

Wanted by  
9/19

LRB Number: 0039/P1

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## Nonsubmittal Form

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D-NOTE

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1 AN ACT...; relating to: guardians and wards.

*Analysis by the Legislative Reference Bureau*

An analysis will be provided on a subsequent version of this bill.

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

2 SECTION 1. 50.06 (title) of the statutes is renumbered 54.50 (2) (title).

3 SECTION 2. 50.06 (1) of the statutes is renumbered 54.50 (2) (a) and amended  
4 to read:

5 54.50 (2) (a) In this ~~section~~ subsection, "incapacitated" means unable to receive  
6 and evaluate information effectively or to communicate decisions to such an extent  
7 that the individual lacks the capacity to manage his or her health care decisions,  
8 including decisions about his or her post-hospital care.

History: 1993 a. 187; 1999 a. 9.

\*\*\*\*NOTE: DAK. check this for any conflict with any other definition - search chapter for term; same?

1           **SECTION 3.** 50.06 (2) (intro.) of the statutes is renumbered 54.50 (2) (b) (intro.)  
2 and amended to read:

3           54.50 (2) (b) (intro.) An individual under ~~sub. (3)~~ par. (c) may consent to  
4 admission, ~~directly from a hospital~~ to a facility, as defined in s. 50.01 (1m), of an  
5 incapacitated individual who does not have a valid power of attorney for health care  
6 and who has not been adjudicated <sup>an</sup> incompetent under ch. 880 54, if all of the following  
7 apply:

History: 1993 a. 187; 1999 a. 9.

\*\*\*\*NOTE: Is my definition of "facility" what you want? It conforms to current law.

8           **SECTION 4.** 50.06 (2) (a) of the statutes is renumbered 54.50 (2) (b) 1. and  
9 amended to read:

10           54.50 (2) (b) 1. No person who is listed under ~~sub. (3)~~ par. (c) in the same order  
11 of priority as, or higher in priority than, the individual who is consenting to the  
12 proposed admission disagrees with the proposed admission.

History: 1993 a. 187; 1999 a. 9.

13           **SECTION 5.** 50.06 (2) (am) 1. of the statutes is renumbered 54.50 (2) (b) 2. a. and  
14 amended to read:

15           54.50 (2) (b) 2. a. Except as provided in subd. <sup>plain</sup> ~~2. 1~~ b., no person who is listed  
16 under ~~sub. (3)~~ par. (c) and who resides with the incapacitated individual disagrees  
17 with the proposed admission.

History: 1993 a. 187; 1999 a. 9.

18           **SECTION 6.** 50.06 (2) (am) 2. (intro.) of the statutes is renumbered 54.50 (2) (b)  
19 2. b. and amended to read:

20           54.50 (2) (b) 2. b. Subdivision <sup>strike</sup> ~~1~~ a. <sup>score</sup> ~~does not apply if any of the following applies:~~  
21 the individual who is consenting to the proposed admission resides with or is the  
22 spouse of the incapacitated individual. ✓

History: 1993 a. 187; 1999 a. 9.

23           **SECTION 7.** 50.06 (2) (am) 2. a. of the statutes is repealed.

1 SECTION 8. 50.06 (2) (am) 2. b. of the statutes is repealed.

2 SECTION 9. 50.06 (2) (b) of the statutes is renumbered 54.50 (2) (b) 3.

3 SECTION 10. 50.06 (2) (c) of the statutes is renumbered 54.50 (2) (b) 4. and  
4 amended to read:

5 54.50 (2) (b) 4. A petition for guardianship for the individual under s. 880.07  
6 54.10 and a petition for protective placement of the individual under s. 55.06 (2) are  
7 filed prior to the proposed admission.

History: 1993 a. 187; 1999 a. 9.

8 SECTION 11. 50.06 (3) (intro.) of the statutes is renumbered 54.50 (2) (c) (intro.)  
9 and amended to read:

10 54.50 (2) (c) (intro.) The following individuals, in the following order of priority,  
11 may consent to an admission under sub. ~~(2)~~ <sup>✓</sup> par. (b):

History: 1993 a. 187; 1999 a. 9.

12 SECTION 12. 50.06 (3) (a) to (g) of the statutes are renumbered 54.50 (2) (c) 1.  
13 to 7.

14 SECTION 13. 50.06 (4) of the statutes is renumbered 54.50 (2) (d) and amended  
15 to read:

16 54.50 (2) (d) A determination that an individual is incapacitated for purposes  
17 of sub. ~~(2)~~ <sup>✓</sup> par. ~~(b)~~ <sup>✓</sup> shall be made by 2 physicians, as defined in s. 448.01 (5), or by one  
18 physician and one ~~licensed~~ <sup>Strike</sup> psychologist, as defined in s. 455.01 (4), who personally  
19 examine the individual and sign a statement specifying that the individual is  
20 incapacitated. Mere old age, eccentricity, <sup>3</sup> or physical disability, either singly or  
21 together, are insufficient to make a finding that an individual is incapacitated.  
22 Neither of the individuals who make a finding that an individual is incapacitated  
23 may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge  
24 that he or she is entitled to or has a claim on any portion of the individual's estate.

1 A copy of the statement shall be included in the individual's records in the facility to  
2 which he or she is admitted.

History: 1993 a. 187; 1999 a. 9.

\*\*\*\*NOTE: I have defined "physician" and "psychologist"?



3 SECTION 14. 50.06 (5) (a) (intro.) of the statutes is renumbered 54.50 (2) (e) 1.  
4 (intro.) and amended to read:

subsection

5 54.50 (2) (e) 1. (intro.) Except as provided in ~~par. (b)~~ subd. 2., an individual who  
6 consents to an admission under this ~~section~~ may, for the incapacitated individual,  
7 make health care decisions to the same extent as a guardian of the person may and  
8 authorize expenditures related to health care to the same extent as a guardian of the  
9 estate may, until the earliest of the following:

History: 1993 a. 187; 1999 a. 9.

10 SECTION 15. 50.06 (5) (a) 1. to 3. of the statutes are renumbered 54.50 (2) (e)  
11 1. a. to c.

12 SECTION 16. 50.06 (5) (b) of the statutes is renumbered 54.50 (2) (e) 2. and  
13 amended to read:

14 54.50 (2) (e) 2. An individual who consents to an admission under this ~~section~~  
15 subsection may not authorize expenditures related to health care if the incapacitated  
16 individual has an agent under a durable power of attorney, as defined in s. 243.07  
17 (1)(a), who may authorize expenditures related to health care.

History: 1993 a. 187; 1999 a. 9.

\*\*\*\*NOTE: I have defined "durable power of attorney"?

18 SECTION 17. 50.06 (6) of the statutes is renumbered 54.50 (2) (f) and amended  
19 to read:

20 54.50 (2) (f) If the incapacitated individual is in the facility after 60 days after  
21 admission and a guardian has not been appointed, the authority of the person who  
22 consented to the admission to make decisions and, if ~~sub. (5) (a)~~ par. (e) 1. applies,

1 to authorize expenditures is extended for 30 days for the purpose of allowing the  
2 facility to initiate discharge planning for the incapacitated individual.

History: 1993 a. 187; 1999 a. 9.

3 **SECTION 18.** 50.06 (7) of the statutes is renumbered 54.50 (2) (g) and amended  
4 to read:

5 54.50 (2) (g) An individual who consents to an admission under this section  
6 subsection may request that an assessment be conducted for the incapacitated  
7 individual under the long-term support community options program under s. 46.27  
8 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is  
9 available for the individual, a functional and financial screen to determine eligibility  
10 for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the  
11 incapacitated individual or if the incapacitated individual is about to be admitted on  
12 a private pay basis, the individual who consents to the admission may waive the  
13 requirement for a financial screen under s. 46.283 (4) (g), unless the incapacitated  
14 individual is expected to become eligible for medical assistance within 6 months.

History: 1993 a. 187; 1999 a. 9.

15 **SECTION 19.** Chapter 54 of the statutes is created to read:

16 **CHAPTER 54**

17 **GUARDIANS AND WARDS**

\*\*\*\*NOTE: "Guardians and Wards" is the title of ch. 880; is it what you want as the  
title of ch. 54?

18 **SUBCHAPTER I**

19 **DEFINITIONS**

20 **54.01 Definitions.** In this chapter: (1) "Activities of daily living" means  
21 bathing; dressing; eating; mobility; and transferring from a surface, including a bed,  
22 to another surface, including a chair; and toileting.

\*\*\*\*NOTE: In accordance with the memo, this definition (3/01) modeled after HFS 10.13 (1), Wis. Admin. Code (the definition used for Family Care).

1 (3) "Conservator" means a person who is appointed or qualified by a court at  
2 an individual's request under s. 54.76 (2) to manage the estate of the individual.

\*\*\*\*NOTE: I omitted the language "or qualified" in your proposal, as s. 54.76 (2) (renumbered from s. 880.31 (2) does not mention qualification.

3 (3m) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

4 (5) ~~Except as provided in s. 54.50,~~ "incapacity" has the meaning given in s.  
5 155.01 (8).

\*\*\*\*NOTE: I have drafted this definition because the term is used in the definition of "standby guardian" (created as s. 54.01 (13) - okay? Note that this term is also used under ss. 54.12 (2) (renumbered from s. 880.04 (2)), 54.12 (3) (renumbered from s. 880.04 (2m)), 54.12 (4) (renumbered from s. 880.04 (3)), 54.34 (1) (b) (renumbered from s. 880.07 (1) (b)), and 54.15 (3) (renumbered from s. 880.09 (2)), 54.15 (4) (renumbered from s. 880.09 (6)), 54.52 (2) (renumbered from s. 880.36 (2)). Is this different from "functional incapacity, as used in s. 54.36 (renumbered from 880.33 (1))?

6 (6) (a) The inability to receive and evaluate information effectively or to  
7 communicate decisions.

8 (b) Mental deficiency, physical illness, physical disability, chronic mental  
9 illness, chronic alcohol abuse, chronic use of prescription drugs, as defined in s.  
10 450.01 (20) or controlled substances, as defined in s. 961.01 (4), or any other physical  
11 or mental reason.

\*\*\*\*NOTE: Please review this definition; it is more specific than your proposal.

\*\*\*\*NOTE: According to the memo, Roy Froemming is working on reformulating this definition.

12 (9) "Interested person" means any of the following:

13 (a) For purposes of a petition for guardianship or protective placement, any of  
14 the following:

\*\*\*\*NOTE: Do you intend to amend ch. 55 to use this definition? If not, the reference to "protective placement" should be eliminated.

15 1. The proposed ward, if he or she has attained 14 years of age.

1           2. The spouse or adult child of the proposed ward, or the parent of a proposed  
2 ward who is a minor.

3           3. For a proposed ~~ward~~ <sup>ward</sup> who has no spouse, child, or parent, any heir at law of  
4 the proposed ward.

5 *not* \*\*\*NOTE: In this context, would an "heir at law" include the state? Should it? Should "child" be "adult child"?

6           4. Any individual who is nominated as fiduciary or appointed to act as fiduciary  
7 for the proposed ward by ~~the~~ <sup>a</sup> court of any state, any trustee for a trust established  
8 by or for the proposed ward, or any person appointed as agent under a power of  
attorney for health care or <sup>as</sup> attorney <sup>in</sup> fact under a durable power of attorney.

\*\*\*NOTE: Is this language intended to include the guardian?

9           5. If the proposed ward is a minor, the individual who has exercised principal  
10 responsibility for the care and custody of the proposed ward during the period of 60  
11 consecutive days immediately before the filing of the petition.

12           6. If the proposed ward is a minor and has no living parent, any individual  
13 nominated to act as fiduciary for the minor in a will or other written instrument that  
14 was executed by a parent of the minor.

\*\*\*NOTE: Is "executed" okay? What other "written instrument" would be applicable here? Should the "written instrument" be required to be lawful or valid?

15           7. If the proposed ward is receiving moneys paid, or if moneys are payable, by  
16 the federal department of veterans affairs, a representative of the federal  
17 department of veterans affairs, or, if the proposed ward is receiving moneys paid, or  
18 if moneys are payable, by the state department of veterans affairs, a representative  
19 of the state department of veterans affairs.

20           8. If the proposed ward is receiving long-term support services or similar public  
21 benefits, the county department of human services or social services.

\*\*\*NOTE: The "long-term support services or other public benefits" is in accord with the memo.

*providing*  
that is providing the services or benefits

a county other than a county

of the proposed ward's residence county

1 9. The corporation counsel of the count in which the petition is filed and, if the  
2 petition is ~~not~~ filed in the county of the proposed ward's residence, the corporation  
3 counsel of the county in which the petition is filed.

✓ \*\*\*\*NOTE: This language includes the corporation counsel of the count in which the petition is filed; the language is somewhat different from that proposed in the memo—the issue is not proposed *residence*, I believe, but place of filing for the proposed ward—please also see s. 54.30 (2) (renumbered from s. 880.05.)

4 10. Any other person required by the court.

5 (b) For purposes of proceedings following the hearing on the petition for  
6 guardianship or protective placement, any of the following:

✓ \*\*\*\*NOTE: DAK check to see if "hearing" would be correct. m-dash

✓ \*\*\*\*NOTE: Is "any" correct, should it, instead, be "one"? Do you need language about the order of priority, i.e., must 1. be designated before 2.? Do you intend to amend ch. 55 with this definition? If not, the reference to "protective placement" should be eliminated.

- 7 1. The guardian.
- 8 2. The spouse or adult child of the ward or the parent of a minor ward. ✓
- 9 3. Any other individual that the court may require, including any fiduciary that
- 10 the court may designate. ✓

✓ \*\*\*\*NOTE: Because the provision that authorizes a court specifically to waive notice to any individual under (a) or (b) is substantive, I have, instead of placing it in the definitions, added it to s. 54.38 (2) (b) 4.

11 4. The county of venue, if the county has an interest.

✓ \*\*\*\*NOTE: This language is in accord with the memo.

12 (10) "Meet the essential requirements for physical health or safety" means  
13 perform those actions necessary to provide the health care, food, shelter, clothes,  
14 personal hygiene and other care without which serious physical injury or illness will  
15 likely occur.

✓ \*\*\*\*NOTE: Because the provision, "Mere old age, eccentricity, poor judgment, or physical disability, singly or together, without mental impairment, may not be used to establish incompetence," is essentially a standard, I have not included it in this definition but have, instead, placed it in s. 54.10 (3) (a) (intro.). ✓

16 (12) "Physician" has the meaning given in s. 448.01 (5).

means a licensed psychologist, as defined

1 (13) "Psychologist" has the meaning given in s. 455.01 (4).

2 (14) "Spendthrift" means an individual who, because of the use of intoxicants  
3 or drugs or because of gambling, idleness, debauchery, or other wasteful course of  
4 conduct, is unable to attend to business or is likely to affect the health, life, or  
5 property of himself or herself or others so as to endanger his or her support and  
6 dependents or expose the public to the support.

\*\*\*\*NOTE: I created this definition in ch. 54 because it is used in s. 880.01 (3)  
(renumbered s. 54.01 (6), the definition of "guardian", please see the \*\*\*\*NOTE below  
that subsection. I am not sure what you want to do with this definition and its antiquated  
language or with the other provisions mentioned in that \*\*\*\*NOTE. See also s. 54.10 (3)  
(a) 1. and its \*\*\*\*NOTE. I did not affect the definition of "spendthrift" in s. 880.01 (9),  
because it is used in remaining subchapters in ch. 880.

close paren

7 (15) "Standby guardian" means any individual designated by the court under  
8 s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the  
9 death, incapacity, or resignation of the initially-appointed guardian, or if the  
10 initially-appointed guardian is unable or unavailable to fulfill his or her duties.

11 (16) "Ward" means an individual for whom a guardian has been appointed.

\*\*\*\*NOTE: I created this definition, rather than renumbering it from ch. 880,  
because the remaining provisions in ch. 880 that are untouched by this draft use this  
term.

SUBCHAPTER II

APPOINTMENT OF GUARDIAN

54.10 Appointment of guardian; determination of incompetence. (1)

STANDARD. A court of appropriate jurisdiction may appoint a guardian, or separate  
guardians of the person and of the estate, for an individual who is a proposed ward  
if the court determines that any of the following applies:

(a) The individual is a minor.

19 (b) The individual is incompetent and the appointment is necessary for at least  
20 one of the following reasons:

1 1. To provide for the personal needs of the individual, including food, clothing,  
2 shelter, health care, or safety.

3 2. To manage the property and financial affairs of the individual.

4 (2) NECESSITY OF APPOINTMENT. In determining whether the appointment of a  
5 guardian is necessary under sub. (1) (b), the court shall consider all of the following:

6 (a) The report of the guardian ad litem, as required under s. 54.40 (4) (b). ✓

\*\*\*\*NOTE: Is the cross-reference to s. 54.40 (4) (b) to the report that you intended  
here? ✓

7 (b) The sufficiency and reliability of available resources to provide for the  
8 individual's personal needs or property management without the appointment of a  
9 guardian.

\*\*\*\*NOTE: Your proposal refers to "the sufficiency and reliability of available  
resources, as defined in sub.\_\_\_\_," but no definition was included. ✓

\*\*\*\*NOTE: Your proposal included a limitation on powers of guardian at this point;  
I have placed that language under s. 54.18 (1). ✓

*that an individual is an incompetent*

10 (3) DETERMINATION OF INCOMPETENCE. All of the following apply to the  
11 determination of incompetence under sub. (1) (b): *does it follow*

12 (a) The determination shall be based on clear and convincing evidence; may  
13 not, unless the proposed ward has a severe inability to communicate, be based on  
14 mere old age, eccentricity, poor judgment, or physical disability; and shall require a  
15 finding that the individual is likely to suffer harm because of all of the following:

→ \*\*\*\*NOTE: Is "all" correct here, or should it be "any"?; your proposal for subd. 2.  
below seemed to indicate "all".

\*\*\*\*NOTE: The language concerning "severe inability to communicate" is from the  
memo.

16 1. The individual is unable to provide for personal needs or property  
17 management.

*2s* *intended to*

\*\*\*\*NOTE: Does this standard replace the "spendthrift" concept?

1           2. The individual cannot adequately understand and appreciate the nature and  
2 consequences of the inability under subd. 1.

3           (b) In reaching its determination, the court shall give primary consideration  
4 to the functional level and functional limitations of the individual, including an  
5 assessment of all of the following:

6           1. The individual's management of the activities of daily living.

7           2. The individual's understanding and appreciation of the nature and  
8 consequences of any inability he or she may have to manage the activities of daily  
9 living.

10          3. The individual's preferences, desires, and values with regard to management  
11 of the activities of daily living.

12          4. The nature and extent of the individual's property and financial affairs and  
13 his or her ability to manage them.

14          5. The extent of the demands placed on the individual by his or her personal  
15 needs and by the nature and extent of his or her property and financial affairs.

16          6. Any physical illness of the individual and the prognosis of the illness.

17          7. Any mental disability, alcoholism, or substance dependence of the individual  
18 and the prognosis of the mental disability, alcoholism, or substance dependence. ✓

      \*\*\*\*NOTE: Your proposal refers to the terms "mental disability," "alcoholism," and  
"substance dependence," "as defined in sub. \_\_\_\_\_," but no definition was included.  
Also, the terms "drug dependence" and "substance dependence" are used *independently*  
in this chapter and should be made uniform. Which would you prefer?

19          8. Any medication with which the individual is being treated and the  
20 medication's effect on the individual's behavior, cognition, and judgment.

21          (c) In addition to the assessment under par. (b), the court shall consider all  
22 other relevant facts and circumstances regarding all of the following:

23          1. The individual's functional level.

*interchangeably*



1           3. Any license, certificate, permit, or registration of the proposed guardian that  
2 is required under chs. 440 to 480 or by the laws of another state for the practice of  
3 a profession or occupation has been suspended or revoked.

      \*\*\*\*NOTE: I added "suspension" to this paragraph; okay? Also, I deleted  
"cancellation", because it seems redundant to revocation.

4           (b) If par. (a) 1., 2., or 3. applies to the proposed guardian, he or she shall include  
5 in the sworn and notarized statement a description of the circumstances  
6 surrounding the applicable event under par. (a) 1., 2., or 3.

      \*\*\*\*NOTE: Note that I put under s. 54.44 (6) the language concerning court action  
if the proposed guardian is inappropriate.

7           **(8) (title) LIMITATION ON NUMBER OF WARDS OF GUARDIAN.**

8           **54.18 General duties and powers of guardian; limitations; immunity.**

9           (1) A ward retains all his or her rights that are not assigned to the guardian or  
10 otherwise limited by statute. A guardian acting on behalf of a ward may exercise only  
11 those powers that the guardian is authorized to exercise by statute or court order.  
12 A guardian may be granted only those powers necessary to provide for the personal  
13 needs or property management of the ward in a manner that is appropriate to the  
14 ward and that constitutes the least restrictive form of intervention.

      \*\*\*\*NOTE: I changed the sentence "All other rights are reserved to the ward," in your  
proposal to refer explicitly to the ward's (and not other) rights.

      \*\*\*\*NOTE: Please see s. 54.63 for the procedure for expanding powers of the  
guardian, as proposed in the memo.

      \*\*\*\*NOTE: Your proposal refers to "the least restrictive form or intervention, as  
defined in \_\_\_\_\_", but no definition was included.

15           (2) A guardian shall do all of the following:

16           (a) Exercise the degree of care, diligence, and good faith when acting on behalf  
17 of a ward that an ordinarily prudent person exercises in his or her own affairs.

      \*\*\*\*NOTE: The "ordinarily prudent person" language is in accord with the memo.

1 (b) Act in all proceedings of the ward as the ward's advocate, including, if the  
2 ward is protectively placed under ch. 55 and if applicable, advocating for the ward's  
3 applicable rights under ss. 50.09 and 51.61.

\*\*\*\*NOTE: Because ss. 50.09 and 51.61 are not automatically applicable to ch. 55,  
I added the "and if applicable" language.

4 (c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation  
5 to the ward.

6 (3) No guardian may do any of the following:

7 **54.19 Duties of guardian of the estate.** Except as specifically limited in the  
8 order of appointment, the guardian of the estate shall do all of the following in order  
9 to provide a ward with the greatest amount of independence and self-determination  
10 with respect to property management in light of the ward's functional level,  
11 understanding, and appreciation of his or her functional limitations and the ward's  
12 personal wishes and preferences with regard to managing the activities of daily  
13 living:

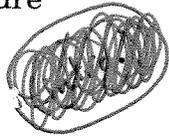
14 (2) Retain, expend, distribute, sell, or invest the ward's property, rents, income,  
15 issues, benefits, and proceeds and account for all of them.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5))  
(b).

16 (3) Determine, if the ward has executed a will, the will's location, determine  
17 the appropriate persons to be notified in the event of the ward's death, and, if the  
18 death occurs, notify those persons.

19 (4) Use the ward's income and property to maintain and support the ward and  
20 any dependents of the ward and to provide for the post-secondary education  
21 expenses of any children of the ward.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5))  
(b).



1 (5) Prepare and file an annual account as specified in s. 54.62.

2 (6) At the termination of the guardianship, deliver the ward's assets to the  
3 persons entitled to them.

4 (7) With respect to claims, do all of the following:

5 (9) File with the register of deeds of any county in which the ward possesses  
6 real property a sworn and notarized statement that specifies the legal description of  
7 the property, the date of adjudication of incompetency of the ward, and the name,  
8 address, and telephone number of the ward's guardian and any surety on the  
9 guardian's bond.

is determined to be an incompetent

(that)

an

\*\*\*\*NOTE: It was unclear to me what is the intent of the proposed language for this provision—is it to somehow provide notice to anyone who would seek to transfer title of the real property to another that the owner is incompetent? Or is it to provide notice to the tax assessor of that fact? (If it is the latter, the "register of deeds of any county" should be replaced with the "assessor of any taxation district"). Is there some other intent? Please review this provision carefully; I tried to tailor it by using terms relevant to Wisconsin law.

10 (10) Perform any other duty required by the court.

\*\*\*\*NOTE: Proposed language was to require performance of "all other duties required by law"; I didn't draft that, because it is unnecessary, but I thought that there might be additional duties imposed by a court upon the guardian. Okay?

11 **54.20 Powers of guardian of the estate. (1) STANDARD.**

\*\*\*\*NOTE: I did not draft the following material in your proposal: "Consistent with the functional limitations of the ward, the ward's understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to manage property and financial affairs, and the ward's personal wishes, preferences and desires with regard to managing the activities of daily living, and the least restrictive form of intervention, the court may authorize the guardian to exercise those powers necessary and sufficient to manage the property and financial affairs of the ward; to provide for the maintenance and support of the ward, and those persons depending upon the ward; to transfer a part of the ward's assets to or for the benefit of another person on the ground that the ward would have made the transfer if he or she had the capacity to act. Transfers made pursuant to this section may be in any form that the ward could have employed if he or she had the requisite capacity, except in the form of a will or codicil. Except as to the powers enumerated in subs. \*\*\*\* below, all such powers may be exercised by the guardian without approval of the court." My reasons for not drafting this material are the following: (1) The majority of these powers are redundant to the duties of the guardian of the estate under s. 54.19 (2) and (4) of this draft and to s. 54.22 of the draft; if you want "except by will or codicil" to be added as a qualifier to s. 54.19 (2), please let me know. (2) The proposed language is internally conflicting, in that it indicates both that "the court may authorize" the powers and that the "powers may be exercised by the guardian



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without approval of the court.” (3) I’m not sure what “the ward’s understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to manage property and financial affairs” means or how it would be applied: are you contemplating some form of informed consent between the guardian and the ward here? → What if, in the face of a court finding of incompetency, the ward indicates that the harm he or she may suffer outweighs the benefit? (4) How would the ward’s intent (to “have made the transfer if he or she had the capacity to act”) be evidenced? (5) What if the ward’s “personal wishes, preferences and desires with regard to managing the activities of daily living, and the least restrictive form of intervention” are naive or delusional and are inconsistent with available housing or the practical judgment of the guardian, or of the court, for that matter?

1           (2) POWERS REQUIRING COURT APPROVAL. The guardian of the estate may do any  
2 of the following with respect to the ward only with prior written approval of the court,  
3 including, if applicable, approval of a petition specified under s. 54.21:

4           (a) Make gifts, under the terms, including the frequency, amount, and specific  
5 donees, specified by the court.

      \*\*\*\*NOTE: Please review s. 54.21 (5) (d) and this provision; have I captured the  
intent of the memo? ✓

6           (c) Establish a trust as specified under 42 USC 1396p (d) (4) (A), (B), or (C) and  
7 transfer assets into the trust.

      \*\*\*\*NOTE: The federal law cited specifies several kinds of trusts to which the  
provisions of 42 USC 1396d (d) do not apply; is that your intent? ✓

8           (d) Purchase an annuity or insurance contract and exercise rights to elect  
9 options or change beneficiaries under insurance and annuity policies and to  
10 surrender the policies for their cash value.

11          (e) Exercise any elective rights that accrue to the ward as the result of the death  
12 of the ward’s spouse or parent.

13          (f) Release or disclaim any interest of the ward that is received by will, intestate  
14 succession, nontestamentary transfer at death, or transfer.

      \*\*\*\*NOTE: Please review this language carefully. Have I captured your intent? ✓

15          (h) Provide support for an individual whom the ward is not legally obligated  
16 to support.

1 (i) Convey or release a contingent or expectation interest in property, including  
2 a marital property right and any right of survivorship that is incidental to a joint  
3 tenancy or survivorship marital property.

\*\*\*\*NOTE: I used the term "expectation interest", rather than the proposed term  
"expectant interest", because Black's Law Dictionary lists the former but not the latter.  
Also, because Black's distinguishes between a contingent interest and an expectation  
interest, I differentiated between the two and used "or", rather than the proposed "and".

4 (j) Compound and discharge all debts and claims for damage due the ward.

\*\*\*\*NOTE: Are these debts of the ward or debts payable to the ward? If the former,  
the language is redundant to s. 54.19 (7) (a) (renumbered from s. 880.22 (1)). ✓

5 (3) POWERS THAT DO NOT REQUIRE COURT APPROVAL. The guardian of the estate  
6 may do any of the following without first receiving the court's approval:

7 (a) Provide support for an individual whom the ward is legally obligated to  
8 support. ✓ from the ward's estate ✓

9 (b) Enter into a contract, other than a contract that is specified in sub. (2) or  
10 that is otherwise prohibited under this chapter.

11 (c) Exercise options of the ward to purchase securities or other property.

12 (d) Authorize access to or release of the ward's confidential records.

\*\*\*\*NOTE: Are there confidential records of the ward that this provision would cover  
that are in addition to mental health court and treatment records under s. 51.30 (5) (b) ✓  
1., stats., and patient health care records under s. 146.82, stats.? If not, perhaps this  
✓ paragraph should specify only those types of records. ✓

13 (e) Apply for public and private benefits.

\*\*\*\*NOTE: I did not draft the proposed language, "Take such other actions as may  
be reasonable or appropriate to carry out the duties of the guardian of the estate except  
for those actions specified in sub. a." This seems redundant to the actions specified in s.  
50.19 (10). ✓

14 (f) Take any other action, except an action specified under sub. (2), that is  
15 reasonable or appropriate to the duties of the guardian of the estate. ✓

1           **54.21 Petition for authority to transfer ward's assets to another. (1)**

2           In this section, "will or similar instrument" includes a revocable or irrevocable trust,  
3           a durable power of attorney, or a marital property agreement.

          \*\*\*\*NOTE: The marital property agreement language comports with the memo. ✓

4           **(2)** A guardian or other person who seeks authority to exercise a power that  
5           includes the transfer of any of a ward's assets to or for the benefit of any person shall  
6           submit to the court a petition that specifies all of the following:

7           (a) Whether a proceeding by anyone seeking this authority with respect to the  
8           ward's property was previously commenced and, if so, a description of the nature of  
9           the proceeding and the disposition made of it. ✓

10          (b) The amount and nature of the ward's financial obligations, including  
11          moneys currently and prospectively required to provide for the ward's maintenance,  
12          support, and well-being and to provide for others dependent upon the ward for  
13          support, regardless of whether the ward is legally obligated to provide the support.  
14          If the petitioner has access to a copy of a court order or written agreement that  
15          specifies support obligations of the ward, the petitioner shall attach the copy to the  
16          petition.

17          (c) The property of the ward that is the subject of the petition, the proposed  
18          disposition of the property, and the reasons for the disposition.

19          (d) If they may be ascertained, the wishes of the ward. ✓

20          (e) As specified in sub. (3), whether the ward has previously executed a will or  
21          similar instrument.

22          (f) A description of any significant gifts or patterns of gifts that the ward has  
23          made.

1 (g) The names, post-office addresses and relationships to the ward of all of the  
2 following:

3 1. Any presumptive adult heirs of the ward.

4 2. If the ward has previously executed a will or similar instrument, the named  
5 or described beneficiaries under the most recent will or similar instrument executed  
6 by the ward.

7 (3) (a) If a ward has previously executed a will or similar instrument and the  
8 petitioner is able, with reasonable diligence, to obtain a copy, the petitioner shall  
9 provide the copy to the court, together with a statement that specifies all of the  
10 following:

\*\*\*\*NOTE: The proposed language refers to the "petitioner or guardian"; however,  
under sub. (2) (intro.), a guardian seeking the authority would also be the petitioner;  
hence, I have used just the term "petitioner."

\*\*\*\*NOTE: I'm not sure what is meant by the proposed language concerning  
"appropriate safeguards for confidentiality." Are these safeguards that the person  
obtaining the copy is supposed to take, or the court? How would this be done? I can  
require that the court treat the copy as confidential; is that what you intended?

11 1. The manner in which the copy was secured.

12 2. The manner in which the terms of the will or similar instrument became  
13 known to the petitioner.

14 3. The basis for the petitioner's belief that the copy is of the ward's most recently  
15 executed will or similar instrument.

16 (b) If the petitioner is unable to obtain a copy of the most recently executed will  
17 or similar instrument or is unable to determine if the ward has previously executed  
18 a will or similar instrument, the petitioner shall provide a statement to the court that  
19 specifies the efforts that were made by the petitioner to obtain a copy or ascertain the  
20 information.

## SECTION 19

1 (c) If a copy of the most recently executed will or similar instrument is not  
 2 otherwise available, the court may order the person who has the original will or  
 3 similar instrument to provide a photocopy to the court for in camera examination.  
 4 The court may provide the photocopy to the parties to the proceeding unless the court  
 5 finds that doing so is contrary to the ward's best interests.

6 (4) The petitioner shall serve notice upon all of the following, together with a  
 7 copy of the petition, stating that the petitioner will move the court, at a time and  
 8 place named in the notice, for the order described in the petition:

\*\*\*\*NOTE: Is this language okay? I have modeled it after s. 804.02 (1) (b), stats. ✓

9 (a) The persons entitled to notice under sub. \*\*\*.

\*\*\*\*NOTE: To whom does this language refer?

10 (b) Unless the court dispenses with notice under this paragraph, the persons  
 11 specified in sub. (2) (g), if known to the petitioner.

12 (c) The county corporation counsel, if the county has an interest in the matter.

\*\*\*\*NOTE: This language comports with the memo. By the way, this means that the  
 petitioner determines whether the county has an interest and gets notice. Is that okay?

13 (5) The court shall consider all of the following in reviewing the petition:

14 (a) The wishes of the ward, if known.

15 (b) Whether the duration of the ward's disability is likely to be sufficiently brief  
 16 so as to justify dismissal of the proceedings in anticipation of the ward's recovered  
 17 ability to decide whether, and to whom, to transfer his or her assets.

18 (c) Whether, after the proposed transfer is made, the needs of the ward, his or  
 19 her spouse, if any, and any other persons legally dependent upon the ward for support  
 20 are able to be met from the remainder of the ward's assets without resort to public  
 21 assistance and that making the proposed transfer does not render the ward ineligible  
 22 under s. 49.453 (2).

Whether

Would

subsection

\*\*\*\*NOTE: Does this language do what you intend?

1 (d) Except for gifting that is authorized under s. 54.20 (2) (a), whether the  
2 donees or beneficiaries under the proposed disposition are reasonably expected  
3 objects of the ward's generosity and whether the proposed disposition is consistent  
4 with any ascertained wishes of the ward or known estate plan or pattern of lifetime  
5 gifts that he or she has made. ✓

\*\*\*\*NOTE: It seemed to me that "reasonably expected objects of the ward's  
generosity" was clearer language than "natural objects of the bounty of the ward."

\*\*\*\*NOTE: Please review s. 54.20 2) (a) and this provision; have I captured the intent  
of the memo?

6 (e) Whether the proposed disposition will produce tax savings that will  
7 significantly benefit the ward, his or her dependents, or other persons for whom the  
8 ward would be concerned.

9 (f) Any other factors that the court determines are relevant.

\*\*\*\*NOTE: Wouldn't you also want the court to be required to consider the factors  
and information specified under subs. (2) (a) to (g) and (3)?

10 (6) The court may grant the petition under sub. (2) if the court finds and records  
11 all of the following:

12 (a) That the ward lacks the requisite mental capacity to perform the act for  
13 which approval is sought and is not likely to regain that capacity within a reasonable  
14 period of time. ✓

15 (b) That a competent individual in the position of the ward would likely perform  
16 the act under the same circumstances. ✓

17 (c) That either of the following applies to the ward:

18 1. Before the ward lacked the requisite mental capacity to perform the act for  
19 which approval is sought, he or she did not manifest intent that is inconsistent with  
20 the act. ✓

1           2. If, before the ward lacked the requisite mental capacity to perform the act  
2 for which approval is sought he or she manifested intent that is inconsistent with the  
3 act, it is likely that the ward would have changed his or her intent under the  
4 circumstances that exist at the time of the filing of the petition.

5           (7) Nothing in this section requires a guardian to file a petition under this  
6 section and a guardian is not liable or accountable to any person for having failed to  
7 file a petition under this section. ✓

\*\*\*\*NOTE: I don't really understand sub. (7). Sub. (2) indicates that a guardian must  
file a petition if he or she proposes to make any transfers covered under the section. What  
is the intent here? ✓

8           **54.22 (title) Petition for authority to sell, mortgage, pledge, lease, or**  
9 **exchange ward's property.**

10          54.25 (1) DUTIES. A guardian of the person shall do all of the following:

11           (b) 1. Regular inspection in person of the ward's condition, surroundings, and  
12 treatment.

13           2. Examination of the ward's patient health care records and treatment  
14 records.

15           3. Attendance at and participation in staff meetings of any facility in which the  
16 ward resides or is a patient, if the meeting includes a discussion of the ward's  
17 treatment and care.

18           4. Inquiry into the risks and benefits of, and alternatives to, treatment for the  
19 ward, particularly if drastic or restrictive treatment is proposed. ✓

\*\*\*\*NOTE: I did not draft the following material proposed: "(c) A guardian of the  
person may bind the ward or the ward's property, to carry out the powers and duties set  
forth in subs. (1) and (2) of this section." My reasons for not drafting this provision are  
the following: (1) Although the provision is stated as a power, it is included in the duties  
of the guardian of the person; as a power, it overlaps or conflicts with the powers and  
duties of the guardian of the estate. (2) It is unclear to me what the term "bind the ward"  
means—are you referring to entering into contracts that bind the ward to some action  
or financial commitment? Problems with this language aside, it does raise an interesting  
issue—if, for instance, the guardian of the person decides on a particular personal

caregiver or type of treatment for the ward, must the guardian of the person work directly in concert with the guardian of the estate to secure a contract for provision of that care or treatment? Are there actually instances in which the guardian of the person differs from the guardian of the estate? If so, in the case of disagreement, who trumps?

1           (2) POWERS. Consistent with the functional limitations of the ward, the court  
2 may authorize the guardian of the estate to do all of the following:

\*\*\*\*NOTE: I did not draft the following material proposed: “[Consistent with the functional limitations of the ward], the ward’s understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to provide for personal needs, and the ward’s personal wishes, preferences and desires with regard to managing the activities of daily living as defined in sub. \*\*\*\*, and the least restrictive form of intervention, and subject to the limitations contained in the Determination and Order Appointing Guardian . . . .” My reasons for not drafting this material are the following: (1) I’m not sure what “the ward’s understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to provide for personal needs” means or how it would be applied: are you contemplating some form of informed consent between the guardian of the person and the ward? (2) What if the ward’s “personal wishes, preferences and desires with regard to managing the activities of daily living . . . and the least restrictive form of intervention” are naive or delusional or inconsistent with the practical judgment of the guardian, or of the court? (3) Since the proposed language requires that the court authorize the guardian of the person to exercise the powers, it is unnecessary to indicate that they are subject to the limitations contained in the court order of appointment. (4) Although I have drafted it (see above), the language requiring that the court authorize the guardian of the estate to perform the powers (that are specified below as s. 54.25 (2) (a) to (i)) seems to require that the court specifically authorize the actions in its order—wouldn’t it be simpler to grant the guardian of the person these powers, as is done under s. 54.20 (3), and add a last power that would be something like “(j) Other powers specifically authorized by the court.”

- 3           (a) Make decisions concerning the ward’s personal caregivers.
- 4           (b) Make decisions concerning the ward’s social environment and other aspects
- 5 of the ward’s social life, including marriage.

\*\*\*\*NOTE: Does this provision mean that the guardian of the person must consent to any marriage of the ward and therefore can block a marriage? What about divorce?

- 6           (c) Restrict travel by the ward.
- 7           (d) Authorize the ward to obtain, retain, or renew a license, permit,
- 8 registration, or certification for which the ward is determined to be qualified, or
- 9 restrict the ward from obtaining, retaining, or renewing such a license, permit,
- 10 registration, or certification.
- 11           (e) Authorize access to or release of the ward’s confidential records.

d

\*\*\*\*NOTE: This power is exactly the same as that specified for the guardian of the estate under s. 54.20 (3) (b) (please see \*\*\*\*NOTE under that paragraph). Who trumps if the guardian of the estate and the guardian of the person conflict on this point? ✓

- 1 (f) Make decisions concerning the ward's education.
- 2 (g) Apply for public and private benefits if a guardian of the estate has not been
- 3 appointed and if no other person is authorized to so apply.
- 4 (h) Make decisions on consenting to health care for the ward.

\*\*\*\*NOTE: This language is in accord with the memo.

- 5 (i) Select the ward's place of residence, including admitting the ward to a
- 6 nursing home or to a community-based residential facility under s. 54.50 (2) (b). In
- 7 making the selection, the guardian of the person may consider all of the following:

- 8 1. The existence and availability of social services and the ward's family and
- 9 friends in the community of the proposed residence.
- 10 2. The ward's care, comfort, maintenance, and, if appropriate, rehabilitation.
- 11 3. The needs of any individuals with whom the ward resides.

\*\*\*\*NOTE: Shouldn't the guardian of the person be required, rather than authorized, to consider factors 1. to 3.? ✓

- 12 (j) Revoke the ward's durable power of attorney or power of attorney for health
- 13 care. ✓

\*\*\*\*NOTE: Since this provision creates an additional power for a guardian, if authorized by the court, I drafted it here, rather than under s. 54.46 (3), as proposed. Should any criteria or other limitation accompany this power?

SUBCHAPTER IV

PROCEDURES

SECTION 20. 54.30 (title) of the statutes is created to read:

54.30 (title) Jurisdiction and venue.

18 54.30 (3) (b) 1. A person shall file a petition for change of venue in the county  
19 in which venue for the guardianship currently lies.

\*\*\*\* NOTE: Should notice also be given to the corporation counsel of the county to which change of venue is sought?

1 2. The person filing the petition under subd. 1. shall give notice to the  
2 corporation counsels of the county in which venue for the guardianship currently lies  
3 and to the register in probate for the county to which change of venue is sought.

4 3. If no objection to the change of venue is made within 15 days after the date  
5 on which notice is given under subd. 1., the court of the county in which venue for  
6 the guardianship currently lies may enter an order changing venue. If objection to  
7 the change of venue is made within 15 days after the date on which notice is given  
8 under subd. 1., the court of the county in which venue for the guardianship currently  
9 lies shall set a date for a hearing within 7 days after the objection is made and shall  
10 give notice of the hearing to the corporation counsel of that county and to the  
11 corporation counsel and register in probate of the county to which change of venue  
12 is sought.

\*\*\*\*NOTE: I have tried to give active voice to s. 54.30 (3) (b) 1. to 3. Please review.

~~SECTION 21. 54.32 (title) of the statutes is created to read:~~

~~54.32 (title) Liability for fees.~~

\*\*\*\*NOTE: DAK come back to this on p. 25 of material. See 880.33 (2) (a) 3.

Plain

15 54.34 (1) (k) Whether the proposed ward is a recipient of a public benefit,  
16 including medical assistance or a benefit under s. 46.27.

17 (L) The agent under any current, valid power of attorney for health care or  
18 durable power of attorney that the proposed ward has executed.

19 (m) Whether the petitioner is requesting a full or limited guardianship.

\*\*\*\*NOTE: If the petitioner is requesting a limited guardianship, shouldn't the  
petitioner be required to list the particulars of the limitations?

20 (n) Whether the proposed ward, if married, has children who are not children  
21 of the current marriage.

~~54.36 (title) Examination of proposed ward.~~

1           **54.38 Notice. (1) FORM AND DELIVERY OF NOTICE.** A notice shall be in writing  
2 and shall include the names of all persons who are petitioning for guardianship. A  
3 copy of the petition shall be attached to the notice. Unless otherwise provided, notice  
4 may be delivered in person, by certified mail with return receipt requested, or by  
5 facsimile transmission. Notice is considered to be given by proof of personal delivery  
6 or by proof that the notice was mailed to the last-known address of the recipient or  
7 was sent by facsimile transmission to the last-known facsimile transmission  
8 number of the recipient. ✓

9           **(2) (b)** Personally or by mail at least 10 days before the hearing, to all of the  
10 following: *time set for* ✓

- 11           1. The proposed ward's counsel, if any. ✓
- 12           2. The proposed ward's guardian ad litem. ✓
- 13           3. Any presumptive adult heirs of the proposed ward. ✓
- 14           4. Any other interested persons, unless specifically waived by the court. ✓
- 15           5. The agent under any durable power of attorney or power of attorney for  
16 health care of the ward. ✓
- 17           6. Any person who has legal or physical custody of the proposed ward. ✓
- 18           7. Any public or private agency, charity, or foundation from which the proposed  
19 ward is receiving aid or assistance. ✓
- 20           8. Any person that the court requires. ✓

21           **(3) (title) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR.**

22           **54.40 (4) (b)** Interview the proposed guardian, the proposed standby guardian,  
23 if any, and any other person seeking appointment as guardian and report to the court  
24 concerning the fitness of each individual interviewed to serve as guardian and  
25 concerning the report under s. 54.15 (7). ✓

\*\*\*\*NOTE: Have I handled this provision as the memo intends? It was not clear to me that it had been agreed to employ the criminal history and patient abuse record search under s. 50.065, stats. for s. 54.15 (7) or here.

1 (f) If the proposed ward requests representation by counsel, inform the court  
2 and the petitioner or the petitioner's counsel, if any.

3 (g) Attend all court proceedings related to the guardianship.

At least 72 hours before the hearing, hearing

4 **54.42 Rights of proposed ward. (1) RIGHT TO COUNSEL.** (a) 1. The proposed  
5 ward requests counsel.

6 2. The guardian ad litem or another person states to the court that the proposed  
7 ward is opposed to the guardianship petition.

\*\*\*\*NOTE: I added "states to the court," because it is otherwise unclear how a statement of opposition triggers action appointing counsel. Should "and the court so appoints" also be added?

8 3. The court determines that the interests of justice require counsel for the  
9 proposed ward.

10 (b) Any attorney ~~appointed~~ <sup>employed/obtained</sup> under par. (a) or (c) shall be a zealous advocate for  
11 the expressed wishes of the proposed ward. <sup>appointed under par.</sup>

\*\*\*\*NOTE: I did not include the language requiring maintenance of a "normal client-lawyer relationship with the client"—the standard for such a relationship should be the State Bar Code of Ethics and need not be required by statute. *In general, is the requirement for zealous advocacy meaningful, i.e., do you intend that an attorney be prosecuted for lack of zeal?*

12 (2) RIGHT TO JURY TRIAL. The proposed ward has the right to a trial by a jury  
13 if demanded by the proposed ward, his or her attorney, or the guardian ad litem,  
14 except that the right is waived unless demanded at least 48 hours before the time set  
15 for the hearing. The number of jurors for such a trial is determined under s. 756.06

16 (2) (b). The proposed ward, his or her attorney, or the guardian ad litem has the right  
17 to present and cross-examine witnesses, including ~~the~~ physician or ~~licensed~~  
18 psychologist who reports to the court concerning the proposed ward.

19 (3) <sup>(title)</sup> RIGHT TO INDEPENDENT MEDICAL EXAMINATION. <sup>any</sup>

1 (5) RIGHT TO BE PRESENT AT HEARING. The proposed ward has the right to be  
2 present at any hearing regarding the guardianship. ✓

\*\*\*NOTE: This provision is in accord with the memo.

3 (6) RIGHT TO HEARING IN ACCESSIBLE LOCATION. The proposed ward has the right  
4 to have <sup>any</sup> the hearing conducted in a location that is accessible to the proposed ward.

\*\*\*NOTE: This provision is in accord with the memo. *regarding the guardianship*

5 **54.44 Hearing. (1) TIME OF HEARING; PROVISION OF REPORTS.** A petition for  
6 guardianship shall be heard within 90 days after it is filed. The guardian ad litem  
7 and attorney for the proposed ward shall be provided with a copy of the report of the  
8 examining physician or ~~licensed~~ psychologist at least 96 hours before the time of the  
9 hearing. *under s. 54.36* ✓

\*\*\*NOTE: I numbered this provision sub. (1), instead of sub. (5), because it fits better chronologically. Because this provision exists, it is unnecessary to repeat the 60 day requirement under s. 54.38 (2) (intro.) (renumbered from s. 880.08 (intro.)), and therefore I removed it from that provision. ✓

\*\*\*NOTE: Your proposed material does not affect s. 880.075, stats. Do you intend that I repeal it? ✓

\*\*\*NOTE: The change to 90 days accords with the memo. ✓

10 (2) STANDARD OF PROOF. Any determination by the court as to whether the  
11 proposed ward is <sup>an</sup> incompetent shall be by clear and convincing evidence. ✓

12 (3) PRESENCE OF PROPOSED GUARDIAN. The proposed guardian shall be physically  
13 present at the hearing unless the court excuses the proposed guardian's attendance  
14 or, for good cause shown, permits attendance by telephone.

\*\*\*NOTE: The language referring to the "proposed" guardian is in accord with the memo. Should this provision also be applied to any proposed standby guardian? ✓

15 (4) PRESENCE OF PROPOSED WARD. The petitioner shall ensure that the proposed  
16 ward attends the hearing unless the attendance is waived by the guardian ad litem.  
17 In determining whether to waive attendance by the proposed ward, the guardian ad  
18 litem shall consider the effect of the proposed ward's attendance on his or her

\*\*\*\* NOTE: Because of the changed language of s. 54.36 (renumbered from s. 880.33 (1)), should the reference to "report of the <sup>examining</sup> physician or psychologist" be changed to "comprehensive evaluation #"? *?*

\*\*\* NOTE: Could there be circumstances under which it would be impossible for the petitioner to ensure attendance?

1 physical or psychological health in relation to the importance of the proceeding and  
2 the proposed ward's expressed desires. If the proposed ward is unable to attend the  
3 hearing because of residency in a nursing home or other facility, physical  
4 inaccessibility, or a lack of transportation and if the proposed ward, guardian ad  
5 litem, advocate counsel, or other interested person so requests, the court shall hold  
6 the hearing in a place where the proposed ward may attend.

\*\*\*NOTE: The last sentence proposed for this subsection is "If the proposed ward is a resident of a nursing home or other facility and is unable personally to attend the hearing, the court shall hold the hearing at the nursing home or other facility if requested by the proposed ward, the proposed ward's counsel, or the guardian ad litem." I omitted this, because it appears to be redundant to the last sentence, if "residency in a nursing home or other facility" is added.

\*\*\*NOTE: The language referring to "proposed ward" is in accord with the memo.

(5) (title) PRIVACY OF HEARING.

days

8 (6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed  
9 guardian is inappropriate, the court shall request that a petition proposing a suitable  
10 guardian be filed, shall set a date for a hearing to be held within 30 days, and shall  
11 require the guardian ad litem to investigate the suitability of a new proposed  
12 guardian.

\*\*\*NOTE: Your proposal would have placed this provision in s. 54.17 (7), but it seems to be procedural. I am not sure, however, if it should be here or in s. 54.46.

SECTION 22. 54.46 of the statutes is created to read:

14 54.46 Disposition of petition. After the hearing under s. 54.44, the court  
15 shall dispose of the case as follows: (in one of the following ways)

16 (1) DISMISSAL OF THE PETITION. If the proposed ward is found not to be  
17 incompetent, the court shall dismiss the petition. The court may also consider an  
18 application by the proposed ward for the appointment of a conservator under s. 54.76.

19 (2) PROTECTIVE ARRANGEMENT; TRANSACTIONS; APPOINTMENT OF SPECIAL GUARDIAN.

20 (a) If a proposed ward is found to be a minor or to be incompetent, the court may,

1 without appointing a guardian, do any of the following if the court first considers the  
2 interests of dependents and creditors of the ward and whether a guardianship is  
3 necessary, given the ward's functional level:

4 1. Authorize, direct, or ratify any transaction or series of transactions  
5 necessary to achieve any security, service, or care arrangement that meets the  
6 foreseeable needs of the ward. ✓

7 2. Authorize, direct, or ratify a contract, trust, or other transaction related to  
8 the ward's property or financial affairs if necessary as a means of providing for the  
9 personal needs of or property management for the ward. ✓

10 (b) The court may appoint a special guardian to assist in the accomplishment  
11 of any protective arrangement or transaction under par. (a). ✓ The special guardian  
12 has any authority conferred by the order of appointment, shall report to the court on  
13 all actions taken under the order of appointment, and shall serve until discharged  
14 by order of the court. The court may approve a reasonable compensation for the  
15 special guardian, except that, if the court finds that the special guardian has failed  
16 to discharge his or her duties satisfactorily, the court may deny or reduce the amount  
17 of compensation or remove the special guardian. ✓

✓ \*\*\*\*NOTE: Should the compensation language be under subch. V, around s. 54.72  
or 54.74, instead of here? ✓

18 (3) APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be  
19 <sup>an</sup> incompetent, <sup>or a minor</sup> the court may enter a determination and order appointing a guardian  
20 that specifies any powers of the guardian that require court approval, as provided  
21 in ss. 54.20 (2) and 54.25 (2), and may provide for any of the following:

\*\*\* NOTE: I have added "or a minor" after  
"incompetent"; correct?

I

1 (a) Co-guardians. The court may appoint co-guardians of the person or  
2 co-guardians of the estate, subject to any conditions that the court imposes. A  
3 co-guardian's individual decision is binding unless otherwise ordered by the court.

\*\*\*\*NOTE: What if ~~each~~ <sup>one</sup> co-guardian's individual decision is in conflict with the other?

\*\*\*\*NOTE: Note that I did not here include a power of the guardian to revoke a durable power of attorney, as proposed. Instead, I included that power under s. 54.25 (2) (j). ✓

\*\*\*\*NOTE: I am not <sup>t</sup> sure what the decision on this language is under the memo.

I

4 (c) Durable power of attorney. If the ward has executed a durable power of  
5 attorney, the court may, for good cause shown, revoke the durable power of attorney  
6 or limit the authority of the agent under the terms of the durable power of attorney.  
7 The ward's durable power of attorney remains in effect unless so revoked or limited.

I

8 (d) County employee as guardian or conservator. The court may designate an  
9 employee of a county home, county hospital, or county mental hospital to act, if  
10 appointed by the court, as guardian of the estate of one or more wards or as  
11 conservator for the estate of one or more individuals who so apply, if the ward or  
12 individual is a resident of the county home or a patient of the county hospital or  
13 county mental hospital. The term of such a guardian or conservator shall terminate,  
14 after approval of the employee's accounts by the court, if the employee resigns as  
15 guardian or conservator or is removed by the court.

✓ \*\*\*\*NOTE: This provision is crafted from s/880.13 (3); the remainder of that subsection is renumbered and amended as s. 54.46 (5) (c). Please review. I had no idea what a "county institutional employee" is—is what I have drafted accurate?

54.48 (title) Protective placement and protective services.

16 **54.50 Limited term guardianships.** (1) (a) *Standard.* If it is demonstrated  
17 to the court that a proposed ward's particular situation requires the immediate  
18

1 appointment of a temporary guardian of the person or estate, the court may appoint  
2 a temporary guardian under the requirements of this section.

\*\*\*\*NOTE: The terms “proposed ward” and “immediate appointment” are in accord with the memo.

3 (c) *Procedures for appointment.* All of the following procedures apply to the  
4 appointment of a temporary guardian:

5 1. Any person may petition for the appointment of a temporary guardian for  
6 an individual. The petition shall contain the information required under s. 54.34 (1),  
7 shall specify reasons for the appointment of a temporary guardian and the powers  
8 requested for the temporary guardian, and shall include a petition for appointment  
9 of a guardian of the person or estate or state why such a guardianship is not sought.

10 2. The petitioner shall serve the petition and order for hearing on the proposed  
11 ward before the hearing or as soon as practicable after the hearing, but not later than  
12 3 calendar days after the hearing.

13 3. The court shall appoint a guardian ad litem, who shall attempt to meet with  
14 the proposed ward before the hearing or as soon as is practicable after the hearing,  
15 but not later than 7 calendar days after the hearing. The guardian ad litem shall  
16 report to the court on the advisability of the temporary guardianship at the hearing  
17 or not later than 10 calendar days after the hearing.

\*\*\*\*NOTE: Your proposed material makes no mention of s. 880.15 (1s) (notice of petition, including the right to counsel and the right to petition for reconsideration or modification of the temporary guardianship). I have repealed this provision, but am concerned about possible due process issues that may arise, particularly because s. 54.50 (1) (c) 2. permits the petition to be served on the proposed ward *after* the hearing. ✓

\*\*\*\*NOTE: Your proposed material also makes no mention of s. 880.15 (2), which requires a bond from the temporary guardian. If you had intended that the provisions of s. 54.46 (5) (renumbered from s. 880.13) apply, please let me know. Or had you intended that no bond requirement exist? I have repealed s. 880.15 (2) for now. ✓

18 4. The court shall hold a hearing on the temporary guardianship no earlier than  
19 48 hours after the filing of the petition unless good cause is shown. At the hearing,

1 the petitioner shall provide a report or testimony from a physician or ~~licensed~~  
 2 psychologist that indicates that there is a reasonable likelihood that the proposed  
 3 ward is <sup>an</sup> incompetent. The guardian ad litem shall attend the hearing in person or  
 4 by telephone or, instead, ~~may~~ <sup>shall</sup> provide to the court a written report concerning the  
 5 proposed ward for review at the hearing.

\*\*\*\*NOTE: Please review my version of the last sentence, which differs from that in your proposal. Have I captured your intent?

\*\*\*\*NOTE: The language permitting testimony from a physician or psychologist is in accord with the memo.

6 5. If the court appoints a temporary guardian, the court shall so notify the ward  
 7 not later than 3 calendar days after the hearing. If the ward, his or her counsel, the  
 8 guardian ad litem, or an interested party requests, the court shall order a rehearing  
 9 on the issue of appointment of the temporary guardian within 10 calendar days after  
 10 the request. If a rehearing is requested, the temporary guardian may take no action  
 11 to expend the ward's assets without approval by the court.

\*\*\*\*NOTE: Your proposal does not specify which party is to provide notice to the ward, so I have required the court to do so. Does that meet your intent?

\*\*\*\*NOTE: Your proposal does not mention s. 880.15 (3) (requiring powers and duties of the temporary guardian to cease at termination of the temporary guardianship and requiring a report and accounting by the temporary guardian). Do you intend that this provision apply? I have repealed s. 880.15 (3) for now. ✓

12 (2) (h) If the allegedly incapacitated individual, his or her guardian ad litem,  
 13 or any interested person objects to the admission, the individual, guardian ad litem ✓  
 14 or person may request the court in which the guardianship petition is pending to hold  
 15 a hearing on whether the individual is incapacitated or whether the admission shall  
 16 continue before the guardianship hearing. If requested, the court shall hold such a  
 17 hearing within 7 calendar days after receipt of the request.

\*\*\*\*NOTE: What disposition should the court make if it decides that the person isn't incapacitated or the admission should not continue? ✓

\*\*\*\*NOTE: The change in this paragraph to 7 calendar days is in accord with the memo. ✓

\*\*\*\*NOTE: The memo states that s. 50.06, stats., should also be amended to be parallel to this change. I am confused by this; the bill rennumbers all of s. 50.06 into ch. 54. What parallel change would this be?

SUBCHAPTER V

POST-APPOINTMENT MATTERS

~~SECTION 23. 54.60 (1) (title) of the statutes is created to read:~~

~~54.60 (1) (title) INVENTORY REQUIRED.~~

<sup>no B</sup>  
~~54.60~~ (2) CONTENTS OF INVENTORY. The inventory shall provide all of the following information with respect to each asset:

(a) How the asset is held or titled.

(b) The name and relationship to the ward of any co-owner.

(c) The marital property classification of the property and, for any property that is marital property, the spouse who has management and control rights with respect to the property.

\*\*\*\*NOTE: DAK: Is par (c) applicable only if the ward is married, or is everything classified marital property? Ask PJK.

(3) TIME FOR FILING. The guardian of the estate shall file the initial inventory within 60 days after appointment, unless the court extends or reduces the time.

(4) NOTICE OF INVENTORY. The court shall specify the persons to whom the guardian shall provide copies of the inventory.

(5) FEE. The guardian of the estate shall pay the fee specified in s. 814.66 (1) (b) 2. at the time the inventory is filed. ✓

(6) APPRAISAL. The court may order that the guardian of the estate appraise all or any part of the ward's estate.

\*\*\*\*NOTE: I worded this a bit differently than does your proposal; it is unnecessary to require by statute that the guardian do what a court orders.

54.62 (title) Accounts.

1 (3) SMALL ESTATES. (a) If a ward's estate does not exceed \$5,000 in value, the  
2 guardian need not file an account under sub. (1) unless otherwise ordered to do so  
3 by the court. For the purposes of this paragraph, the value of the ward's estate does  
4 not include the ward's income, any burial trust possessed by the ward, or any term  
5 or other life insurance policy that is irrevocably assigned to pay for the disposition  
6 of the ward's remains at death.

\*\*\*\*NOTE: I wasn't sure if "term life insurance" was modified by "irrevocably  
assigned. . .". Have I drafted this as you intended?

7 (b) If the ward's estate, as calculated under par. (a), increases above \$5,000 in  
8 value, the guardian shall so notify the court, which shall determine if an annual  
9 account under sub. (1) or a final account under s. 54.66 is required.

10 (4) ANNUAL ACCOUNTS OF MARRIED WARDS. (a) For a married ward, the court may  
11 waive filing of an annual account under sub. (1) or permit the filing of a modified  
12 annual account, which shall be signed by the ward's guardian and spouse and shall  
13 consist of all of the following:

14 1. Total assets of the ward, as determined under ch. 766, on January 1 of the  
15 year in question.

16 2. Income in the name of the ward, without regard to ch 766, and the ward's  
17 ~~shared~~ joint income.

18 3. Expenses incurred on behalf of the ward, including the ward's proportionate  
19 share of household expenses if the ward and the ward's spouse reside in the same  
20 household, without regard to ch. 766.

21 4. Total assets of the ward, as determined under ch. 766, on December 31 of the  
22 year in question.

\*\*\*\*NOTE: I may have questions about this subsection after consulting with the  
Domestic Relations drafter, who is presently unavailable.

step: ~~1/2/3/4/5~~  
as ~~1/2/3/4/5~~

par. (a) ✓

1 (b) The court shall provide notice of the waiver under sub. (1) to any adult child  
2 of the ward.

3 **54.63 Expansion of order of guardianship; procedure.** (1) If the  
4 guardian or another interested person submits to the court a written statement with  
5 relevant accompanying support requesting the removal of rights from the ward and  
6 transfer to the guardian of powers in addition to those specified in the order of  
7 appointment of the guardian, based on an expansion of the ward's incapacity, the  
8 court shall do all of the following:

9 (a) Appoint a guardian ad litem for the ward. ✓

services as  
a

10 (b) Provide notice to the county department of social services or human services  
11 if the ward is protectively placed or receives long-term support/public benefit. ✓

12 (2) (a) If, after 10 days after the court has provided notice under sub. (1) (b),  
13 or earlier if the court determines that the circumstances are extraordinary, no person  
14 submits to the court an objection to the request under sub. (1), the court may amend  
15 the order entered under s. 54.46 (3) and enter a determination and the amended  
16 order that specifies any change in the powers of the guardian. ✓

17 (b) If, within 10 days after the court has provided notice under sub. (1) (b), or  
18 earlier if the court determines that the circumstances are extraordinary, a person  
19 submits to the court an objection to the request under sub. (1), any person may  
20 request a hearing under the procedure specified in s. 54.64 (2).

\*\*\*\*NOTE: Please review this language very carefully; it is in accord with the memo. ✓  
Because it appears to be a post-appointment matter, I have placed it in s. 54.63. It  
appears, under the language proposed, that only the county department of social services  
or human services receives notice. Shouldn't the ward and the guardian (if the guardian  
is other than the person submitting the statement under sub. (1)) at least also receive  
notice? As it is written, the court may act after 10 days after providing the notice, but the  
notice is only provided if the ward is protectively placed or receiving long-term  
care—what if neither of these is true, i.e., what if there is no notice to send out? Should  
the notice be required to state if the circumstances are extraordinary, i.e., that the court  
may act before 10 days are up?

That

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54.64 (1) (title) DURATION.

54.64 (2) (title) REVIEW AND MODIFICATION.

(a) 1. Appoint a guardian ad litem.

2. Fix a time and place for hearing.

3. Designate the persons who are entitled to notice of the hearing and designate the manner in which the notice shall be given.

(b) The ward has the right to counsel for purposes of the hearing under par. (a).

Notwithstanding any finding of incompetence for the ward, the ward may retain and contract for the payment of reasonable fees to an attorney in connection with proceedings involving review of the terms and conditions of the guardianship,

including the question of incompetence, ~~whether or not the ward is successful in such~~

~~a proceeding.~~ The court shall appoint counsel if the ward is unable to obtain counsel.

If the ward is indigent the county of jurisdiction for the guardianship shall provide counsel at the county's expense.

(3) (b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence. ✓

(4) (b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence. ✓

(5) (b) Continue the guardianship, but waive requirements for a bond for the guardian and for accounting by the guardian. ✓

54.66 (title) Final accounts.

(3) DISCHARGE. After approving the final account and after the guardian has filed proper receipts, the court shall discharge the guardian and release the guardian's bond.

\*\*\* NOTE: I deleted "whether or not the ward is successful in such a proceeding" because it seems unnecessary.

STET:  
leave  
as  
typed

\*\*\*\*NOTE: I wasn't sure who files the receipts under this subsection. Is my drafting accurate? ✓

1           **54.68 Review of conduct of guardian.** (1) CONTINUING JURISDICTION OF  
2 COURT. The court that appointed the guardian shall have continuing jurisdiction over  
3 the guardian.

4           (2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if  
5 committed by a guardian with respect to the ward's estate, constitutes cause for a  
6 remedy of the court under sub. (2):

*a ward or*

*3*

*ward of the*

*, as required under this chapter,*

7           (a) Failing to timely file a ~~required~~ inventory or account that is accurate and  
8 complete.

9           (b) Committing fraud, waste, or mismanagement.

10           (c) Abusing or neglecting the ward or knowingly permitting others to do so.

\*\*\*\*NOTE: This provision is from the memo.

11           (d) Engaging in self-dealing.

~~\*\*\*\*NOTE: DAK: definition?~~

12           (e) Failing to adequately provide for the personal needs of the ward from  
13 available estate assets and public benefits. ✓

14           (f) Failing to exercise due diligence and reasonable care in assuring that the  
15 ward's personal needs are being met in the least restrictive environment consistent  
16 with the ward's needs and functional capacities. ✓

17           (g) Failing to act in the best interests of the ward. ✓

18           (h) Failing to disclose conviction for a crime that would have prevented  
19 appointment of the person as guardian. ✓

\*\*\*\*NOTE: Pars. (g) and (h) are in accord with the memo.

~~\*\*\*\*NOTE: DAK put in a cross reference for (h)~~

1 (i) Other than as provided in pars. (a) to (h), failing to perform any duties of a  
 2 guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19,  
 3 54.20, 54.22, 54.25, and 54.62.

\*\*\*\*NOTE: The order of subs. (2) and (3) in your proposal is here reversed, in accord with the memo.

\*\*\*\*NOTE: This provision needs work to clarify it. The memo specifies ss. 880.19, 880.192, 880.251, and 880.39 (as renumbered under this draft) for this paragraph. However, ss. 880.192 and 880.251 are not touched by your proposal, and s. 880.39 goes to immunity for the guardian. What would you like for me to do with these?

4  
 5 (3) REMEDIES OF THE COURT. If petitioned by any party and after finding cause  
 6 as specified in sub. (2), a court may do any of the following:

7 (a) Order the guardian to file an inventory or other report or account required  
 8 of the guardian.

9 (b) Require the guardian to reimburse the estate of the ward for losses incurred  
 10 as the result of the guardian's breach of a duty to the ward.

11 (c) *remove extra space* Impose a financial penalty on the guardian, including denial of  
 12 compensation for the guardian.

13 (d) Remove the guardian.

14 (e) Enter any other order that may be necessary or appropriate to compel the  
 15 guardian to act in the best interests of the ward or to otherwise carry out the  
 16 guardian's duties.

\*\*\*\*NOTE: I did not include enforcement of this order by civil contempt, as in your proposal; that language is unnecessary, since the definition of "contempt of court" under s. 785.01 (1) (b), stats., subjects anyone to contempt proceedings for disobedience to the order of a court under s. 785.02, stats.

\*\*\*\*NOTE: Should there not also be some provision for notice to the guardian? A hearing?

1 (4) REMOVAL OF PAID GUARDIAN. The court may remove a paid guardian if  
 2 changed circumstances indicate that a previously unavailable volunteer guardian is  
 3 available to serve and that the change would be in the best interests of the ward.

4 (5) FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. (2) or (4), all  
 5 of the following apply:

6 (a) The court may require the guardian to pay personally any costs of the  
 7 proceeding, including costs of service and attorney fees. ✓

→ \*\*\*\*\*NOTE: I did not draft language in your proposal that authorizes the court to  
 require the guardian to pay “any other penalties the court determines are appropriate.”  
 Such a penalty must be specific and be a forfeiture, for a civil action, or a criminal penalty.  
 Please also note that s. 939.61, stats, provides a penalty if a statute prohibiting an act  
 does not specify one. ✓

\*\*\*\*\*NOTE: I did not draft “in matters relating to this section,” as in the memo,  
 because of the language I created for sub. (5) (intro.). ✓

8 (b) Notwithstanding a finding of incompetence, a ward who is petitioning the  
 9 court under sub. (2) may retain an attorney, the selection of whom is subject to court  
 10 approval, and contract for the payment of fees, regardless of whether or not the  
 11 guardian consents or whether or not the court finds cause under sub. (2). ✓

\*\*\*\*\*NOTE: The language “the selection . . . approval” is in accord with the memo.

12 54.70 (6m) Provide a summary written report to the court.

13 (9m) Attend the hearing.

\*\*\*\*\*NOTE: This language comports with the memo. Because the memo expresses  
 agreement about the fact that the *Goldie H.* case requires “some kind of hearing” in every  
*Watts* review, please also see my changes to 54.70 (1) and (7) (renumbered and amended  
 from s. 880.331 (5) (a) and (g)). ✓ ✓

14 **54.72 Guardian compensation and reimbursement.** A guardian of the  
 15 person or a guardian of the estate is entitled to compensation and to reimbursement  
 16 for expenses as follows:

17 (1) COMPENSATION. (a) Subject to the court’s approval, as determined under par.

18 (b), a guardian shall receive reasonable compensation for the guardian’s services.

\*\*\*\*\* NOTE: Who pays if the ward's estate does not? Does  
 the county pay if the ward is indigent?  
 indigent

1 (b) The court shall use all of the following factors in deciding whether  
2 compensation for a guardian is just and reasonable:

- 3 1. The reasonableness of the services rendered.
- 4 2. The fair market value of the service rendered.
- 5 3. The necessity of the services.

\*\*\*\*NOTE: Isn't this the same as reasonableness?

- 6 4. Any conflict of interest of the guardian.
- 7 5. The availability of another to provide the services.
- 8 6. The value of the ward's estate.
- 9 7. The hourly <sup>or other</sup> rate ~~charged~~ <sup>proposed</sup> by the guardian for the services.

\*\*\*\*NOTE: Is the rate charged by the guardian your intent?

10 (c) The amount of the compensation may be determined on an hourly basis, as  
11 a monthly stipend, or on any other basis that the court determines is reasonable  
12 under the circumstances. The court may establish the amount or basis for computing  
13 the guardian's compensation at the time of the guardian's initial appointment. ✓

14 (2) REIMBURSEMENT OF EXPENSES. The guardian shall be reimbursed for the  
15 amount of the guardian's reasonable expenses incurred in the execution of the  
16 guardian's duties, including necessary compensation paid to an attorney, an  
17 accountant, a broker, and other agents or service providers.

\*\*\*\*NOTE: The language "shall be reimbursed" <sup>CS</sup>comports with the memo. ✓  
\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under Sub. (1)(a).

18 (3) WHEN COURT APPROVAL REQUIRED. A court must approve compensation and  
19 reimbursement of expenses before payment to the guardian is made, but court  
20 approval need not be obtained before charges are incurred. ✓

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS; CONSERVATORS

hard return

Conservator; appointment; duties and powers; termination.

1 (B) → 54.76 (6) The powers of a conservator cease upon removal by the court or upon  
2 appointment of a guardian for or the death of the individual whose estate is  
3 conserved.

LPS: push sub (6) down

\*\*\*\*NOTE: I did not include language about removal "for cause" as in your proposal, because, under s. 54.76 (4) (consolidated, renumbered, and amended from s. 880.31 (4) and (5)), no cause for appointment of a successor conservator appears to be required, but, instead, the application of the conserved individual for a change seems to suffice. However, shouldn't there be a provision that specifically authorizes (or requires) the court to remove the conservator for cause? ✓

4 SECTION 24. 757.48 (1) (a) of the statutes is amended to read:

5 757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a  
6 guardian ad litem is appointed by the court, the guardian ad litem shall be an  
7 attorney admitted to practice in this state. In order to be appointed as a guardian  
8 ad litem under s. ~~54.40 (1)~~ 767.045, an attorney shall have completed 3 hours of  
9 approved continuing legal education relating to the functions and duties of a  
10 guardian ad litem under ch. 767. ✓

History: Sup. Ct. Order, 50 Wis. 2d vii (1971) 1971 c. 211; 1977 c. 187 s. 96; 1977 c. 299, 447; Stats. 1977 s. 757.48; 1987 a. 355; 1993 a. 16; 1995 a. 27.

11 SECTION 25. 880.01 (1) of the statutes is renumbered 54.01 (2) and amended  
12 to read:

13 54.01 (2) "Agency" means any public or private board, corporation, or  
14 association which, including a county department under s. 51.42 or 51.437, that is  
15 concerned with the specific needs and problems of mentally retarded,  
16 developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons,  
17 including a county department under s. 51.42 or 51.437 individuals with mental  
18 retardation, developmental disability, mental illness, alcoholism, or drug  
19 dependency and of aging individuals.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

\*\*\*\*NOTE: "Mental retardation" is a disfavored term; is it necessary to retain it in this definition? Is "mental deficiency" a possibility? Is either term necessary if "developmental disability" is used? In addition, "developmentally disabled person" is also a disfavored term, because it seems to describe the totality of the person as such; ✓

no #

In order to be appointed as a guardian ad litem under s. 54.40(1), an attorney shall have completed 3 hours of continuing legal education relating to the functions and duties of a guardian ad litem under ch. 54. approved

therefore, I have amended the definition under s. 54.01 (7) to refer to "individual with a developmental disability"; okay?

1           **SECTION 26.** 880.01 (2) of the statutes is renumbered 54.01 (7) and amended  
2 to read:

3           54.01 (7) "~~Developmentally disabled person~~ Individual with developmental  
4 disability" means any individual having a disability attributable to mental  
5 retardation, cerebral palsy, epilepsy, autism or another neurological condition  
6 closely related to mental retardation or requiring treatment similar to that required  
7 for mentally retarded individuals, which has continued or can be expected to  
8 continue indefinitely, substantially impairs the individual from adequately  
9 providing for his or her own care or custody, and constitutes a substantial handicap  
10 to the afflicted individual. The term does not include ~~a person~~ an individual affected  
11 by senility which is primarily caused by the process of aging or the infirmities of  
12 aging.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 880.01 (1) (renumbered s. 54.01 (2)). Also, this definition uses the term "infirmities of aging"; your proposal does not include the definition for that term (s. 880.01 (5), stats., but because you use the term in this definition, I have retained the definition of s. 880.01 (5) (renumbered s. 54.01 (8)); had you wanted some other language for the term?

13           **SECTION 27.** 880.01 (3) of the statutes is renumbered 54.01 (4) and amended  
14 to read:

15           54.01 (4) "Guardian" means ~~one a person~~ appointed by a court to have care,  
16 ~~custody, and control of the person~~ act on behalf of a minor or an incompetent or the  
17 ~~management of~~ to provide for the personal needs or manage the estate of a minor, an  
18 incompetent, or a spendthrift.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

\*\*\*\*NOTE: Please check this definition carefully; I used the term "person," rather than "corporation, public agency, any other person, or legal entity," because the definition of "person" in s. 990.01 (26) (which applies to all the statutes) is so broad. Your proposal retains mention of "spendthrift," yet the provisions concerning spendthrifts currently

## SECTION 27

SS. ✓  
 under ~~s.~~ 880.01 (9), 880.03, 880.07 (1) (b), 880.08 (2), 880.15 (1) and (1s), 880.215, and 880.26 (2) (c) are eliminated from your proposal. Your proposal also does not mention current subch. IV of ch. 880, which also applies to spendthrifts. Are these omissions intentional? Do you want "spendthrift" deleted from this subsection? What do you wish to do about subch. IV of ch. 880? ✓

\*\*\*\*NOTE: In accord with the memo, I have removed "who is 18 years of age or older".

1 SECTION 28. 880.01 (4) of the statutes is renumbered 54.01 (6) (intro.) and  
 2 amended to read:

3 54.01 (6) (intro.) "Incompetent" means a person ~~an individual~~ adjudged by a  
 4 ~~court of record to be substantially incapable of managing~~ unable to meet the essential ~~requirements for his or her physical health or safety or to be unable adequately to~~  
 5 manage his or her property or caring for himself or herself by reason of infirmities  
 6 of aging, developmental disabilities, or other like incapacities. Physical disability  
 7 without mental incapacity is not sufficient to establish incompetence. financial  
 8 affairs so as to meet the essential requirements for his or her physical health or  
 9 safety, because of all of the following:  
 10

*Handwritten notes:*  
 - "SS." circled at top left.  
 - "an individual who is" circled in a bubble above line 3.  
 - "strike" written next to line 3 with an arrow pointing to "an individual".  
 - "strike" written next to line 4 with an arrow pointing to "adjudged by a court of record".  
 - "financial" circled at the end of line 8.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

\*\*\*\*NOTE: See the \*\*\*\*Note under s. 54.01 (6) (b).

11 SECTION 29. 880.01 (5) of the statutes is renumbered 54.01 (8) and amended  
 12 to read:

13 54.01 (8) "Infirmities of aging" means organic brain damage caused by  
 14 advanced age or other physical degeneration in connection ~~therewith~~ with advanced  
 15 age to the extent that the person so afflicted an individual is substantially impaired  
 16 in ~~his or her~~ ability to adequately provide for his or her own care or custody. ✓

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

\*\*\*\*NOTE: See NOTE under s. 880.01 (2) (renumbered s. 54.01 (7)).

17 SECTION 30. 880.01 (6) and (7) of the statutes are repealed.

\*\*\*\*NOTE: I repealed s. 880.01 (6) (the definition of "interested person"), because it is replaced by the definition under s. 54.01 (9). I also repealed s. 880.01 (7) (the definition of "minor"), because the definition of "minor" in s. 990.01 (20) serves sufficiently for ch. 54 and for the remaining subchapters of ch. 880. ✓

1 SECTION 31. 880.01 (7m) of the statutes is renumbered 54.01 (11).

\*\*\*NOTE: Your proposal does not include this definition (“not competent to refuse psychotropic medication”); however, I understand from Betsy Abramson that your intent is to include provisions relating to this issue—is that correct? Are there changes that you wish to make to this definition? ✓

2 SECTION 32. 880.01 (8) of the statutes is repealed.

3 SECTION 33. 880.02 of the statutes is renumbered 54.30 (1) and amended to  
4 read:

5 54.30 (1) JURISDICTION ~~IN CIRCUIT COURT~~. The circuit court shall have has  
6 jurisdiction over all petitions for guardianship. A guardianship of the estate of any  
7 person, once granted, shall extend to all of his or her estate in this state and shall  
8 exclude the jurisdiction of every other circuit court, except as provided in ch. 786. ✓

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.02; 1977 c. 449; 1979 c. 32 s. 92 (14).

\*\*\*NOTE: I did not draft language in your proposal that establishes jurisdiction in circuit court over all petitions for protective placement, as such a provision properly belongs in ch. 55. Do you want me to draft it there? ✓

9 SECTION 34. 880.03 of the statutes is repealed. ✓

10 SECTION 35. 880.04 (title) of the statutes is renumbered 54.12 (title) and  
11 amended to read:

12 54.12 (title) Exceptions to appointment of guardian. ✓

History: 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142; 1987 a. 191; 1989 a. 138; 1991 a. 221; 1993 a. 486.

13 SECTION 36. 880.04 (1) of the statutes is renumbered 54.12 (1) and amended  
14 to read:

15 54.12 (1) EMANCIPATION OF MARRIED MINORS. Except for minors found to be  
16 ~~incompetent~~, upon marriage, a minor shall is no longer be a proper subject for  
17 guardianship of the person and a A guardianship of the person is revoked by the  
18 marriage of a minor ward. Upon application, the court may release in whole or in  
19 part the estate of a minor ward to the ward upon the ward's marriage. ~~Upon~~  
20 ~~marriage, the guardianship of an incompetent is subject to review under s. 880.34.~~ ✓

History: 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142; 1987 a. 191; 1989 a. 138; 1991 a. 221; 1993 a. 486.

*Handwritten annotations:*  
- "incompetent" circled in blue.  
- "incompetent" circled in red with "strike" written above it and an arrow pointing to the word.  
- "Upon" circled in red with "strike" written above it and an arrow pointing to the word.  
- "marriage, the guardianship of an incompetent is subject to review under s. 880.34." circled in red with "strike" written above it and an arrow pointing to the sentence.  
- "A" underlined in blue.  
- "is" underlined in blue.  
- "Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34." circled in red with "strike" written above it and an arrow pointing to the sentence.  
- "strike period" written in blue at the bottom right.  
- A signature in blue ink at the bottom right.

\*\*\*\*NOTE: I repealed the last sentence (it is broader than merely applying to a minor), but am uncertain if that is what you want. Your proposal does not touch s. 880.34 (2)—do you no longer want to have marriage of an incompetent ~~may~~ considered as a trigger for review of the guardianship? ✓

1 SECTION 37. 880.04 (2) of the statutes is renumbered 54.12 (2) and amended  
2 to read:

3 54.12 (2) SMALL ESTATES. If a minor or an incompetent, except for his or her  
4 incapacity, is entitled to ~~possession of~~ possess personal property of a value of valued  
5 at \$10,000 or less, any court wherein in which an action or proceeding involving said  
6 the property is pending ~~may, in its discretion,~~ <sup>plain comma</sup> without requiring the appointment of  
7 a guardian, order that the clerk of court do one of the following:

\*\*\*\*NOTE: I have assumed from the language in par. (a) (below) that the clerk of court would perform these functions. Correct? ✓

8 (a) Deposit the property in a savings account in a bank, ~~the payment of whose~~  
9 ~~accounts in cash immediately upon default of the bank are~~ or other financial  
10 institution insured by an agency of the federal deposit insurance corporation; deposit  
11 ~~in a savings account in a savings bank or a savings and loan association that has its~~  
12 ~~deposits insured by the federal deposit insurance corporation; deposit in a savings~~  
13 ~~account in a credit union having its deposits guaranteed by the Wisconsin credit~~  
14 ~~union savings insurance corporation or by the national board, as defined in s. 186.01~~  
15 ~~(3m);~~ government, or invest the property in interest-bearing obligations of the  
16 United States. The fee for ~~the clerk's services~~ of the clerk of court in depositing and  
17 disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a). ✓

18 (b) ~~Payment~~ Make payment to the natural guardian of the minor or to the  
19 person having actual custody of the minor.

\*\*\*\*NOTE: The proposed material referred to "the natural guardian of the minor," defined in sub. \_\_\_\_\_, but no definition was included, unless you were referring to the definition of "minor"? What is a "natural" guardian? Is it the parent? <sup>eeas</sup>

20 (c) ~~Payment~~ Make payment to the minor.

1 (d) ~~Payment~~ Make payment to the person having actual or legal custody of the  
2 incompetent or to the person providing for the incompetent's care and maintenance  
3 for the benefit of the incompetent.

History: 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142; 1987 a. 191; 1989 a. 138; 1991 a. 221; 1993 a. 486.

4 **SECTION 38.** 880.04 (2m) of the statutes is renumbered 54.12 (3) and amended  
5 to read:

6 54.12 (3) INFORMAL ADMINISTRATION. If a minor or an incompetent, except for  
7 his or her incapacity, is entitled to possession of personal property of a value of \$5,000  
8 \$10,000 or less from an estate administered through informal administration under  
9 ch. 865, the personal representative may, without the appointment of a guardian, do  
10 any of the following: ✓

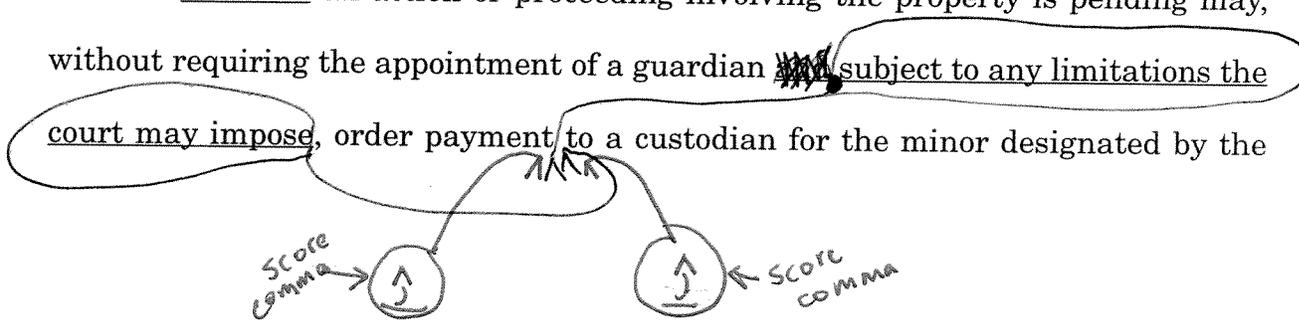
11 (a) With the approval of the register in probate, take one of the actions ~~under~~  
12 specified in sub. (2) (a) to (e). ✓

13 (b) With the approval of the guardian ad litem of the minor or incompetent, take  
14 one of the actions ~~under~~ specified in sub. (2) (a) to (e) and file proof of the action taken  
15 and of the approval of the guardian ad litem with the probate registrar instead of  
16 filing a receipt under s. 865.21. ✓

History: 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142; 1987 a. 191; 1989 a. 138; 1991 a. 221; 1993 a. 486.

17 **SECTION 39.** 880.04 (3) of the statutes is renumbered 54.12 (4) and amended  
18 to read:

19 54.12 (4) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or  
20 her incapacity, is entitled to possession of personal property of any value, any court  
21 wherein in which an action or proceeding involving the property is pending may,  
22 without requiring the appointment of a guardian ~~and~~ subject to any limitations the  
23 court may impose, order payment to a custodian for the minor designated by the



1 court under ss. ~~880.61 to 880.72~~ subch. III of ch. 880 or under the uniform gifts to  
2 minors act or uniform transfers to minors act of any other state. ✓

History: 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142; 1987 a. 191; 1989 a. 138; 1991 a. 221; 1993 a. 486.

\*\*\*\*NOTE: This cross-reference must be fixed if you choose to renumber the remaining subchapters in ch. 880.

3 SECTION 40. 880.05 of the statutes is renumbered 54.30 (2) and amended to  
4 read:

proposed ward

5 54.30 (2) VENUE. All petitions for guardianship of residents of the state shall  
6 be directed to the circuit court of the county of residence of the ~~person~~ <sup>strike</sup> subject to  
7 ~~guardianship~~ <sup>strike</sup> or of the county in which the ~~person~~ <sup>strike</sup> is physically present. A petition  
8 for guardianship of the person or estate of a nonresident may be directed to the circuit  
9 court of any county ~~where~~ in which the ~~person~~ nonresident or any property of the  
10 nonresident may be found. ✓

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.05; 1975 c. 393, 421; 1977 c. 449 s. 497; 1987 a. 27.

\*\*\*\*NOTE: I did not draft language of your proposal that requires that petitions for protective placement be directed to the circuit court, because such a provision more properly belongs in ch. 55. Do you want me to draft it there? ✓

\*\*\*\*NOTE: The second sentence of this provision is perplexing—does my change from “person” to “nonresident” appear to be accurate? ✓

concurrence

\*\*\*\*NOTE: “Residence” is defined in ss. 46.27 (1) (d), 49.001 (6), and 49.686 (1) (f), stats., as follows: “. . . the voluntary occurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.” If “residence” is not defined for ch. 54, it is likely that a court would look to this definition for interpretation of s. 54.30 (2); should I define the term and use this definition? ✓

11 SECTION 41. 880.06 (title) of the statutes is renumbered 54.30 (3) (title).

12 SECTION 42. 880.06 (1) of the statutes is renumbered 54.30 (3) (a) and amended  
13 to read:

score

14 54.30 (3) (a) *Original proceeding*. The court ~~wherein~~ in which a petition is first  
15 filed shall determine venue. If ~~it is determined~~ the court determines that venue lies  
16 in another county, the court shall order the entire record certified to the proper court.  
17 A court ~~wherein~~ in which a subsequent petition is filed shall, ~~upon being~~ if it is

1 satisfied of that an earlier filing took place in another court, summarily dismiss such  
2 the petition. ✓

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

3 **SECTION 43.** 880.06 (2) of the statutes is renumbered 54.30 (3) (b) (intro.) and  
4 amended to read:

5 54.30 (3) (b) (intro.) *Change of residence of ward or guardian.* If a guardian  
6 removes from the county where appointed to another county within the state or a  
7 ward removes from the county in which he or she has resided changes residence from  
8 one county to another county within the state, ~~the circuit court for the county in~~  
9 ~~which the ward resides may appoint a new guardian as provided by law for the~~  
10 ~~appointment of a guardian. Upon verified petition of the new guardian, accompanied~~  
11 ~~by a certified copy of appointment and bond if the appointment is in another county,~~  
12 ~~and upon the notice prescribed by s. 879.05 to the originally appointed guardian,~~  
13 ~~unless he or she is the same person, and to any other persons that the court shall~~  
14 ~~order, the court of original appointment may order the guardianship accounts settled~~  
15 ~~and the property delivered to the new guardian. venue may be transferred to the~~  
16 ward's new county of residence under the following procedures: ✓

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

17 **SECTION 44.** 880.07 (title) of the statutes is renumbered 54.34 (title) and  
18 amended to read:

19 **54.34 (title) Petition; fees for guardianship.**

20 History: 1971 c. 41 s. 8; Stats. 1971 s. 880.07; 1973 c. 284; 1977 c. 394; 1979 c. 32, 110, 355; 1981 c. 317; 1987 a. 366; 1989 a. 56; 1993 a. 316, 486.

20 **SECTION 45.** 880.07 (1) (intro.) of the statutes is renumbered 54.34 (1) (intro.)

21 and amended to read:

22 54.34 (1) (intro.) Any relative, public official or other person, <sup>strikes comma</sup> may petition for  
23 the appointment of a guardian of a person ~~subject to guardianship~~ for an individual.