petition must contain.

(2) PROTECTIVE SERVICES. A court may under s. 55.12 order protective services for an individual who meets all of the following standards:

(a) The individual has been determined to be incompetent by a circuit court or is a minor who is alleged to be developmentally disabled and on whose behalf a petition for a guardianship has been submitted.

(b) As a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual will incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others if protective services are not provided.

INSERT 91-18

create
auto reb AA

1 **SECTION 161.** 55.09 of the statutes is created to read:

2 **55.09 Notice of petition and hearing for protective services or**
3 **placement.**

4 (2) OTHER NOTICE REQUIRED. In addition to the notice required under sub. (1),
5 notice shall be served, personally or by mail, at least 10 days before the time set for
6 a hearing, upon all of the following:

7 (a) The guardian ad litem, legal counsel, and guardian, if any, of the individual
8 sought to be protected.

9 (b) The agent under an activated power of attorney for health care, if any, of the
10 individual sought to be protected.

11 (c) The presumptive adult heirs, if any, of the individual sought to be protected.

12 (d) Other persons who have physical custody of the individual sought to be
13 protected whose names and addresses are known to the petitioner or can with
14 reasonable diligence be ascertained.

15 (e) The county department.

16 (f) Any governmental or private body or group from whom the individual sought
17 to be protected is known to be receiving aid.

18 (g) Any other persons or entities that the court may require.

19 (h) The department, if the individual sought to be protected may be placed in
20 a center for the developmentally disabled.

21 (i) The county department that is participating in the program under s. 46.278
22 of the county of residence of the individual sought to be protected, if the individual
23 has a developmental disability and may be placed in an intermediate facility or a
24 nursing facility, except that, for an individual sought to be protected to whom s.
25 46.279 (4m) applies, this notice shall instead be served on the department.

*create autobref
(to use on page 138)*

1 (3) NOTICE OF PETITION FOR INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC
2 MEDICATION. Notice of a petition under s. 55.14 shall be served personally or by mail
3 upon the corporation counsel and county department.

INSECT
93-3

4 SECTION 162. 55.10 of the statutes is created to read:

5 55.10 Hearing on petition for protective services or protective
6 placement.

the individual's

7 (2) ATTENDANCE. The individual sought to be protected shall be present at the
8 hearing on the petition unless, after a personal interview, the guardian ad litem
9 certifies in writing to the court that the individual is unwilling to participate or
10 unable to participate in a meaningful way or certifies other specific reasons why the
11 individual is unable to attend. If the individual is unable to attend a hearing only
12 because of physical inaccessibility or lack of transportation, the court shall, if
13 requested by the individual, the individual's guardian ad litem, adversary counsel,
14 or other interested person, hold the hearing in a place where the individual is able
15 to attend.

****NOTE: This revised provision eliminates some redundancies and mirrors
language, under this draft, in s. 880.08 (1). *ok*

****NOTE: I know that "adversary counsel" is in current law (in s. 880.08 (1), stats.),
but I don't understand the meaning. Is it counsel for the petitioner? For the individual
sought to be protected? *see above*

16 (3) HEARING TO BE OPEN. The hearing shall be open, unless the individual sought
17 to be protected, or his or her attorney acting with the consent of the individual sought
18 to be protected, requests that it be closed. If the hearing is closed, only persons in
19 interest, including representatives of providers of service and their attorneys and
20 witnesses, may be present.

****NOTE: I am confused by the term "persons in interest" used in the second
sentence. This proposal defines "interested person" at s. 55.01 (4); it is unclear from the
definition whether service providers, their representatives, and witnesses are included.
Are they intended to be? If so, the term in the second sentence, rather than "persons in

KOURE

interest,” should be “interested persons,” and the definition should be revised to clearly include them, which would eliminate the necessity to specify them in this subsection. If they are not intended to be included in the definition of “interested person,” the sentence should be revised to be “. . . only interested persons *and* representatives of . . .”.

1 (4) RIGHTS. The following provisions apply to all hearings under this chapter
2 except transfers of placement under s. 55.15 and summary hearings under ss. 55.18
3 (3) (d) and 55.19 (3) (d):

****NOTE: Please see the ****NOTE under s. 55.19 (3) (d) (intro.).

4 (a) *Counsel; costs.* The individual sought to be protected has the right to counsel
5 whether or not the individual is present at the hearing on the petition. The court
6 shall require representation by full legal counsel whenever the petition alleges that
7 the individual is not competent to refuse psychotropic medication under s. 55.14, the
8 individual sought to be protected requested such representation at least 72 hours
9 before the hearing, the guardian ad litem or any other person states that the
10 individual sought to be protected is opposed to the petition, or the court determines
11 that the interests of justice require it. If the individual sought to be protected or any
12 other person on his or her behalf requests but is unable to obtain legal counsel, the
13 court shall appoint legal counsel. Counsel shall be provided at public expense, as
14 provided under s. 967.06 and ch. 977, if the individual is indigent. If the individual
15 sought to be protected is an adult who is indigent, and if counsel was not appointed
16 under s. 977.08, the county in which the hearing is held is liable for any fees due the
17 individual’s legal counsel. If the individual sought to be protected is represented by
18 counsel appointed under s. 977.08 in a proceeding for the appointment of a guardian
19 under s. 880.33, the court shall order the counsel appointed under s. 977.08 to
20 represent under this section the individual sought to be protected.

21 (c) *Trial by jury; right to cross examine witnesses.* The individual sought to be
22 protected has the right to a trial by a jury if demanded by the individual sought to

1 be protected or his or her attorney or guardian ad litem. The number of jurors shall
2 be determined under s. 756.06 (2) (b). The individual sought to be protected, and the
3 individual's attorney and guardian ad litem have the right to present and
4 cross-examine witnesses, including any person making an evaluation or review
5 under s. 55.11.

6 (e) *Independent evaluation.* The individual sought to be protected has the right
7 to secure an independent evaluation as provided in s. 55.11 (2) (e)

INSERT
95-7

8 **SECTION 163.** 55.11 of the statutes is created to read:

9 **55.11 Comprehensive evaluation; recommendations; statements.**

10 (2) If requested by the individual sought to be protected, or anyone on the
11 individual's behalf, the individual sought to be protected has the right at his or her
12 own expense, or, if indigent, at the expense of the county where the petition is filed,
13 to secure an independent comprehensive evaluation, if an independent
14 comprehensive evaluation has not already been made. The individual, or anyone on
15 the individual's behalf, may present a report of this independent comprehensive
16 evaluation or the evaluator's personal testimony as evidence at the hearing.

17 (3) A copy of the comprehensive evaluation and any independent
18 comprehensive evaluation shall be provided to the individual's guardian, agent
19 under any activated health care power of attorney, and guardian ad litem, and to the
20 individual or the individual's attorney at least 96 hours in advance of the hearing to
21 determine protective placement or protective services.

22 (4) Where applicable by reason of the particular disability, the county
23 department or an agency with which it contracts under s. 55.02 (2) that has
24 responsibility where the individual has legal residence shall make a
25 recommendation for protective placement or protective services.

***NOTE: As originally proposed, this subsection referred to responsibility of the county department or agency for the place of legal residence of the individual; I think what is meant is a reference to a county department or agency that has responsibility where the individual legally resides; is that correct? Is "legal" necessary?

NOTE

1 (5) If the court is considering protective placement of the individual in a center
2 for the developmentally disabled, the court shall request a statement or testimony
3 from the department regarding whether the protective placement is appropriate for
4 the individual's needs and whether it is consistent with the purpose of the center
5 under s. 51.06 (1).

6 (6) If the individual has a developmental disability and the court is considering
7 protective placement of the individual in an intermediate facility or a nursing
8 facility, the court shall request a statement or testimony from the county department
9 of the individual's county of residence that is participating in the program under s.
10 46.278 as to whether the individual's needs could be met in a noninstitutional
11 setting, except that, if s. 46.279 (4m) applies to the individual, the court shall request
12 the statement or testimony from the department, rather than the county
13 department.

INSERT 96-13

14 SECTION 164. 55.12 of the statutes is created to read:

15 **55.12 Order for protective services or protective placement.**

16 (7) If an individual to be protectively placed is a resident of a facility licensed
17 for 16 or more beds, the court may consider whether moving the individual would
18 create a serious risk of harm to that individual.

19 (8) The court may order protective services as an alternative to protective
20 placement.

21 (9) The court may order psychotropic medication as a protective service only
22 as provided in s. 55.14.

INSERT 96-22

23 SECTION 165. 55.13 (2) and (3) of the statutes are created to read:

1 55.13 (2) If the county department or agency with which the county
2 department contracts under s. 55.02 (2) that is providing emergency protective
3 services to an individual under sub. (1) has reason to believe that the individual
4 meets the criteria for protective services under s. 55.08 (2), the county department
5 or agency may file a petition under s. 55.075. If a petition is filed, a preliminary
6 hearing shall be held within 72 hours, excluding Saturdays, Sundays, and legal
7 holidays, to establish probable cause that the criteria under s. 55.08 (2) are present.
8 The county department or agency shall provide the individual with written notice
9 and orally inform the individual of the time and place of the preliminary hearing.
10 If the individual is not under guardianship, a petition for guardianship shall
11 accompany the petition under s. 55.08 (2), except in the case of a minor who is alleged
12 to be developmentally disabled.

13 (3) Upon finding probable cause under sub. (2), the court may order emergency
14 protective services to continue to be provided for up to 60 days pending the hearing
15 on protective services under s. 55.10.

***NOTE: Please review my changes to sub. (3). *ok*

INSERT
97-15

16 ✓ **SECTION 166.** 55.135 (title) of the statutes is created to read:

17 **55.135 (title) Emergency and temporary protective placement.**

INSERT
97-17

18 **SECTION 167.** 55.14 of the statutes is created to read:

19 **55.14 Involuntary administration of psychotropic medication.** (1) In
20 this section:

21 (a) "Involuntary administration of psychotropic medication" means any of the
22 following:

23 1. Placing psychotropic medication in an individual's food or drink with
24 knowledge that the individual protests receipt of the psychotropic medication.

1 2. Forcibly restraining an individual to enable administration of psychotropic
2 medication.

3 3. Requiring an individual to take psychotropic medication as a condition of
4 receiving privileges or benefits.

***NOTE: Shouldn't the definition of "protest" that is created under s. 880.38 (4)
(a) also be created in s. 55.14 (1), because of use of the term in s. 55.14 (1) (a) 1.?

INSERT
98-4

(d) ✓
5 (d) "Psychotropic medication" means a prescription drug, as defined in s. 450.01
6 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

7 (2) Involuntary administration of psychotropic medication, with consent of a
8 guardian, may be ordered as a protective service under the requirements of this
9 section.

10 (3) In addition to the other requirements of this chapter pertaining to petitions
11 for protective services, a petition under this section shall allege that all of the
12 following are true: , if known, for individual's refusal ✓

13 (a) A physician has prescribed psychotropic medication for the individual.

14 (b) The individual is not competent to refuse psychotropic medication.

15 (c) The individual has refused to take the psychotropic medication voluntarily
16 or attempting to administer psychotropic medication to the individual voluntarily is
17 not feasible or is not in the best interests of the individual. If the petition alleges that
18 the individual has refused to take psychotropic medication voluntarily, the petition
19 shall identify the reasons the individual refuses to take psychotropic medication
20 voluntarily. The petition also shall provide evidence showing that a reasonable
21 number of documented attempts to administer psychotropic medication voluntarily
22 using appropriate interventions that could reasonably be expected to increase the
23 individual's willingness to take psychotropic medication voluntarily have been made

1 and have been unsuccessful. If the petition alleges that attempting to administer
2 psychotropic medications to the individual voluntarily is not feasible or is not in the
3 best interests of the individual, the petition must identify specific reasons supporting
4 that allegation.

****NOTE: What if the individual's reasons for refusal cannot be ascertained? Would
it be possible to require that the petition identify the reasons, *if known*, for the
individual's refusal?

5 (d) The individual's condition for which psychotropic medication has been
6 prescribed is likely to be improved by administration of psychotropic medication and
7 the individual is likely to respond positively to psychotropic medication.

8 (e) Unless psychotropic medication is administered involuntarily, the
9 individual will incur an immediate or imminent substantial probability of physical
10 harm, impairment, injury, or debilitation or will present a substantial probability of
11 physical harm to others. The substantial probability of physical harm, impairment,
12 injury, or debilitation shall be evidenced by one of the following:

13 1. The individual's history of at least 2 episodes, one of which has occurred
14 within the previous 24 months, that indicate a pattern of overt activity, attempts,
15 threats to act, or omissions that resulted from the individual's failure to participate
16 in treatment, including psychotropic medication, and that resulted in a finding of
17 probable cause for commitment under s. 51.20 (7), a settlement agreement approved
18 by a court under s. 51.20 (8) (bg), or commitment ordered under s. 51.20 (13).

19 2. Evidence that the individual meets one of the dangerousness criteria set
20 forth in s. 51.20 (1) (a) 2. a. to e.

21 (4) A petition under this section must include a written statement signed by
22 a physician who has personal knowledge of the individual that provides general
23 clinical information regarding the appropriate use of psychotropic medication for the

1 individual's condition and specific data that indicates that the individual's current
2 condition necessitates the use of psychotropic medication.

3 (5) The guardian ad litem appointed under s. 55.10 (4) (b) for an individual who
4 is the subject of a petition under this section shall report to the court whether the
5 allegations in the petition required under sub. (3) are true, and whether involuntary
6 administration of psychotropic medication is in the best interests of the individual.

7 (6) If requested by an individual who is the subject of a petition under this
8 section or anyone on his or her behalf, the individual has the right at his or her own
9 expense, or if indigent at the expense of the county in which the petition is filed, to
10 secure an independent medical or psychological examination relevant to the issues
11 of whether the allegations in the petition required under sub. (3) are true, and
12 whether involuntary administration of psychotropic medication is in the best
13 interest of the individual, and to present a report of this independent evaluation or
14 the evaluator's personal testimony as evidence at the hearing.

15 (7) Upon the filing of a petition under this section, the court shall appoint
16 counsel as required under s. 55.10 (4) (a). A petition under this section shall be heard
17 within 30 days after it is filed.

18 (8) The court may issue an order authorizing an individual's guardian to
19 consent to involuntary administration of psychotropic medication to the individual
20 and may order involuntary administration of psychotropic medication to the
21 individual as a protective service, with the guardian's consent, if the court or jury
22 finds by clear and convincing evidence that the allegations in the petition required
23 under sub. (3) are true, all other requirements for involuntary administration of
24 psychotropic medication under this section have been met, psychotropic medication
25 is necessary for treating the condition described in the statement under sub. (4), and

1 all other requirements of this chapter for ordering protective services have been met.

2 An order under this section shall do all of the following:

3 (a) Direct the development of a treatment plan for the individual specifying the
4 protective services, including psychotropic medication as ordered by the treating
5 physician, that the individual should receive. If the individual resides in a nursing
6 home or hospital, the nursing home or hospital shall develop the treatment plan. If
7 the individual resides elsewhere, the county department or an agency with which it
8 contracts under s. 55.02 (2) shall develop the treatment plan. The treatment plan
9 shall include a plan for the involuntary administration of psychotropic medication
10 to the individual. The treatment plan is subject to the approval of the guardian and
11 to review and approval by the court. If the court approves the plan, the court shall
12 order the county department or an agency with which it contracts under s. 55.02 (2)
13 to ensure that psychotropic medication is administered in accordance with the
14 treatment plan.

15 (b) Order the individual to comply with the treatment plan under par. (a). The
16 order shall provide that if the individual fails to comply with provisions of the
17 treatment plan that require the individual to take psychotropic medications, the
18 medications may be administered involuntarily with consent of the guardian. The
19 order shall specify the methods of involuntary administration of psychotropic
20 medication to which the guardian may consent. An order authorizing the forcible
21 restraint of an individual shall specify that a person licensed under s. 441.06, 441.10,
22 or 448.05 (2) or (5) shall be present at all times that psychotropic medication is
23 administered in this manner and shall require the person or facility using forcible
24 restraint to maintain records stating the date of each administration, the medication
25 administered, and the method of forcible restraint utilized.

1 (9) If an individual who is subject to an order under this section is not in
2 compliance with the order because he or she refuses to take psychotropic medication
3 as ordered under the treatment plan, and it is necessary for the individual to be
4 transported to an appropriate facility for forcible restraint for administration of
5 psychotropic medication, the corporation counsel shall file with the court a
6 statement of the facts of the noncompliance of the individual. The statement shall
7 be sworn to be true and shall be based upon the information and belief of the person
8 filing the statement. The statement shall be signed by the individual's guardian and
9 by the director or designee of the county department or an agency with which it
10 contracts under s. 55.02 (2) to develop and administer the treatment plan. Upon
11 receipt of the statement of noncompliance, if the court finds by clear and convincing
12 evidence that the individual has substantially failed to comply with the
13 administration of psychotropic medication as ordered under the treatment plan, the
14 court may issue an order authorizing the sheriff or any other law enforcement agency
15 in the county in which the individual is found or in which it is believed that the
16 individual may be present to take the individual into custody and transport him or
17 her to an appropriate facility for administration of psychotropic medication using
18 forcible restraint, with consent of the guardian.

****NOTE: Please review my changes to the first sentence of sub. (9), especially the change of "may" to "shall" and the change from "belief that the person is not in compliance" to "noncompliance of the individual." The latter change is because the condition that must be fulfilled before the corporation counsel can act is expressed as a matter of facts rather than of beliefs (i.e., "if an individual is not in compliance" rather than "if the corporation counsel believes that an individual is not in compliance").

19 (10) Nothing in this section prohibits the involuntary administration of
20 psychotropic medication as an emergency protective service under s. 55.13.

1 (11) The county department or an agency with which it contracts under s. 55.02
2 (2) shall provide to the department a copy of any order issued under this section that
3 applies to any protectively placed individual in the county.

4 (12) The department shall annually submit to the legislature under s. 13.172
5 (2) a report regarding orders under this section.

6 (13) An order under this section is subject to annual review under s. 55.19.

7 **SECTION 168.** 55.15 of the statutes is created to read:

8 **55.15 Transfer of an individual under a protective placement order.**

9 (1) TRANSFERS AUTHORIZED. An individual under a protective placement order may
10 be transferred between protective placement units, between protective placement
11 facilities, or from a protective placement unit to a medical facility if the medical
12 facility is not a psychiatric facility.

✓
INSERT
103-6

INSERT 103-12 ✓

****NOTE: The term "psychiatric facility" is not defined, but "treatment facility" is;
should the latter term be substituted for "psychiatric facility" in this subsection?

13 (2) WHO MAY TRANSFER. A guardian, a county department or agency with which
14 it contracts under s. 55.03 (2) that provided protective placement to the individual
15 pursuant to the order of the court, the department, or a protective placement facility
16 may transfer an individual under a protective placement order under the
17 requirements of this section, notwithstanding the fact that a court order has named
18 a specific facility for the protective placement of the individual.

19 (3) CONSENT OF GUARDIAN REQUIRED. No individual may be transferred under
20 this section without the written consent of the individual's guardian, except in the
21 case of an emergency transfer under sub. (5) (b).

22 (4) CONSENT OF COUNTY DEPARTMENT. No individual may be transferred under
23 this section to a facility that is more costly to the county without the written consent

1 of the county department, except in the case of an emergency transfer under sub. (5)
2 (b).

3 (5) NOTICE OF TRANSFER. (a) *Nonemergency transfer*. A person or entity who
4 initiates a transfer shall provide 10 days' prior written notice of a transfer to the court
5 that ordered the protective placement and to each of the other persons and entities
6 specified in sub. (2) who did not initiate the transfer. The notice of transfer shall
7 include notice of the right of the individual under a protective placement, the
8 individual's attorney, if any, or other interested person to petition the court for a
9 hearing on the transfer.

****NOTE: I removed the right of the guardian to petition the court for a hearing on
the transfer; under sub. (3), the guardian has to approve a nonemergency transfer before
it can be made.

10 (b) *Emergency transfer*. If an emergency makes it impossible to provide the
11 notice specified in par. (a) or to obtain the prior written consent of the guardian
12 specified in sub. (3), the individual may be transferred without the prior written
13 consent of the guardian and without the notice specified in par. (a). Written notice
14 shall be provided immediately upon transfer to each of the persons and entities
15 specified under sub. (2) who did not initiate the transfer. Notice shall also be
16 provided to the court that ordered the protective placement within a reasonable time,
17 not to exceed 48 hours from the time of transfer. The notice shall include notice of
18 the right to file with the court under sub. (6) a petition objecting to the emergence
19 transfer.

20 (6) PETITION. An individual under protective placement, the individual's
21 guardian, the individual's attorney, if any, or any other interested person may file a
22 petition with the court objecting to a proposed transfer or to an emergency transfer

1 made under sub. (5) (b). The petition shall specify the reasons for the person's
2 objection to the transfer.

***NOTE: Note that I added emergency transfer, so that a person, by petition, may
also object to that. Please see also subs. (5) (b) and (8) (intro.). Okay? *ole*

3 (7) HEARING. (a) The court shall order a hearing within 10 days after the filing
4 of a petition under sub. (6).

5 (b) The court shall notify the petitioner, the individual under protective
6 placement, the individual's guardian, the individual's attorney, if any, and the county
7 department of the time and place of the hearing.

8 (c) A guardian ad litem shall be appointed to represent the individual under
9 protective placement at the hearing. If the individual is an adult who is indigent, the
10 county in which the hearing is held shall be liable for guardian ad litem fees. If the
11 individual is a minor, the individual's parents or the county in which the hearing is
12 held shall be liable for guardian ad litem fees as provided in s. 48.235 (8).

13 (cm) The court shall appoint counsel for the individual under protective
14 placement if the individual, the individual's guardian ad litem, or anyone on the
15 individual's behalf requests that counsel be appointed for the individual

16 (d) The petitioner, individual under protective placement, the individual's
17 guardian, and the individual's attorney, if any, have the right to attend the hearing
18 and to present and cross-examine witnesses.

***NOTE: Does the guardian ad litem also have this right? *yes*

19 (8) STANDARD FOR TRANSFER. In determining whether to approve a proposed
20 transfer or an emergency transfer made under sub. (5) (b), the court shall consider
21 all of the following:

22 (a) Whether the requirements of s. 55.12 (2) and (6) are met.

the individual's guardian ad litem,

****NOTE: Please review my change to sub. (8) (a); without these modifications, I don't understand the difference between par. (a) and par. (b). *ok*

1 (b) Whether the protective placement is in the least restrictive environment
2 consistent with the requirements of s. 55.12 (3), (4), and (5) or, if the transfer is to an
3 intermediate facility or nursing facility, is in the most integrated setting, as defined
4 in s. 46.279 (1) (bm).

5 (c) Whether the protective placement is in the best interests of the person under
6 protective placement.

7 **(9) ORDER RELATING TO TRANSFER.** Following the hearing under sub. (7), the
8 court shall do one of the following:

9 (a) If the court finds that the individual continues to meet the standards under
10 s. 55.08 (1) and the individual's proposed protective placement does not meet the
11 standards for transfer under sub. (8), the court shall issue an order prohibiting the
12 transfer. The court shall include the information relied upon as a basis for the order
13 and shall make findings based on the standards under sub. (8) in support of the
14 denial of the transfer.

****NOTE: Note that I changed "current placement" to "proposed protective placement." *ok*

****NOTE: Note also that I changed the cross-reference from s. 55.08 (1) to sub. (8); isn't the court supposed to support or deny the transfer based on the standard for transfer rather than based on the standards for protective placement, since the transfer is from one protective placement to another? *ok*

15 (b) If the court finds that the individual continues to meet the standards under
16 s. 55.08 (1) and the proposed transfer meets the standard under sub. (8), the court
17 shall approve the proposed transfer. The court may order protective services along
18 with transfer of protective placement. The court shall include the information relied
19 upon as a basis for the order and shall make findings based on the standards in s.
20 55.08 (1) in support of the need for continued protective placement.

1 (c) If the court finds that the individual no longer meets the standards under
2 s. 55.08 (1), the court shall terminate the protective placement, as provided in s.
3 55.17.

INSERT 107-3

4 **SECTION 169.** 55.16 of the statutes is created to read:

5 **55.16 Modification of an order for protective placement or protective**
6 **services.** (1) USE OF TRANSFER PROVISIONS. If a petitioner is an entity authorized
7 under s. 55.15 (2) to transfer an individual under a protective placement and the
8 modification sought is a transfer of an individual between protective placement
9 units, between protective placement facilities, or from a protective placement unit
10 to a medical facility that is not a psychiatric facility, the petitioner may utilize the
11 procedure in s. 55.15 in lieu of the procedure under this subsection.

12 (2) PETITION. (a) *Filing; services.* An individual under protective placement
13 or receiving protective services, the individual's guardian, the individual's legal
14 counsel or guardian ad litem, if any, the department, the county department that
15 placed the individual or provided the protective services under an order of the court,
16 an agency with which the county department contracts under s. 55.02 (2), or any
17 interested person may file a petition at any time for modification of an order for
18 protective services or protective placement. The petition shall be served on the
19 individual, the individual's guardian, the individual's legal counsel and guardian ad
20 litem, if any, and the county department.

21 (b) *Modification of an order for protective placement; allegations.* A petition for
22 modification of an order for protective placement shall make one of the following
23 allegations:

24 1. That the protective placement is not in the least restrictive environment that
25 is consistent with the individual's needs.

requirements of
s. 55.12 (3), (4), and (5)

1 2. That a protective placement in a facility with a higher level of restrictiveness
2 would be more consistent with the individual's needs. *requirements of s. 55.12(3), (4), and (5)*

3 3. That a protective placement in a different facility with the same level of
4 restrictiveness as the current placement would be more consistent with the
5 individual's needs for reasons unrelated to the level of restrictiveness. *requirements of s. 55.12 (3), (4), (5)*

6 (c) *Modification of an order for protective services; allegations.* 1. A petition for
7 modification of an order for protective services, other than an order under s. 55.14,
8 shall allege that the protective services are not provided in the least restrictive
9 manner ~~that is consistent with the individual's needs or are not otherwise consistent~~
10 ~~with his or her current needs.~~ *environment or manner that is consistent with the requirements of s. 55.12 (3), (4), (5)*

11 2. A petition for modification of an order under s. 55.14 shall allege that
12 modification of the order or the treatment plan for the individual would be in his or
13 her best interests. *court-ordered*

14 (3) HEARING. (a) The court shall order a hearing within 21 days after the filing
15 of a petition under sub. (2), except that the court is not required to order a hearing
16 if a hearing on a protective placement for the individual or on a petition for
17 court-ordered protective services or transfer of protective placement with respect to
18 the individual has been held within the previous 6 months.

19 (b) The court may extend the 21-day limitation in par. (a) if requested by the
20 individual or the individual's guardian, guardian ad litem, or legal counsel.

21 (c) The hearing shall be subject to s. 55.10 (4).

22 (4) ORDER MODIFICATION FOR INDIVIDUAL UNDER PROTECTIVE PLACEMENT. After a
23 hearing under sub. (3) on a petition for modification of an order for protective
24 placement, the court shall make one of the following orders and shall include in the
25 order the information relied on as a basis for that order:

****NOTE: I have revised this provision, s. 55.16 (5) (a) (intro.) and (b), and 55.17 (3) (intro.) and (4) (a) (intro.) and (b) because the proposed language appeared to permit the court to make no finding and because these introductory provisions introduce a series of orders, rather than findings.

1 (a) If the court finds that the individual continues to meet the standards under
2 s. 55.08 (1) and the individual's protective placement is in the least restrictive
3 environment that is consistent with the requirements of s. 55.12 (3), (4), and (5), the
4 court shall order continuation of the protective placement in the facility in which the
5 individual resides at the time of the hearing.

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****NOTE: The petitions to which the orders under s. 55.16 (4) (a) and (b) respond are not required to allege that the requirements of s. 55.12 (3), (4), and (5) have not been met. Should they be? If so, see also s. 55.16 (5) (a) 1. and 2., which also have this problem.

Yes
Yes

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6 (b) If the court finds that the individual continues to meet the standards under
7 s. 55.08 (1) and the protective placement of the individual is not in an environment
8 that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall
9 order transfer of the individual to a protective placement that is in the least
10 restrictive environment consistent with the factors in s. 55.12 (3), (4), and (5). In lieu
11 of ordering transfer of the individual to a specific facility, the court may order the
12 county department of the individual's residence to develop or recommend a
13 protective placement that is in the least restrictive environment consistent with the
14 requirements of s. 55.12 (3), (4), and (5), and arrange for the individual's transfer to
15 that protective placement within 60 days after the court's order. The court may
16 extend this time period to permit development of a protective placement. The court
17 may order protective services along with transfer of protective placement.

The least restrictive

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18 (c) If the court finds that the individual no longer meets the standards under
19 s. 55.08 (1), the court shall terminate the protective placement, as provided in s.
20 55.17 (3) (c).