

2007 DRAFTING REQUEST

Bill

Received: **09/05/2006**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Luther Olsen (608) 266-0751**

By/Representing: **Laura Rose**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact: **B. Abramson, E. Henningsen, Bruc**

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Olsen@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Reconciliation of 2005 Acts 264, 387, 388

Instructions:

2005 SB731, with necessary changes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 11/06/2006	csicilia 12/18/2006		_____			
/P1			nnetzke 12/21/2006	_____	cduerst 12/21/2006		
/1	dkennedy 02/27/2007	csicilia 02/28/2007	jfrantze 02/28/2007	_____	sbasford 02/28/2007	lparisi 03/21/2007	

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: **09/05/2006**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Luther Olsen (608) 266-0751**

By/Representing: **Laura Rose**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact: **B. Abramson, E. Henningsen, Bruc**

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Olsen@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Reconciliation of 2005 Acts 264, 387, 388

Instructions:

2005 SB731, with necessary changes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 11/06/2006	csicilia 12/18/2006		_____			
/P1			nmatzke 12/21/2006	_____	cduerst 12/21/2006		
/1	dkennedy 02/27/2007	csicilia 02/28/2007	jfrantze 02/28/2007	_____	sbasford 02/28/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: 09/05/2006

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Luther Olsen (608) 266-0751

By/Representing: Laura Rose

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact: B. Abramson, E. Henningsen, Bruce

Addl. Drafters:

Subject: Mental Health - protect place

Extra Copies:

Submit via email: YES

Requester's email: Sen.Olsen@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Reconciliation of 2005 Acts 264, 387, 388

Instructions:

2005 SB731, with necessary changes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 11/06/2006	csicilia 12/18/2006		_____			
/P1			nmatzke 12/21/2006	_____	cduerst 12/21/2006		

FE Sent For:

195 2/28
07

J. Bell
2/28
<END>

2007 DRAFTING REQUEST

Bill

Received: 09/05/2006

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Luther Olsen (608) 266-0751

By/Representing: Laura Rose

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact: B. Abramson, E. Henningsen, Bruce

Addl. Drafters:

Subject: Mental Health - protect place

Extra Copies:

Submit via email: YES

Requester's email: Sen.Olsen@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Reconciliation of 2005 Acts 264, 387, 388

Instructions:

2005 SB731, with necessary changes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy						
		PI	gjs	12/18	12/19		
				OG			
				nwn	nwn/rs		
					12/19		

FE Sent For:

<END>

Kennedy, Debora

From: Kennedy, Debora
Sent: Friday, November 03, 2006 8:14 AM
To: 'Ellen Henningsen'
Cc: Rose, Laura; 'Betsy Abramson'
Subject: RE: Your call

I am aware of those provisions. Have you looked at s. 880.38 (4) in Act 264, which is renumbered by the Revisor to be s. 54.25 (4), and which, to my knowledge, does not "expire"? MY point is that s. 54.25 (4) is in conflict with 54.25 (2) (d) 2. a. and therefore should be reconciled in the bill just as other provisions are reconciled. Please review.

From: Ellen Henningsen [mailto:guardian@cwag.org]
Sent: Thursday, November 02, 2006 6:00 PM
To: Kennedy, Debora
Cc: Margaret Resan
Subject: Your call

Debora – I'm going to out tomorrow at the forms meeting and then speaking all day Monday and then again all day Tuesday so I'm not sure when I can call you back.

Here's my point –

Effective November 1, 2006, sec. 880.38 (2) states:

(2) A guardian of the person shall endeavor to secure necessary

care, services, or appropriate protective placement on behalf

of the ward. Subject to any limitation imposed by the court under

s. 880.33 (8) (b), a guardian may consent, without further court involvement, to involuntary administration of medication, other

than psychotropic medication, and involuntary medical treatment

that is in the ward's best interest. A guardian may consent to involuntary

administration of psychotropic medication only under a

court order under s. 55.14 or s. 880.33 (4m) or (4r), 2003 stats. In

determining whether medication, other than psychotropic medication,

or medical treatment is in the ward's best interest, the

guardian shall consider the invasiveness of the medication or

treatment and the likely benefits and side effects of the medication

Your call

or treatment.

This language expires on November 30 and is replaced by sec. 54.25 (2) (d) 2:

2. All of the following are powers subject to subd. 1.:

a. Except as provided under subd. 2. b., c., and d., and except for consent to psychiatric treatment and medication under ch. 51, and subject to any limitation under s. 54.46 (3) (b), the power to give informed consent, if in the ward's best interests, to voluntary or involuntary medical examination and treatment and to the voluntary receipt by the ward of medication, including any appropriate psychotropic medication that is in the ward's best interest, if the guardian has first made a good-faith attempt to discuss with the ward the ward's voluntary receipt of the psychotropic medication and the ward does not protest. For purposes of this subd. 2.

a., "protest" means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication.

"Protest" does not mean a discernible negative response to a proposed method of administration of the psychotropic medication.

A guardian may consent to the involuntary administration of psychotropic medication only under a court order under s.

55.14. In determining whether medication or medical treatment, other than psychotropic medication, is in the ward's best interest, the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment.

As I read the above ch. 54 language, there's no reference to the authority of the GP to consent to involuntary, non-psych meds as there is in 880.38. I would love to be wrong so please let me know if I've missed anything.

Your call

Director, Wisconsin Guardianship Support Center

Elder Law Center of the Coalition of Wisconsin Aging Groups

2850 Dairy Drive, Suite 100

Madison, WI 53718-6751

608-224-0606 ext. 314

fax 608-224-0607

guardian@cwag.org

www.cwag.org/legal/guardian-support

Kennedy, Debora

From: Rose, Laura
Sent: Tuesday, October 31, 2006 10:39 AM
To: 'abramson@mailbag.com'; Kennedy, Debora
Subject: RE: Last picky details

Sorry I haven't answered sooner, I am swamped!

I think it should be the first day of the first month beginning after publication.

X I think raising the limit on estates to \$50K is not appropriate for this bill.

The meds issue . . . G consent to forcible administration of non-psych meds. . .not sure what to say about that. Here is what Ellen said: "Here's something that I want to add - Act 264 states the authority of the guardian of the person to make decisions on medical treatment and RX when the ward is not protesting and when the ward is protesting. That language is only effective for the month of November, however. Act 387's language leaves out the authority to consent to non-psych meds when the ward is protesting. It would nice if that hole could be fixed." What do you think, Betsy?

Other than that, I agree with Ellen's points.

Laura

-----Original Message-----

From: abramson@mailbag.com [mailto:abramson@mailbag.com]
Sent: Saturday, October 28, 2006 11:09 PM
To: Kennedy, Debora; Rose, Laura; Betsy Abramson
Subject: Re: Last picky details

> What do you suggest about effective date? I'm cool with whatever you
> two
think is most prudent. BA

> Okay. The last e-mail with directions that I have is from Betsy
> (October 23), with her opinion on #1-4 of Ellen's October 23 e-mail
> from Nancy Rottier. Laura, do you agree that 1-4 should be done? If
> so, I can finish today, unless something more has come up. Has it?
> Also, about the effective date; do you want it effective on
> publication, or on the first day of the month after publication?
> (There seems to be a difference in the messages I'm getting.)

>
> Debora A. Kennedy
> Managing Attorney
> Legislative Reference Bureau
> (608) 266-0137
> debora.kennedy@legis.state.wi.us

>
>

Kennedy, Debora

From: Rose, Laura
Sent: Monday, October 23, 2006 12:50 PM
To: Kennedy, Debora
Subject: Reconciliation bill

Hi Debora,

Nancy Rottier's comment is that the the changes in the reconciliation bill should go into effect the first day of the first month beginning after publication. ✓

They are working on a list of other essential changes from their office, as well. Shouldn't be a lot of changes.

Thanks!!

Laura

Kennedy, Debora

From: Betsy Abramson [abramson@mailbag.com]
Sent: Monday, October 23, 2006 12:02 PM
To: Rose, Laura; Kennedy, Debora
Subject: Fw: Reconciliation Bill

Betsy J. Abramson
Attorney / Elder Law Consultant
520 Miller Ave.
Madison, WI 53704
(608) 332-7867

abramson@mailbag.com

----- Original Message -----

From: Ellen Henningsen
To: Nancy Rottier ; abramson@mailbag.com ; Lisa Roys
Cc: Margaret Resan
Sent: Monday, October 23, 2006 11:53 AM
Subject: RE: Reconciliation Bill

1. I agree that we can't change the effective date of the new laws. I think the recon bill should go into effect the 1st day of the month after publication.
2. I agree this should be addressed in the recon bill even though it wasn't in SB 731.
3. This is supposed to have been sec. 54.44 (5). It got dropped by the Revisor, so I'm told, because the original 880 section was repealed by Act 264. So Act 387's amendment was ineffective. I think it should be added in though if we decide we need to stay as close to original SB 731 as possible, I'd give this up.
4. I don't have an opinion of the substance of this. Again, though if we decide we need to stay as close to original SB 371 as possible, I'd oppose including this.
5. Here's something that I want to add – Act 264 states the authority of the guardian of the person to make decisions on medical treatment and RX when the ward is not protesting and when the ward is protesting. That language is only effective for the month of November, however. Act 387's language leaves out the authority to consent to *non-psych* meds when the ward is protesting. It would nice if that hole could be fixed.
6. I have stuff for a trailer bill but that can wait though I think soon some of us should start the work of compiling that list.

I am of course happy to do whatever is needed to get the recon bill passed as soon as possible.

Attorney Ellen J. Henningsen
Director, Wisconsin Guardianship Support Center
Elder Law Center of the Coalition of Wisconsin Aging Groups
2850 Dairy Drive, Suite 100
Madison, WI 53718-6751
608-224-0606 ext. 314
fax 608-224-0607
guardian@cwag.org
www.cwag.org/legal/guardian-support

Kennedy, Debora

From: Rose, Laura
Sent: Tuesday, October 24, 2006 3:55 PM
To: 'Betsy Abramson'; Kennedy, Debora
Subject: RE: S. 55.14 (9)

ditto

LR

From: Betsy Abramson [mailto:abramson@mailbag.com]
Sent: Tuesday, October 24, 2006 3:40 PM
To: Kennedy, Debora; Rose, Laura
Subject: Re: S. 55.14 (9)

Agreed!
BA

Betsy J. Abramson
Attorney / Elder Law Consultant
520 Miller Ave.
Madison, WI 53704
(608) 332-7867
abramson@mailbag.com

----- Original Message -----

From: Kennedy, Debora
To: Rose, Laura ; Betsy Abramson
Sent: Tuesday, October 24, 2006 2:41 PM
Subject: S. 55.14 (9)

As I mentioned to Betsy the other day, one issue hanging about still was s. 55.14 (9), which was affected by both Acts 264 and 387. Specifically, the question was whether "of" or "for" should be used in the first sentence; the Revisor's position is that "of" is surplusage, but I thought that, of the two words, it was in fact the correct one. Dianne agreed. So the relevant part of the sentence in question should read "...., the corporation counsel MAY (rather than SHALL; this was an issue already settled) file with the court a statement of the facts that constitute the basis OF (rather than FOR) the noncompliance of the individual.

Okay?

Debora A. Kennedy
Managing Attorney
Legislative Reference Bureau
(608) 266-0137
debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Betsy Abramson [abramson@mailbag.com]
Sent: Monday, October 23, 2006 11:37 AM
To: Nancy Rottier; Lisa Roys; Rose, Laura; Kennedy, Debora
Subject: Re: Reconciliation Bill

Agree re: 1 and 2.

#3 - Ellen Henningsen mentioned the #3 problem today. It seems appropriate to put this back in, via the recon bill - was just an omission.

#4 - I don't think the Bar ever intended to go up to \$50,000, but they just tied it to the other statute, which while we weren't paying attention, zoomed up to \$50,000. That seems awfully high - no annual reports for guardianships of the estate under \$50,000? Yikes. Lots of accountability lost there.

BA

Betsy J. Abramson
 Attorney / Elder Law Consultant
 520 Miller Ave.
 Madison, WI 53704
 (608) 332-7867
abramson@mailbag.com

----- Original Message -----

From: Nancy Rottier
To: [Ellen Henningsen](mailto:Ellen.Henningsen) ; abramson@mailbag.com ; [Lisa Roys](mailto:Lisa.Roys)
Sent: Monday, October 23, 2006 11:17 AM
Subject: Reconciliation Bill

I wanted to let you know the Judicial Conference's Legislative Committee agreed last week to support a reconciliation bill and have me do whatever is needed to promote it as early in the legislative session as possible.

Laura Rose wrote me last week that she'll be requesting a new draft of SB 731 and asked about suggested changes, in particular whether we still wanted a delayed effective date. I've contacted our Probate Benchbook Committee to get reactions. This has also circulated to the Registers in Probate and here's what I've got so far:

1. Effective dates. Because this legislation cannot pass before Jan., 2007 and the acts will have already taken effect, it seems logical to me to delete the effective date sections. What about the provisions of this new bill, though? Seems to me they should go into effect immediately.
2. S. 55.03(1) relating to an agency as a guardian. I believe this is the section with the unintended consequence of prohibiting parents and other persons who are appointed guardians from also being a provider of protective services.
3. From Judge VanDeHey: The Legislature inadvertently deleted the prior provision from 880 that guardianship hearings are open unless the proposed ward or his or her attorney requests that they be closed. This provision is still in both 55 and 51 and was intended to be in 54 (or so I'm told). Any chance of slipping this in to the reconciliation bill?
4. The RIPs note the change to s. 814.66(1)(b)2 that tied the guardianship fees for smaller estates to the estate sizes in s. 867.03(1g). Act 216 from last session changed that size estate from \$20,000 to \$50,000. Because of this change, they'll be taking in less fee money for any guardianships between \$10,000-\$50,000. Was this intentional? Note the fees for guardianship used to be the same as in s. 814.66(1)(a)2. Can we go back to the previous language to lessen the fiscal impact?

Let me know what you think. I think we need to settle on a draft as quickly as possible, then a strategy for co-authors. I will be happy to make whatever contacts are necessary to get this rolling for early in the session.

From: Nancy Rottier [mailto:Nancy.Rottier@wicourts.gov]
Sent: Monday, October 23, 2006 11:18 AM
To: Ellen Henningsen; abramson@mailbag.com; Lisa Roys
Subject: Reconciliation Bill

I wanted to let you know the Judicial Conference's Legislative Committee agreed last week to support a reconciliation bill and have me do whatever is needed to promote it as early in the legislative session as possible.

Laura Rose wrote me last week that she'll be requesting a new draft of SB 731 and asked about suggested changes, in particular whether we still wanted a delayed effective date. I've contacted our Probate Benchbook Committee to get reactions. This has also circulated to the Registers in Probate and here's what I've got so far:

- ✓ 1. Effective dates. Because this legislation cannot pass before Jan., 2007 and the acts will have already taken effect, it seems logical to me to delete the effective date sections. What about the provisions of this new bill, though? Seems to me they should go into effect immediately.
- ✓ 2. S. 55.03(1) relating to an agency as a guardian. I believe this is the section with the unintended consequence of prohibiting parents and other persons who are appointed guardians from also being a provider of protective services.
- ✓ 3. From Judge VanDeHey: The Legislature inadvertently deleted the prior provision from 880 that guardianship hearings are open unless the proposed ward or his or her attorney requests that they be closed. This provision is still in both 55 and 51 and was intended to be in 54 (or so I'm told). Any chance of slipping this in to the reconciliation bill? *880.33(2)(e) RP Act 264, RN, Act 387 → S4.44(5)*
- X 4. The RIPs note the change to s. 814.66(1)(b)2 that tied the guardianship fees for smaller estates to the estate sizes in s. 867.03(1g). Act 216 from last session changed that size estate from \$20,000 to \$50,000. Because of this change, they'll be taking in less fee money for any guardianships between \$10,000-\$50,000. Was this intentional? Note the fees for guardianship used to be the same as in s. 814.66(1)(a)2. Can we go back to the previous language to lessen the fiscal impact?

Let me know what you think. I think we need to settle on a draft as quickly as possible, then a strategy for co-authors. I will be happy to make whatever contacts are necessary to get this rolling for early in the session.

Kennedy, Debora

From: Rose, Laura
Sent: Friday, October 20, 2006 8:37 AM
To: Kennedy, Debora
Subject: RE: Son of SB 731

I have emailed Nancy Rottier at the Director of State Courts office about the effective date. I will let you know as soon as I hear back from her.

Re: the definition of "voluntary" -- please change the s. 49.001(8) definition to conform to the other definitions of "voluntary" in the statutes (ie, "Voluntary" means according to an individual's free choice, if competent, or by choice of his or her guardian if the individual is adjudicated incompetent.)

Thanks!!!!!!!

Laura

From: Kennedy, Debora
Sent: Thursday, October 19, 2006 4:54 PM
To: Rose, Laura
Subject: Son of SB 731

I hope tomorrow to put this in editing, but I've not heard back from you about two things: whether there should be a delayed effective date, and whether any change should be made to the definition of "voluntary" in s. 49.001 (8). Do you want to respond, or would you rather wait until you've had a chance to see the /P1 and the bill is redrafted for introduction?

Debora A. Kennedy
Managing Attorney
Legislative Reference Bureau
(608) 266-0137
debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Betsy Abramson [abramson@mailbag.com]
Sent: Thursday, October 19, 2006 2:43 PM
To: Kennedy, Debora; Rose, Laura
Subject: Re: Guardianship Reform - venue again

That's what I got out of it - although it was an awfully long-convoluted way of saying so. I also think it's consistent with our plan - pick one of the two - and in this case Act 387. Any other substantive changes will have to go in a real, trailer bill - that someone else will direct and champion!
Hope the pieces are coming together for you.
BA

Betsy J. Abramson
Attorney / Elder Law Consultant
520 Miller Ave.
Madison, WI 53704
(608) 332-7867
abramson@mailbag.com

----- Original Message -----
From: "Kennedy, Debora" <Debora.Kennedy@legis.wisconsin.gov>
To: "Betsy Abramson" <abramson@mailbag.com>
Sent: Thursday, October 19, 2006 1:01 PM
Subject: RE: Guardianship Reform - venue again

Do you get out of all this that they want the Act 387 version, except add "extraordinary" to "circumstances"? ??

-----Original Message-----
From: Betsy Abramson [mailto:abramson@mailbag.com]
Sent: Tuesday, October 17, 2006 9:32 PM
To: Kennedy, Debora; Rose, Laura
Subject: Fw: Guardianship Reform - venue again

Ok - that's it for venue! BA

Betsy J. Abramson
Attorney / Elder Law Consultant
520 Miller Ave.
Madison, WI 53704
(608) 332-7867
abramson@mailbag.com

----- Original Message -----
From: "Paul Harris" <harripa@dhfs.state.wi.us>
To: "Gerard Gierl" <GIERLGJ@dhfs.state.wi.us>; "Betsy Abramson" <abramson@mailbag.com>
Cc: "James Yeadon" <YEADOJD@dhfs.state.wi.us>
Sent: Tuesday, October 17, 2006 1:03 PM
Subject: Re: Guardianship Reform - venue again

> I agree with the analysis by both of you. I have no recollection from
> of this from my (very) early involvement several years ago with Mike
> Peters and Betsy.

> So let's go with Act 387.

> I do not like the reference in Act 264 to "or the county in which the
> individual intends to reside." That would open it up to
> county-shopping, and would be difficult to finalize, as a person could

say
> it or not, the Court will have to determine if there is venue /
> jurisdiction to proceed, so it goes without saying that they will
> determine the person's county of residence if or when a petition for
Ch.
> 55 services or placement is brought. But there may well be a reason
why
> Mike Peters (and Paul?) who were part of these revisions early on may
> have thought that should be stated as such in the "venue" section - so
I
> am just making an observation and not suggesting this be removed.
>
> Hope this gets you off dead center, Betsy, and good luck in refining
> all this.
> - Gerard
>
>
> Gerard J. Gierl, J.D.
> Client Rights Specialist
> 608-266-3102
> gierlgj@dhfs.state.wi.us
>
> >>> "Betsy Abramson" <abramson@mailbag.com> 10/06/06 8:48 AM >>>
> Hey Paul and Gerard: So venue/county of responsibility (amongst other
> issues) has some inconsistencies in the language in the various bills
> that passed this session and we need your wise counsel about how to
> handle it. It's in new 55.075(5)(a):
> Act 387 (the guardianship reform bill, SB 391) did this:
> (5) WHERE A PETITION MAY BE FILED; VENUE; COUNTY OF RESPONSIBILITY.
(a)
> A petition under sub. (1) shall be filed in the county of residence of
> the individual to be protected, as determined under s. 51.40 or by the
> individual's guardian or where the individual is physically present
due
> to circumstances including those specified under s. 51.22(4). If an
> individual has not received services under ch. 46, 51 or 55 or if an
> individual has received services under ch. 46, 51 or 55 that have been
> terminated and has established residence in a county other than that in
> which the individual resided when the services were received, the court
> may determine the individual's county of residence. The county of
> residence under this paragraph is the county of responsibility.
>
> Ok, above was from Act 387 and is currently the law, b/c it was signed
> into law last. But under Act 264 (the Leg Council, AB 785 provision),
> sub. (a) read:
>
> A petition under sub. (1) shall be filed in the county of residence of
> the individual to be protected, except that the petition may be filed
in
> the county in which the individual is physically present due to
> extraordinary circumstances, including requiring medical aid and
> preventing harm to the individual or others, or in the county in which
> the individual intends to reside. the county of residence, as
> determined by the court, under s. 51.40, or by the guardian, is the
> county of responsibility.
>
> As you can see, they're pretty different. Are options include:
> 1. going with Act 387 language
> 2. going with Act 264 language
> 3. Combing the two and re-writing it to the best of both bills.
>
> Your thoughts, please? Sorry to trouble you with this thing again,
but
> it's just a bad penny that won't go away!
> Betsy
>
>

> Betsy J. Abramson
> Attorney / Elder Law Consultant
> 520 Miller Ave.
> Madison, WI 53704
> (608) 332-7867
> abramson@mailbag.com