By 1/16/03

2003 – 2004 LEGISLATURE

LRB–0039/~~P1~~ P2
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slays

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

SAV

LPS: All new changes are in RED and BLUE ink

Also there are some marks in RED and BLUE where it is hard to read or easy to miss something.

REGENERATE

AN ACT ***to repeal*** 50.06 (2) (am) 2. a., 50.06 (2) (am) 2. b., 880.01 (6) and (7), 880.01 (8), 880.03, 880.08 (1) (title), 880.08 (3) (title), 880.08 (3) (e), 880.09 (1), 880.09 (3), 880.09 (4), 880.09 (5), 880.12, 880.125, 880.15 (1m), 880.15 (1s), 880.15 (2), 880.15 (3), 880.173 (title), 880.173 (2), 880.175 (title), 880.19 (title), 880.19 (1) (title), 880.19 (2) (title), 880.19 (3) (title), 880.19 (4) (title), 880.19 (5) (title), 880.19 (5) (d), 880.191 (title), 880.21, 880.22 (title), 880.22 (1) (title), 880.22 (2) (title), 880.23 (title), 880.24 (title), 880.24 (1), 880.25 (title), 880.26 (title), 880.26 (2) (d), 880.31 (title), 880.33 (title) and 880.39 (title); ***to renumber*** 50.06 (title), 50.06 (2) (b), 50.06 (3) (a) to (g), 50.06 (5) (a) 1. to 3., 880.01 (7m), 880.06 (title), 880.07 (1) (a), 880.07 (1) (c), 880.07 (1) (e), 880.07 (1) (f), 880.07 (1) (g), 880.13 (title), 880.13 (2) (title), 880.15 (title), 880.17, 880.18 (title), 880.24 (3), 880.33 (2) (b), 880.331 (4) (intro.), 880.331 (5) (d) and 880.36 (title); ***to renumber and amend*** 50.06 (1), 50.06 (2) (intro.), 50.06 (2) (a), 50.06 (2) (am) 1., 50.06 (2) (am) 2. (intro.), 50.06 (2) (c), 50.06 (3) (intro.), 50.06 (4), 50.06 (5) (a) (intro.), 50.06 (5) (b), 50.06 (6), 50.06 (7), 880.01 (1), 880.01 (2), 880.01 (3),

880.01 (4), 880.01 (5), 880.02, 880.04 (title), 880.04 (1), 880.04 (2), 880.04 (2m), 880.04 (3), 880.05, 880.06 (1), 880.06 (2), 880.07 (title), 880.07 (1) (intro.), 880.07 (1) (b), 880.07 (1) (d), 880.07 (1) (h), 880.07 (1) (i), 880.07 (1) (j), 880.07 (2), 880.07 (4), 880.08 (intro.), 880.08 (1), 880.08 (3) (am) (intro.), 880.08 (3) (am) 1., 880.08 (3) (am) 2., 880.08 (3) (am) 3., 880.08 (3) (am) 4., 880.08 (4), 880.09 (intro.), 880.09 (2), 880.09 (6), 880.09 (7), 880.10, 880.13 (1), 880.13 (2) (a), 880.13 (2) (b), 880.13 (3), 880.14, 880.15 (1), 880.173 (1), 880.175, 880.18, 880.19 (1), 880.19 (2) (a), 880.19 (2) (b), 880.19 (3), 880.19 (4) (a), 880.19 (4) (b), 880.19 (4) (c), 880.19 (5) (a), 880.19 (5) (b), 880.19 (5) (c), 880.19 (6), 880.191 (1), 880.22 (1), 880.22 (2), 880.23, 880.24 (2), 880.245, 880.25 (1), 880.25 (2), 880.25 (3), 880.25 (4), 880.25 (5), 880.26 (1) (intro.), 880.26 (1) (c), 880.26 (2) (intro.), 880.26 (2) (c), 880.26 (3), 880.27, 880.28, 880.31 (2), 880.31 (3), 880.31 (6), 880.33 (1), 880.33 (2) (a) 1., 880.33 (2) (a) 2., 880.33 (2) (a) 3., 880.33 (2) (e), 880.33 (5), 880.33 (5m), 880.33 (7), 880.33 (8) (b), 880.331 (title), 880.331 (1), 880.331 (2), 880.331 (3), 880.331 (4) (a), 880.331 (4) (b), 880.331 (4) (c), 880.331 (4) (d), 880.331 (4) (e), 880.331 (4) (f), 880.331 (5) (intro.), 880.331 (5) (a), 880.331 (5) (b), 880.331 (5) (c), 880.331 (5) (e), 880.331 (5) (f), 880.331 (5) (g), 880.331 (6), 880.331 (7), 880.331 (8), 880.34 (title), 880.34 (1), 880.34 (4), 880.34 (5), 880.35, 880.36 (1), 880.36 (2), 880.38 (title), 880.38 (1), 880.38 (2), 880.38 (3) and 880.39; ***to consolidate, renumber and amend*** 880.31 (1) and (7) and 880.31 (4) and

remove xtra space

(5); ***to amend*** 757.48 (1) (a); and ***to create*** chapter 54 of the statutes; **relating to:** guardians and wards

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Analysis by the Legislative Reference Bureau

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

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

INSERT 3-2

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

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

notwithstanding s. 54.01 (10)

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

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

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

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

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

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

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

54.50 **(2)** (b) 2. a. Except as provided in subd. 2. b., no person who is listed under ~~sub. (3)~~ par. (c) and who resides with the incapacitated individual disagrees with the proposed admission.

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

54.50 **(2)** (b) 2. b. Subdivision ~~1.~~ 2. a. does not apply if ~~any of the following applies:~~ the individual who is consenting to the proposed admission resides with or is the spouse of the incapacitated individual.

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

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

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

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

54.50 **(2)** (b) 4. A petition for guardianship for the individual under s. ~~880.07~~ 54.34 and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission.

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

54.50 **(2)** (c) (intro.) The following individuals, in the following order of priority, may consent to an admission under ~~sub. (2)~~ par. (b):

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

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

5 54.50 **(2)** (d) A determination that an individual is incapacitated for purposes
6 of ~~sub. (2)~~ par. (b) shall be made by 2 physicians~~, as defined in s. 448.01 (5),~~ or by one
7 physician and one ~~licensed~~ psychologist~~, as defined in s. 455.01 (4),~~ who personally
8 examine the individual and sign a statement specifying that the individual is
9 incapacitated. Mere old age, eccentricity, or physical disability, either singly or
10 together, are insufficient to make a finding that an individual is incapacitated.
11 Neither of the individuals who make a finding that an individual is incapacitated
12 may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge
13 that he or she is entitled to or has a claim on any portion of the individual's estate.
14 A copy of the statement shall be included in the individual's records in the facility to
15 which he or she is admitted.

****~~NOTE: I~~ have defined "physician" and "psychologist."

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

18 54.50 **(2)** (e) 1. (intro.) Except as provided in ~~par. (b)~~ subd. 2., an individual who
19 consents to an admission under this ~~section~~ subsection may, for the incapacitated
20 individual, make health care decisions to the same extent as a guardian of the person
21 may and authorize expenditures related to health care to the same extent as a
22 guardian of the estate may, until the earliest of the following:

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

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

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

~~****NOTE: I have defined "durable power of attorney."~~

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

54.50 **(2)** (f) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if ~~sub. (5) (a)~~ par. (e) 1. applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

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

54.50 **(2)** (g) An individual who consents to an admission under this ~~section~~ subsection may request that an assessment be conducted for the incapacitated individual under the long–term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional and financial screen to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the

requirement for a financial screen under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

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

CHAPTER 54

GUARDIANS AND WARDS

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

INSERT 7-5

SUBCHAPTER I

DEFINITIONS

activities relating to the performance of self care, work, and leisure activities, including

54.01 Definitions. In this chapter:

(1) "Activities of daily living" means ~~bathing~~, dressing, eating, mobility, ~~transferring from a surface, including a bed, to another surface, including a chair,~~ and ~~toileting~~. object manipulation grooming,

****NOTE: ~~In accordance with the memo, this definition is modeled after HFS 10.13 (1), Wis. Admin. Code (the definition used for Family Care).~~ I have in this revised definition removed "feeding," which seems unrelated to self care, and play, which seems redundant to "leisure."

(3) "Conservator" means a person who is appointed ~~or qualified~~ by a court at 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.~~

INSERT 7-13

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

INSERT 7-14

(5) "Incapacity" has the meaning given in s. 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 (15) — 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)), 54.15 (3) (renumbered from s. 880.09 (2)), 54.15 (4) (renumbered from s. 880.09 (6)), and 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))?

INSERT 7-15

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

1 (b) Mental deficiency, physical illness, physical disability, chronic mental
2 illness, chronic alcohol abuse, chronic use of prescription drugs, as defined in s.
3 450.01 (20), or controlled substances, as defined in s. 961.01 (4), or any other physical
4 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.

INSERT 8-4

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

6 (B) (a) For purposes of a petition for guardianship or protective placement, any of
7 (12) the following:

in this bill I

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

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

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

11 3. For a proposed ward who has no spouse, child, or parent, ~~any~~ an heir ~~at law~~ of, as defined in s. 851.09,
12 the proposed ward that may be reasonably ascertained with due diligence.

****NOTE: In this context, would an "heir at law" include the state? Should it? Should "child" be "adult child"?

13 4. Any individual who is nominated as ~~fiduciary~~ guardian or appointed to act as guardian or fiduciary
14 for the proposed ward by a court of any state, any trustee for a trust established by
15 or for the proposed ward, ~~or~~ any person appointed as agent under a power of attorney
16 for health care (1) or any person appointed as attorney–in–fact under a durable power of attorney.

INSERT 8-16

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

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

1 6. If the proposed ward is a minor and has no living parent, any individual
2 nominated to act as fiduciary for the minor in a will or other written instrument that
3 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?

4 7. If the proposed ward is receiving moneys paid, or if moneys are payable, by
5 the federal department of veterans affairs, a representative of the federal
6 department of veterans affairs, or, if the proposed ward is receiving moneys paid, or
7 if moneys are payable, by the state department of veterans affairs, a representative
8 of the state department of veterans affairs.

9 8. If the proposed ward is receiving long–term support services or similar public
10 benefits, the county department of human services or social services that is providing
11 the services or benefits.

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

12 9. The corporation counsel of the county in which the petition is filed and, if the
13 petition is filed in a county other than the county of the proposed ward's residence,
14 the corporation counsel of the county of the proposed ward's residence.

****NOTE: This language includes the corporation counsel of the county 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).

INSERT 9-14

15 10. Any other person required by the court.

subsequent to an order

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

in this bill

****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.

INSERT 9-17

18 1. The guardian.

for purposes of a petition for

2. The spouse or adult child of the ward or the parent of a minor ward.

3. Any other individual that the court may require, including any fiduciary that 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.

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

INSERT 10-4

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

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

INSERT 10-9

(15) **(~~12~~)** "Physician" has the meaning given in s. 448.01 (5).

(17) **(~~13~~)** "Psychologist" has the means a licensed psychologist, as defined given in s. 455.01 (4).

INSERT 10-11

(20) **(~~14~~)** "Spendthrift" means an individual who, because of the use of ~~intoxicants~~ alcohol or other drugs or because of gambling, ~~idleness, debauchery,~~ or other wasteful course of conduct, is unable to attend to business or is likely to affect the health, life, or property of himself or herself or others so as to endanger his or her support and 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 (4), 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.

INSERT 10-16

temporarily or permanently

1 (~~15~~ 21) "Standby guardian" means any individual designated by the court under
2 s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the
3 death, ~~incapacity,~~ or resignation of the initially–appointed guardian, or if the
4 initially appointed guardian is unable or unavailable to fulfill his or her duties.

5 (~~16~~ 22) "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.

6 SUBCHAPTER II

7 APPOINTMENT OF GUARDIAN

8 **54.10 Appointment of guardian; ~~determination of incompetence.~~** (1)
9 STANDARD. A court of appropriate jurisdiction may appoint a guardian, or separate
10 guardians of the person and of the estate, for an individual who is a proposed ward
11 if the court determines that any of the following applies:

12 (a) The individual is a minor.

13 (b) The individual is an incompetent and the appointment is necessary for at
14 least one of the following reasons:

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

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

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

20 (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?

1 (b) The sufficiency and reliability of available resources to provide for the
2 individual's personal needs or property management without the appointment of a
3 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).

4 **(3)** DETERMINATION OF INCOMPETENCE. All of the following apply to the
5 determination under sub. (1) (b) that an individual is an incompetent:

6 (a) The determination shall be based on clear and convincing evidence; may
7 not, unless the proposed ward has a severe inability to communicate, be based on
8 mere old age, eccentricity, poor judgment, or physical disability; and shall require a
9 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.

10 1. The individual is unable to provide for personal needs or property
11 management.

****NOTE: Is this standard intended to replace the "spendthrift" concept?

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

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

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

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

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

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

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

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

11 7. Any mental disability, alcoholism, or substance dependence of the individual
12 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 interchangeably in this chapter and should be made uniform. Which would you prefer?

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

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

17 1. The individual's functional level.

18 2. The individual's understanding and appreciation of the nature and
19 consequences of his or her functional limitations.

INSERT 13-19

20 54.12 (2) (e) Make payment to the agent under a durable power of attorney of
21 the ward.

1

****NOTE: Because I defined "durable power of attorney" in s. 54.01 (3m), it is unnecessary to use the term "durable financial power of attorney," as requested in the memo.

SUBCHAPTER III

NOMINATION OF GUARDIAN;

POWERS AND DUTIES; LIMITATIONS

54.15 (1) AGENT UNDER DURABLE POWER OF ATTORNEY. The court shall appoint as guardian the agent under a proposed ward's durable power of attorney, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

****NOTE: This provision is written as a requirement, as are ss. 54.15 (2) (renumbered from s. 880.09 (7)), 54.15 (3) (renumbered from s. 880.09 (2)), and 54.15 (4) (renumbered from s. 880.09 (6); what does the judge do if they conflict? Should the "shalls" be "mays"?

INSERT 14-7

(7) STATEMENT OF ACTS BY PROPOSED GUARDIAN. (a) At least 96 hours before the hearing under s. 54.44, the proposed guardian shall submit to the court a sworn and notarized statement as to whether any of the following is true:

1. The proposed guardian has been convicted of a crime, as defined in s. 939.12.

****NOTE: Is this definition of a crime what you want? Note that it includes misdemeanors (which are distinguished from felonies in that felonies are punishable by imprisonment in state prison, whereas misdemeanors are punishable by imprisonment in a county jail).

2. The proposed guardian has filed for or received protection under the federal bankruptcy laws.

3. Any license, certificate, permit, or registration of the proposed guardian that is required under chs. 440 to 480 or by the laws of another state for the practice of 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.

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

54.18 General duties and powers of guardian; limitations; immunity. **(1)** A ward retains all his or her rights that are not assigned to the guardian or otherwise limited by statute. A guardian acting on behalf of a ward may exercise only those powers that the guardian is authorized to exercise by statute or court order. A guardian may be granted only those powers necessary to provide for the personal needs or property management of the ward in a manner that is appropriate to the 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.

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

(a) Exercise the degree of care, diligence, and good faith when acting on behalf 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.

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

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

(d) Notify the court of any change of address of the guardian or ward.

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

54.19 Duties of guardian of the estate. Except as specifically limited in the order of appointment, the guardian of the estate shall do all of the following in order

to provide a ward with the greatest amount of independence and self–determination with respect to property management in light of the ward's functional level, understanding, and appreciation of his or her functional limitations and the ward's personal wishes and preferences with regard to managing the activities of daily living:

(2) Retain, expend, distribute, sell, or invest the ward's property, rents, income, issues, benefits, and proceeds and account for all of them, subject to ch. 786.

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

* (b) second paren

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

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

(4) Use the ward's income and property to maintain and support the ward and any dependents of the ward and to provide for the postsecondary education expenses of any children of the ward.

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

* (b) second paren

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

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

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

(8) **(9)** File with the register of deeds of any county in which the ward possesses real property, of which the guardian has knowledge, a sworn and notarized statement that specifies the legal description of the property, the date that the ward is determined to be an incompetent, and the name, address, and telephone number of the ward's guardian and any surety on the guardian's bond.

****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 an 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.

1 (9) **(~~10~~)** Perform any other duty required by the court. order

****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?

2 **54.20 Powers of guardian of the estate.**

****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 enumberated 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 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?

INSERT 17-2

3 **(2)** POWERS REQUIRING COURT APPROVAL. The guardian of the estate may do any

4 of the following with respect to the ward only with ~~prior written approval of the court~~,

5 ~~including, if applicable, approval of a petition specified under s. 54.21~~:

the court's prior written approval following any petition, notice, and hearing that the court ~~may~~ requires

(a) Make gifts, under the terms, including the frequency, amount, and specific donees, specified by the court. in approval of a petition under s. 54.21

****NOTE: Please review s. 54.21 (5) (d) and this provision; have I captured the intent of the memo? now your s. 54.20(2)(intro.) and (a)

(c) Establish a trust as specified under 42 USC 1396p (d) (4) (A), (B), or (C) and 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?

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

INSERT 18-7

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

(g) (f) Release or disclaim, under s. 854.13, any interest of the ward that is received by will, intestate succession, nontestamentary transfer at death, or other transfer.

INSERT 18-11

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

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

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

(K) (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)).

Adjust, compromise, damages

1 **(3)** POWERS THAT DO NOT REQUIRE COURT APPROVAL. The guardian of the estate
2 may do any of the following without first receiving the court's approval:
3 (a) Provide support from the ward's estate for an individual whom the ward is
4 legally obligated to support.
5 (b) Enter into a contract, other than a contract that is specified in sub. (2) or
6 that is otherwise prohibited under this chapter.
7 (c) Exercise options of the ward to purchase securities or other property.
8 (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.

9 (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).

10 (f) Take any other action, except an action specified under sub. (2), that is
11 reasonable or appropriate to the duties of the guardian of the estate. INSERT 19-13

12 **54.21 Petition for authority to transfer ward's assets to another. (1)**
13 In this section, "will or similar instrument" includes a revocable or irrevocable trust,
14 a durable power of attorney, or a marital property agreement. init cap individual

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

15 **(2)** A guardian or other person who seeks authority to exercise a power that
16 includes the transfer of any of a ward's assets to or for the benefit of any person shall
17 submit to the court a petition that specifies all of the following: INSERT 19-17
18 (a) Whether a proceeding by anyone seeking this authority with respect to the
19 ward's property was previously commenced and, if so, a description of the nature of
20 the proceeding and the disposition made of it.

an order directing the guardian of the estate to

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

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

(d) ~~If they may be ascertained,~~ the wishes, if ascertainable, of the ward.

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

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

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

1. Any presumptive adult heirs of the ward.

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

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

1. The manner in which the copy was secured.

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

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

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

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

INSERT 21-15

(4) The petitioner shall serve notice upon all of the following, together with a copy of the petition, stating that the petitioner will move the court, at a time and 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.~~

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

If not the same as the petitioner, the guardian of the person and the guardian of the estate

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

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

(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?

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

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

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

(c) Whether, after the proposed transfer is made, the needs of the ward, his or her spouse, if any, and any other persons legally dependent upon the ward for support are able to be met from the remainder of the ward's assets without resort to public assistance and whether making the proposed transfer would render the ward ineligible under s. 49.453 (2).

will benefit

the ward's estate, or members of the ward's immediate family

INSERT 22-13

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

(d) Except for gifting that is authorized under s. 54.20 (2) (a), whether the donees or beneficiaries under the proposed disposition are reasonably expected objects of the ward's generosity and whether the proposed disposition is consistent with any ascertained wishes of the ward or known estate plan or pattern of lifetime 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?

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

(f) The factors specified in sub. (2) (a) to (g) and any statements or other evidence under sub. (3).

(g) ~~(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)?

(6) The court may grant the petition under sub. (2) if the court finds and records all of the following: and enter an order directing the guardian of the estate to take action requested in the petition.

(a) That the ward ~~lacks the requisite mental capacity~~ has incapacity to perform the act for which approval is sought and the incapacity is not likely to ~~regain that capacity~~ change positively within a reasonable period of time.

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

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

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

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

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

****NOTE: I don't really understand sub. (7). Subsection (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?

Regularly inspect,

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

2 (b) 1. ~~Regular inspection~~ in person ~~of~~ the ward's condition, surroundings, and

3 treatment.

Examine

4 2. ~~Examination of~~ the ward's patient health care records and treatment

5 records.

Attend and participate

6 3. ~~Attendance at and participation~~ in staff meetings of any facility in which the

7 ward resides or is a patient, if the meeting includes a discussion of the ward's

8 treatment and care.

Inquire

9 4. ~~Inquiry~~ into the risks and benefits of, and alternatives to, treatment for the

10 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?

11 **(2)** POWERS. Consistent with the functional limitations of the ward, the court

12 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."?

1 (a) Make decisions concerning the ward's personal caregivers.

2 (b) Make decisions concerning the ward's social environment and other aspects
3 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?

4 (c) Restrict travel by the ward.

5 (d) Authorize the ward to obtain, retain, or renew a license, permit,
6 registration, or certification for which the ward is determined to be qualified, or
7 restrict the ward from obtaining, retaining, or renewing such a license, permit,
8 registration, or certification.

9 (e) Authorize access to or release of the ward's confidential records.

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

10 (f) Make decisions concerning the ward's education.

11 (g) Apply for public and private benefits if a guardian of the estate has not been
12 appointed and if no other person is authorized to so apply.

13 (h) Make decisions on consenting to health care for the ward.

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

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

1. The existence and availability of social services and the ward's family and friends in the community of the proposed residence.

2. The ward's care, comfort, maintenance, and, if appropriate, rehabilitation.

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.?

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

INSERT 26-6

****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

54.30 Jurisdiction and venue.

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

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

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

3. If no objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies may enter an order changing venue. If objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies shall set a date for a hearing within 7 days after the objection is made and shall give notice of the hearing to the corporation counsel of that county and to

the corporation counsel and register in probate of the county to which change of venue is sought.

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

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

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

(m) Whether the petitioner is requesting a full or limited guardianship. INSERT 27-7

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

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

, motion, or other required document

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

INSERT 27-17

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

1. The proposed ward's counsel, if any.
2. The proposed ward's guardian ad litem.
3. Any presumptive adult heirs of the proposed ward.
4. Any other interested persons, unless specifically waived by the court.

5. The agent under any durable power of attorney or power of attorney for health care of the ward.

6. Any person who has legal or physical custody of the proposed ward.

7. Any public or private agency, charity, or foundation from which the proposed ward is receiving aid or assistance.

8. Any person that the court requires.

54.40 **(4)** (b) Interview the proposed guardian, the proposed standby guardian, if any, and any other person seeking appointment as guardian and report to the court concerning the fitness of each individual interviewed to serve as guardian and 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.

INSERT 28-10

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

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

54.42 Rights of proposed ward. (1) RIGHT TO COUNSEL. (a) 1. At least 72 hours before the hearing, the proposed ward requests counsel.

2. The guardian ad litem or another person states to the court that the proposed 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?

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

(b) Any attorney obtained under par. (a) or appointed under par. (c) shall be a zealous advocate for the expressed wishes of the proposed ward.

****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?

(2) RIGHT TO JURY TRIAL. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, his or her attorney, or the guardian ad litem, except that the right is waived unless demanded at least 48 hours before the time set for the hearing. The number of jurors for such a trial is determined under s. 756.06 (2) (b). The proposed ward, his or her attorney, or the guardian ad litem has the right to present and cross–examine witnesses, including any physician or licensed psychologist who reports to the court concerning the proposed ward. each

INSERT 29-7

(3) RIGHT TO INDEPENDENT MEDICAL EXAMINATION.

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

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

(6) RIGHT TO HEARING IN ACCESSIBLE LOCATION. The proposed ward has the right to have any hearing regarding the guardianship conducted in a location that is accessible to the proposed ward.

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

other than a petition under the circumstances of s. 54.50 (1) or (2),

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

INSERT 29-18

****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.

If do not

****NOTE: Your proposed material does not affect s. 880.075, stats. Do you intend that I repeal it? where should I put it? Should I make an exception for it in s. 54.44(1)?

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

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

1 **(2)** STANDARD OF PROOF. Any determination by the court as to whether the
2 proposed ward is ~~an~~ incompetent shall be by clear and convincing evidence.

and any proposed standby guardian

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

of either

****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?

6 **(4)** PRESENCE OF PROPOSED WARD. The petitioner shall ensure that the proposed
7 ward attends the hearing unless the attendance is waived by the guardian ad litem.
8 In determining whether to waive attendance by the proposed ward, the guardian ad
9 litem shall consider the effect of the proposed ward's attendance on his or her
10 physical or psychological health in relation to the importance of the proceeding and
11 the proposed ward's expressed desires. If the proposed ward is unable to attend the
12 hearing because of residency in a nursing home or other facility, physical
13 inaccessibility, or a lack of transportation and if the proposed ward, guardian ad
14 litem, advocate counsel, or other interested person so requests, the court shall hold
15 the hearing in a place where the proposed ward may attend.

the ability of the proposed ward to understand and meaningfully participate,

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

****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.

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

court finds any of the following

****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.

54.46 Disposition of petition. After the hearing under s. 54.44,, the court shall dispose of the case in one of the following ways:

INSERT 31-9

(a)

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

FINANCIAL CS

(2) PROTECTIVE ARRANGEMENT; TRANSACTIONS; APPOINTMENT OF SPECIAL GUARDIAN. (a) If a proposed ward is found to be a minor ~~or to be an~~ incompetent, or a spendthrift, the court may, without appointing a guardian, do any of the following if the court first considers the interests of dependents and creditors of the ward and whether a guardianship is necessary, given the ward's functional level:

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

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

(b) The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or transaction under par. (a). The special guardian

1 has any authority conferred by the order of appointment, shall report to the court on
2 all actions taken under the order of appointment, and shall serve until discharged
3 by order of the court. The court may approve a reasonable compensation for the
4 special guardian, except that, if the court finds that the special guardian has failed
5 to discharge his or her duties satisfactorily, the court may deny or reduce the amount
6 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?

7 **(3)** APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be an
8 incompetent or a minor, the court may enter a determination and order appointing
9 a guardian that specifies any powers of the guardian that require court approval, as
10 provided 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?

11 (a) *Co–guardians.* The court may appoint co–guardians of the person or
12 co–guardians of the estate, subject to any conditions that the court imposes.
13 ~~co–guardian's individual decision is binding unless otherwise ordered by the court.~~

****NOTE: What if one 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 sure what the decision on this language is under the memo.

14 (c) *Durable power of attorney.* If the ward has executed a durable power of
15 attorney, the court may, for good cause shown, revoke the durable power of attorney
16 or limit the authority of the agent under the terms of the durable power of attorney.
17 ~~The ward's durable power of attorney remains in effect unless so revoked or limited.~~

INSERT 32-17

18 (d) *County employee as guardian or conservator.* The court may designate an
19 employee of a county home, county hospital, or county mental hospital to act, if

1 appointed by the court, as guardian of the estate of one or more wards or as
2 conservator for the estate of one or more individuals who so apply, if the ward or
3 individual is a resident of the county home or a patient of the county hospital or
4 county mental hospital. The term of such a guardian or conservator shall terminate,
5 after approval of the employee's accounts by the court, if the employee resigns as
6 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?

INSERT 33-6

7 **54.50 Limited term guardianships. (1)** (a) *Standard.* If it is demonstrated
8 to the court that a proposed ward's particular situation requires the immediate
9 appointment of a temporary guardian of the person or estate, the court may appoint
10 a temporary guardian under this section.

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

11 (c) *Procedures for appointment.* All of the following procedures apply to the
12 appointment of a temporary guardian:
13 1. Any person may petition for the appointment of a temporary guardian for
14 an individual. The petition shall contain the information required under s. 54.34 (1),
15 shall specify reasons for the appointment of a temporary guardian and the powers
16 requested for the temporary guardian, and shall include a petition for appointment
17 of a guardian of the person or estate or state why such a guardianship is not sought.
18 2. The petitioner shall serve the petition and order for hearing on the proposed
19 ward before the hearing or as soon as practicable after the hearing, but not later than
20 3 calendar days after the hearing.

INSERT 33-20

21 3. The court shall appoint a guardian ad litem, who shall attempt to meet with
22 the proposed ward before the hearing or as soon as is practicable after the hearing,

but not later than 7 calendar days after the hearing. The guardian ad litem shall report to the court on the advisability of the temporary guardianship at the hearing 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.

3 ~~4~~. The court shall hold a hearing on the temporary guardianship no earlier than 48 hours after the filing of the petition unless good cause is shown. At the hearing, the petitioner shall provide a report or testimony from a physician or psychologist that indicates that there is a reasonable likelihood that the proposed ward is ~~an~~ incompetent. The guardian ad litem shall attend the hearing in person or by telephone or, instead, shall provide to the court a written report concerning the 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.

4 ~~5~~. If the court appoints a temporary guardian, ~~the court shall so notify the ward not later than 3 calendar days after the hearing. If~~ and if the ward, his or her counsel, the guardian ad litem, or an interested party requests, the court shall order a rehearing on the issue of appointment of the temporary guardian within 10 calendar days after the request. If a rehearing is requested, the temporary guardian may take no action to expend the ward's assets, pending a rehearing, 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.

1 **(2)** (h) If the allegedly incapacitated individual, his or her guardian ad litem,
2 or any interested person objects to the admission, the individual, guardian ad litem,
3 or person may request the court in which the guardianship petition is pending to hold
4 a hearing on whether the individual is incapacitated or whether the admission shall
5 continue before the guardianship hearing. If requested, the court shall hold such a
6 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 renumbers all of s. 50.06 into ch. 54. What parallel change would this be?

INSERT 35-6

7 SUBCHAPTER V

8 POST–APPOINTMENT MATTERS

9 54.60 **(2)** CONTENTS OF INVENTORY. The inventory shall provide all of the
10 following information with respect to each asset:
11 (a) How the asset is held or titled.
12 (b) The name and relationship to the ward of any co–owner.
13 (c) The marital property classification of the property and, for any property that
14 is marital property, the spouse who has management and control rights with respect
15 to the property.
16 **(3)** TIME FOR FILING. The guardian of the estate shall file the initial inventory
17 within 60 days after appointment, unless the court extends or reduces the time.
18 **(4)** NOTICE OF INVENTORY. The court shall specify the persons to whom the
19 guardian shall provide copies of the inventory.

from the ward's estate

1 **(5)** FEE. The guardian of the estate shall pay the fee specified in s. 814.66 (1)
2 (b) 2. at the time the inventory ~~is~~ filed. or other documents concerning the estate's value are

3 **(6)** APPRAISAL. The court may order that the guardian of the estate appraise
4 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.

5 **54.62 Accounts.**

6 **(3)** SMALL ESTATES. (a) If a ward's estate does not exceed $5,000 in value, the
7 guardian need not file an account under sub. (1) unless otherwise ordered to do so
8 by the court. For the purposes of this paragraph, the value of the ward's estate does
9 not include the ward's income, any burial trust possessed by the ward, or any term
10 or other life insurance policy that is irrevocably assigned to pay for the disposition
11 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?

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

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

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

21 2. Income in the name of the ward, without regard to ch 766, and the ward's
22 joint income.

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

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

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

(b) The court shall provide notice of the waiver under par. (a) to any adult child of the ward.

INSERT 37-7

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

, including notice concerning potential court action if circumstances are extraordinary, be given

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

(b) ~~Provide~~ notice to the county department of social services or human services if the ward is protectively placed or receives long–term support services as a public benefit.

all of the following: #1.

is provided

INSERT 37-17

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

is provided

1 (b) If, within 10 days after ~~the court has provided~~ notice under sub. (1) (b), a
2 person submits to the court an objection to the request under sub. (1), any person may
3 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 that the circumstances are extraordinary, if they are, thereby indicating that the court may act before 10 days are up?

4 54.64 **(2)** REVIEW AND MODIFICATION.

5 (a) 1. Appoint a guardian ad litem.

6 2. Fix a time and place for hearing.

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

, the selection of whom is subject to court approval,

9 (b) The ward has the right to counsel for purposes of the hearing under par. (a).
10 Notwithstanding any finding of incompetence for the ward, the ward may retain and
11 contract for the payment of reasonable fees to an attorney in connection with
12 proceedings involving review of the terms and conditions of the guardianship,
13 including the question of incompetence. The court shall appoint counsel if the ward
14 is unable to obtain counsel. If the ward is indigent the county of jurisdiction for the
15 guardianship shall provide counsel at the county's expense.

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

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

INSERT 38-17

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

INSERT 38-19

(9) (e) The ward dies.

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

54.66 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 wasn't sure who files the receipts under this subsection. Is my drafting accurate?

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

(2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if committed by a guardian with respect to a ward or the ward's estate, constitutes cause for a remedy of the court under sub. (3): 4

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement.

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

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

(d) Engaging in self–dealing.

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

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

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

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

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

3 (i) Other than as provided in pars. (a) to (h), failing to perform any duties of a
4 guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19,
5 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?

INSERT 40-5

6 4 **(3)** REMEDIES OF THE COURT. If petitioned by any party or on the court's own motion and after finding cause
7 as specified in sub. (2), a court may do any of the following:

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

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

12 (c) Impose a financial penalty on the guardian, including denial of
13 compensation for the guardian.

14 (d) Remove the guardian.

15 (e) Enter any other order that may be necessary or appropriate to compel the
16 guardian to act in the best interests of the ward or to otherwise carry out the
17 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?

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

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

(a) The court may require the guardian to pay personally any costs of the 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.).

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

****NOTE: The language "the selection . . . approval" is in accord with the memo.

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

(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)).

INSERT 41-13

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

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

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

1. The reasonableness of the services rendered.

2. The fair market value of the service rendered.

3. The necessity of the services.

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

3 ~~4~~. Any conflict of interest of the guardian.

4 ~~5~~. The availability of another to provide the services.

5 ~~6~~. The value and nature of the ward's estate.

6 ~~7~~. The hourly or other rate proposed by the guardian for the services.

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

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

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

****NOTE: The language "shall be reimbursed" comports with the memo.

****NOTE: Please see the **** NOTE under sub. (1) (a).

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

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS;

CONSERVATORS

54.76 Conservator; appointment; duties and powers; termination.

(6) The powers of a conservator ~~cease upon removal by~~ the court ~~or upon appointment of~~ a guardian for ~~or the death of~~ the individual whose estate is conserved.

****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?

SECTION 20. 757.48 (1) (a) of the statutes is amended to read:

757.48 **(1)** (a) Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. In order to be appointed as a guardian ad litem under s. 767.045, an attorney shall have completed 3 hours of approved continuing legal education relating to the functions and duties of a guardian ad litem under ch. 767. In order to be appointed as a guardian ad litem under s. 54.40 (1), an attorney shall have completed 3 hours of approved continuing legal education relating to the functions and duties of a guardian ad litem under ch. 54.

SECTION 21. 880.01 (1) of the statutes is renumbered 54.01 (2) and amended to read:

54.01 **(2)** "Agency" means any public or private board, corporation, or association ~~which~~ , including a county department under s. 51.42 or 51.437, that is concerned with the specific needs and problems of ~~mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437~~ individuals with mental

1 ~~retardation,~~ developmental disability, mental illness, alcoholism, or drug
2 dependency and of aging individuals.

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

3 **SECTION 22.** 880.01 (2) of the statutes is renumbered 54.01 (~~7~~ 11) and amended
4 to read:

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

****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?

15 **SECTION 23.** 880.01 (3) of the statutes is renumbered 54.01 (~~4~~ 7) and amended
16 to read:

17 54.01 (~~4~~ 7) "Guardian" means ~~one~~ a person appointed by a court under s. 54.10 to ~~have care,~~
18 ~~custody and control of the person~~ act on behalf of a minor or an individual determined incompetent or ~~the~~

score

or provide for the personal needs

1 ~~management of~~ to ~~provide for the personal needs or~~ manage the estate of a minor, an
2 incompetent, or a spendthrift.

individual determined

INSERT 45-2

****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 under ss. 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".

3 **SECTION 24.** 880.01 (4) of the statutes ~~is renumbered 54.01 (6) (intro.) and~~
4 ~~amended to read:~~ repealed.

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

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

13 **SECTION 25.** 880.01 (5) of the statutes is ~~renumbered 54.01 (8) and amended~~
14 ~~to read:~~ repealed.

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

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

1 **SECTION 26.** 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.

2 **SECTION 27.** 880.01 (7m) of the statutes is ~~renumbered 54.01 (11)~~. repealed

****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?

3 **SECTION 28.** 880.01 (8) of the statutes is repealed.

4 **SECTION 29.** 880.02 of the statutes is renumbered 54.30 (1) and amended to
5 read: subject matter

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

INSERT 46-9A

****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? INSERT 46-9B

10 **SECTION 30.** 880.03 of the statutes is repealed.

11 **SECTION 31.** 880.04 (title) of the statutes is renumbered 54.12 (title) and
12 amended to read:

13 **54.12** (title) **Exceptions to appointment of guardian.**

14 **SECTION 32.** 880.04 (1) of the statutes is renumbered ~~54.12 (1)~~ 54.46 (7) and amended
15 to read: 54.46 (7)

16 ~~54.12 (1)~~ EMANCIPATION OF MARRIED MINORS. Except for ~~minors~~ a minor found to be
17 ~~incompetent~~ incompetents, upon marriage, a minor ~~shall~~ is no longer ~~be~~ a proper
18 subject for guardianship of the person ~~and a~~ . A guardianship of the person is revoked
19 by the marriage of a minor ward. Upon application, the court may release in whole

RESTORE TO PLAIN TEXT

or in part the estate of a minor ward to the ward upon the ward's marriage. ~~Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34.~~

****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 considered as a trigger for review of the guardianship?

SECTION 33. 880.04 (2) of the statutes is renumbered 54.12 (~~2~~ 1) and amended to read:

54.12 (~~2~~ 1) SMALL ESTATES. If a minor or an incompetent, except for his or her incapacity, is entitled to ~~possession of~~ possess personal property ~~of a value of~~ valued at $10,000 or less, any court ~~wherein~~ in which an action or proceeding involving ~~said~~ the property is pending may~~, in its discretion~~, without requiring the appointment of 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?

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

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

****NOTE: The proposed material referred to "the natural guardian of the minor, as 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?

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

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

SECTION 34. 880.04 (2m) of the statutes is renumbered 54.12 (~~3~~ 2) and amended to read:

54.12 (~~3~~ 2) INFORMAL ADMINISTRATION. If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of ~~$5,000~~ $10,000 or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

(a) With the approval of the register in probate, take one of the actions ~~under~~ specified in sub. (~~2~~ 1) (a) to (e).

(b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions ~~under~~ specified in sub. (~~2~~ 1) (a) to (e) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

SECTION 35. 880.04 (3) of the statutes is renumbered 54.12 (~~4~~ 3) and amended to read:

54.12 (~~4~~ 3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court ~~wherein~~ in which an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment, subject to any

limitations the court may impose, to a custodian for the minor designated by the court under ~~ss. 880.61 to 880.72~~ subch. III of ch. 880 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

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

SECTION 36. 880.05 of the statutes is renumbered 54.30 (2) and amended to read:

54.30 **(2)** VENUE. All petitions for guardianship of residents of the state shall be directed to the circuit court of the county of residence of the ~~person subject to guardianship~~ proposed ward or of the county in which the ~~person~~ proposed ward is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county ~~where~~ in which the ~~person~~ nonresident or any property of the nonresident may be found.

****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?

****NOTE: "Residence" is defined in ss. 46.27 (1) (d), 49.001 (6), and 49.686 (1) (f), stats., as follows: ". . . the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain." 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?

INSERT 49-11

SECTION 37. 880.06 (title) of the statutes is renumbered 54.30 (3) (title).

SECTION 38. 880.06 (1) of the statutes is renumbered 54.30 (3) (a) and amended to read:

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

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

SECTION 39. 880.06 (2) of the statutes is renumbered 54.30 (3) (b) (intro.) and amended to read:

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

SECTION 40. 880.07 (title) of the statutes is renumbered 54.34 (title) and amended to read:

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

SECTION 41. 880.07 (1) (intro.) of the statutes is renumbered 54.34 (1) (intro.) and amended to read:

54.34 **(1)** (intro.) Any ~~relative, public official or other~~ person~~,~~ may petition for the appointment of a guardian ~~of a person subject to guardianship~~ for an individual. ~~Such~~ The petition shall state~~, so far as may be~~ all of the following, if known to the petitioner:

INSERT 50-25