

Dec 28

2007-2008

2005 - 2006 LEGISLATURE

0122/PI  
LRB-5008/1  
DAK:cjs:rs  
g's

D-NOTE

SA com ✓  
SA pres ✓  
X-ref ✓

# 2005 SENATE BILL 731

May 16, 2006 - Introduced by COMMITTEE ON SENATE ORGANIZATION. Referred to Committee on Senate Organization.

REGENERATE

1 AN ACT *to renumber* 55.01 (4g), 55.01 (6), 55.01 (6d), 55.01 (6g) and 55.01 (6t);  
2 *to renumber and amend* 55.06 (3) (d); *to amend* 46.90 (1) (eg) 1., 46.90 (1)  
3 (eg) 2., 46.90 (5m) (a), 46.90 (5m) (br) 2., 46.90 (6) (bt) 8., 54.10 (3) (d), 54.25 (2)  
4 (b) 4., 54.25 (2) (d) 2. n., 55.03 (1), 55.03 (3), 55.043 (4) (am), 55.043 (6) (bt) 8.,  
5 55.055 (1) (a), 55.055 (1) (b), 55.10 (4) (a), 55.11 (1) (c), 55.13 (2), 55.15 (2), 55.18  
6 (2) (a), 55.18 (3) (a), 813.123 (2) (b), 813.123 (3) (b), 813.123 (4) (ar) 1., 813.123  
7 (5) (ar) 1. and 940.285 (1m); *to repeal and recreate* 46.286 (3) (a) 3., 49.001  
8 (8), 51.01 (5) (a), 51.01 (14t), 51.03 (3) (a) 6., 51.20 (7) (d) 1., 54.01 (8), 54.25 (1)  
9 (b) (intro.), 54.36 (1), 54.38 (2) (a), 54.40 (1), 54.42 (1) (c), 54.48, 54.75, 55.001,  
10 55.01 (1v), 55.01 (2), 55.01 (6v), 55.02, 55.043 (1r) (b) 2., 55.043 (1r) (c) 2. c.,  
11 55.06, 55.075 (3), 55.075 (5) (a), 55.08 (1) (b), 55.08 (2) (a), 55.09 (1), 55.10 (4)  
12 (b), 55.135 (4), 55.14 (2), 55.14 (3) (c), 55.14 (3) (e) (intro.), 55.14 (3) (e) 1., 55.14  
13 (5), 55.14 (7), 55.14 (8) (a), 55.14 (9), 55.14 (10), 55.14 (11), 55.175, 55.19 (intro.),  
14 55.19 (1) (a) 1., 55.19 (1) (b), 55.19 (1) (bm), 55.19 (1) (c), 55.19 (1m), 55.19 (2)

**SENATE BILL 731**

1 (b) 3., 55.19 (2) (b) 5., 55.19 (2) (b) 6., 55.19 (2) (c), 55.19 (2) (f) 4., 55.19 (2) (g),  
 2 55.19 (3) (b) (intro.), 55.19 (3) (bm), 55.19 (3) (br), 55.19 (3) (d) (intro.), 55.19 (3)  
 3 (e) 1., 55.19 (3) (e) 2., 55.19 (3) (e) 3., 55.22 (2), 609.65 (1) (intro.), 813.123 (4)  
 4 (a) (intro.), 813.123 (4) (a) 2. a., 813.123 (5) (a) (intro.), 813.123 (6) (c) and  
 5 813.123 (7); **to create** 54.36 (title), 940.295 (1) (cr) and 940.295 (1) (hr) of the  
 6 statutes; and **to affect** 2005 Wisconsin Act 387, section 585 (intro.), 2005  
 7 Wisconsin Act 387, section 585 (2) and 2005 Wisconsin Act 388, section 252m  
 8 (1); **relating to:** protective placements and protective services; involuntary  
 9 administration of psychotropic medication; guardianships, conservatorships,  
 10 and wards; and services for adults at risk and elder adults at risk.

2005 Wisconsin Acts 264,  
387,  
and  
388,

---

***Analysis by the Legislative Reference Bureau***

With respect to the laws relating to protective placements and protective services, involuntary administration of psychotropic medication, guardianships, conservatorships, wards, and services for adults at risk and elder adults at risk, this bill reconciles ~~these acts that cannot~~ be reconciled by the revisor of statutes in preparing the statutes. The bill makes numerous and diverse minor changes to correct incorrect cross-references, to align inconsistent provisions, to give effect to certain provisions superceded by subsequent acts, and to make more uniform the definitions of "developmental disability," degenerative brain disorder," ~~and~~ "serious and persistent mental illness" and "voluntary

as to provisions that were mutually inconsistent and therefore could not

---

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

INSERT  
2-11

✓ 11 **SECTION 1.** 46.286 (3) (a) 3. of the statutes, as affected by 2005 Wisconsin Acts  
 12 264 and 388, is repealed and recreated to read:

13 46.286 (3) (a) 3. Is functionally eligible at the intermediate level and is  
 14 determined by an elder-adult-at-risk agency under s. 46.90 (2) or an adult-at-risk  
 15 agency designated under s. ~~55.02~~ to be in need of protective services or protective  
 16 placement under ch. 55.

55.043 (1d)

✓

SENATE BILL 731

1 SECTION 2. 46.90 (1) (eg) 1. of the statutes, ~~as created by 2005 Wisconsin Act~~

2 ~~388~~ is amended to read:

3 46.90 (1) (eg) 1. A guardian of the estate appointed under s. ~~880.03~~ 54.10.

4 SECTION 3. 46.90 (1) (eg) 2. of the statutes, ~~as created by 2005 Wisconsin Act~~

5 ~~388~~ is amended to read:

6 46.90 (1) (eg) 2. A conservator appointed under s. ~~880.31~~ 54.76.

7 SECTION 4. 46.90 (5m) (a) of the statutes, ~~as affected by 2005 Wisconsin Act 888,~~

8 is amended to read:

9 46.90 (5m) (a) Upon responding to a report, the elder-adult-at-risk agency or  
10 the investigative agency shall determine whether the elder adult at risk or any other  
11 individual involved in the alleged abuse, financial exploitation, neglect, or  
12 self-neglect is in need of services under this chapter or ch. 47, 49, 51, 54, or 55 ~~or 880~~.  
13 From the appropriation under s. 20.435 (7) (dh), the department shall allocate to  
14 selected counties not less than \$25,000 in each fiscal year, and within the limits of  
15 these funds and of available state and federal funds and of county funds appropriated  
16 to match the state and federal funds, the elder-adult-at-risk agency shall provide  
17 the necessary direct services to the elder adult at risk or other individual or arrange  
18 for the provision of the direct services with other agencies or individuals. Those  
19 direct services provided shall be rendered under the least restrictive conditions  
20 necessary to achieve their objective.

21 SECTION 5. 46.90 (5m) (br) 2. of the statutes, ~~as created by 2005 Wisconsin Act~~

22 ~~888~~ is amended to read:

23 46.90 (5m) (br) 2. Take appropriate emergency action, including emergency  
24 protective placement under s. ~~55.06~~ 55.135, if the elder-adult-at-risk agency

SENATE BILL 731

SECTION 5

1 determines that the emergency action is in the best interests of the elder adult at risk  
2 and the emergency action is the least restrictive appropriate intervention.

3 SECTION 6. 46.90 (6) (bt) 8. of the statutes, ~~as created by 2003 Wisconsin Act~~  
4 ~~388~~, is amended to read:

5 46.90 (6) (bt) 8. To the attorney or guardian ad litem for the elder adult at risk  
6 who is the alleged victim named in the record, to assist in preparing for any  
7 proceeding under ch. 48, 51, 54, 55, 813, 880, 971, or 975 pertaining to the alleged  
8 victim.

9 SECTION 7. 49.001 (8) of the statutes, as affected by 2005 Wisconsin Acts 264  
10 and 387, is repealed and recreated to read:

11 49.001 (8) "Voluntary" means according to an individual's free choice, if  
12 competent, or, ~~if adjudicated incompetent~~, by choice of his or her guardian, ~~unless~~ <sup>if</sup> the  
13 individual is ~~subject to a court-ordered placement under ch. 55~~, is placed by an  
14 ~~agency having a court-ordered involuntary commitment of the individual under ch.~~  
15 ~~51, or is involuntarily committed to the department of corrections or to the~~  
16 ~~department under ch. 979 or 980.~~ *adjudicated incompetent*

INSER 4-16

17 SECTION 8. 51.01 (5) (a) of the statutes, as affected by 2005 Wisconsin Acts 264,  
18 387 and 388, is repealed and recreated to read: ✓ ✓

19 51.01 (5) (a) "Developmental disability" means a disability attributable to  
20 brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, mental  
21 retardation, or another neurological condition closely related to mental retardation  
22 or requiring treatment similar to that required for individuals with mental  
23 retardation, which has continued or can be expected to continue indefinitely and  
24 constitutes a substantial handicap to the afflicted individual. "Developmental

**SENATE BILL 731**

1 disability” does not include dementia that is primarily caused by degenerative brain  
2 disorder.

3 **SECTION 9.** 51.01 (14t) of the statutes, as affected by 2005 Wisconsin Acts 264  
4 ~~and 387~~, is repealed and recreated to read:

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

14 **SECTION 10.** 51.03 (3) (a) 6. of the statutes, as affected by 2005 Wisconsin Acts  
15 264 and 387, is repealed and recreated to read:

16 51.03 (3) (a) 6. The number of individuals authorized to consent to involuntary  
17 administration of psychotropic medication under s. 55.14 (8) or for whom guardians  
18 were appointed under s. 880.33 (4m), 2003 stats.

INSERT  
5-18

19 **SECTION 11.** 51.20 (7) (d) 1. of the statutes, as affected by 2005 Wisconsin Acts  
20 264 and 387, is repealed and recreated to read:

21 51.20 (7) (d) 1. If the court determines after hearing that there is probable cause  
22 to believe that the subject individual is a fit subject for guardianship and protective  
23 placement or services, the court may, without further notice, appoint a temporary  
24 guardian for the subject individual and order temporary protective placement or  
25 services under ch. 55 for a period not to exceed 30 days, and shall proceed as if

SENATE BILL 731

SECTION 11

1 petition had been made for guardianship and protective placement or services. If the  
 2 court orders only temporary protective services for a subject individual under this  
 3 paragraph, the individual shall be provided care only on an outpatient basis. The  
 4 court may order psychotropic medication as a temporary protective service under  
 5 this paragraph if it finds that there is probable cause to believe that the allegations  
 6 under s. 55.14 (3) (e) apply, that the individual is not competent to refuse  
 7 psychotropic medication and that the medication ordered will have therapeutic  
 8 value and will not unreasonably impair the ability of the individual to prepare for  
 9 and participate in subsequent legal proceedings. An individual is not competent to  
 10 refuse psychotropic medication if, because of serious and persistent mental illness,  
 11 and after the advantages and disadvantages of and alternatives to accepting the  
 12 particular psychotropic medication have been explained to the individual, one of the  
 13 following is true:

INSERT 6-13

14 a. The individual is incapable of expressing an understanding of the  
 15 advantages and disadvantages of accepting treatment and the alternatives.

16 b. The individual is substantially incapable of applying an understanding of  
 17 the advantages, disadvantages and alternatives to his or her serious and persistent  
 18 mental illness in order to make an informed choice as to whether to accept or refuse  
 19 psychotropic medication.

and 388

INSERT 6-19

20 SECTION 12. 54.01 (8) of the statutes, as affected by 2005 Wisconsin Acts 264

21 and 387, is repealed and recreated to read:

22 54.01 (8) "Developmental disability" means a disability attributable to mental  
 23 retardation, cerebral palsy, epilepsy, autism, or another neurological condition  
 24 closely related to mental retardation or requiring treatment similar to that required  
 25 for individuals with mental retardation, which has continued or can be expected to

SENATE BILL 731

1 continue indefinitely, substantially impairs an individual from adequately providing  
2 for his or her own care or custody, and constitutes a substantial handicap to the  
3 afflicted individual. The term does not include dementia that is primarily caused by  
4 degenerative brain disorder.

5 SECTION 13. 54.10 (3) (d) of the statutes, as created by 2005 Wisconsin Act 387,

6 is ~~amended~~ to read: *repealed and recreated*

7 54.10 (3) (d) Before appointing a guardian under this subsection, declaring  
8 incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers  
9 are appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2) (d), the  
10 court shall determine if additional medical, psychological, social, vocational, or  
11 educational evaluation is necessary for the court to make an informed decision  
12 respecting the individual's competency to exercise legal rights and may obtain  
13 assistance in the manner provided in s. ~~55.06 (1)~~ *55.11* whether or not protective  
14 placement is made.

INSERT 7-14

15 SECTION 14. 54.25 (1) (b) (intro.) of the statutes, as affected by 2005 Wisconsin  
16 Acts 264 and 387, is repealed and recreated to read:

17 54.25 (1) (b) (intro.) Endeavor to secure any necessary care or services for the  
18 ward that are in the ward's best interests, based on all of the following:

19 SECTION 15. 54.25 (2) (b) 4. of the statutes, as created by 2005 Wisconsin Act

20 ~~387~~, is ~~amended~~ to read: *repealed and recreated*

21 54.25 (2) (b) 4. To protest a residential placement made under s. ~~55.05 (1)~~  
22 *55.055*, and to be discharged from a residential placement unless the individual is  
23 protectively placed under s. ~~55.06~~ *ch. 55* or the ~~elements~~ requirements of s. ~~55.06 (1)~~  
24 *55.135 (1)* are ~~present~~ met.

INSERT 7-24

SENATE BILL 731

INSERT  
8-4

1 SECTION 16. 54.25 (2) (d) 2. n. of the statutes, ~~as created by 2005 Wisconsin Act~~

2 ~~387~~, is amended to read:

3 54.25 (2) (d) 2. n. The power to apply petition for protective placement under  
4 s. ~~55.06~~ 55.075 or for commitment under s. 51.20 or 51.45 (13) for the ward. ✓

5 SECTION 17. 54.36 (title) of the statutes is created to read:

6 **54.36 (title) Examination of proposed ward.** ✓

7 SECTION 18. 54.36 (1) of the statutes, as affected by 2005 Wisconsin Acts 264  
8 and 387, is repealed and recreated to read:

9 54.36 (1) Whenever it is proposed to appoint a guardian on the ground that a  
10 proposed ward allegedly has incompetency or is a spendthrift, a physician or  
11 psychologist, or both, shall examine the proposed ward and furnish a written report  
12 stating the physician's or psychologist's professional opinion regarding the presence  
13 and likely duration of any medical or other condition causing the proposed ward to  
14 have incapacity or to be a spendthrift. The privilege under s. 905.04 does not apply

15 to the ~~statement~~ <sup>report</sup>. The petitioner shall provide a copy of the report to the proposed  
16 ward or his or her counsel, the guardian ad litem, and the petitioner's attorney, if any.  
17 Prior to the examination on which the report is based, the guardian ad litem,  
18 physician, or psychologist shall inform the proposed ward that statements made by  
19 the proposed ward may be used as a basis for a finding of incompetency or a finding  
20 that he or she is a spendthrift, that he or she has a right to refuse to participate in  
21 the examination, absent a court order, or speak to the physician or psychologist, and  
22 that the physician or psychologist is required to report to the court even if the  
23 proposed ward does not speak to the physician or psychologist. The issuance of such  
24 a warning to the proposed ward prior to each examination establishes a presumption  
25 that the proposed ward understands that he or she need not speak to the physician

**SENATE BILL 731**

1 or psychologist. Nothing in this section prohibits the use of a report by a physician  
2 or psychologist that is based on an examination of the proposed ward by the  
3 physician or psychologist before filing the petition for appointment of a guardian, but  
4 the court will consider the recency of the report in determining whether the report  
5 sufficiently describes the proposed ward's current state and in determining the  
6 weight to be given to the report.

7 **SECTION 19.** 54.38 (2) (a) of the statutes, as affected by 2005 Wisconsin Acts 264  
8 and 387, is repealed and recreated to read:

9 54.38 (2) (a) On the proposed ward or ward by personal service and an existing  
10 guardian, if any, by personal service or by registered or certified mail at least 10 days  
11 before the time set for hearing. If the proposed ward or ward is in custody or  
12 confinement, the petitioner shall have notice served by registered or certified mail  
13 on the proposed ward's or ward's custodian, who shall immediately serve it on the  
14 proposed ward or ward. The process server or custodian shall inform the proposed  
15 ward or ward of the complete contents of the notice and petition, motion, or other  
16 required document; certify on the notice that the process server or custodian served  
17 and informed the proposed ward or ward; and return the certificate and notice to the  
18 court.

19 **SECTION 20.** 54.40 (1) of the statutes, as affected by 2005 Wisconsin Acts 264  
20 and 387, is repealed and recreated to read:

21 54.40 (1) APPOINTMENT. The court shall appoint a guardian ad litem when a  
22 petition for appointment of a guardian is brought under s. 54.34 (1), when a petition  
23 for receipt and acceptance of a foreign guardianship is brought under s. 54.34 (3), to  
24 review the scope of a guardianship, to provide protective placement to an individual  
(25) or order protective services under ch. 55, to review any protective placement ~~or~~

SENATE BILL 731

SECTION 20

1 ~~protective service order~~ under s. 55.18, to terminate a protective placement under s.  
 2 55.17, to expand an order of guardianship under s. 54.63, to review incompetency and  
 3 terminate a guardianship under s. 54.64, to review the conduct of a guardian under  
 4 s. 54.68, ~~to expand an order of guardianship under s. 54.63, to review incompetency~~  
 5 ~~and terminate a guardianship under s. 54.64, to review the conduct of a guardian~~  
 6 ~~under s. 54.68,~~ or at any other time that the court determines it is necessary.

INSERT 10-6

7 **SECTION 21.** 54.42 (1) (c) of the statutes, as affected by 2005 Wisconsin Acts 264  
 8 and 387, is repealed and recreated to read:

9 54.42 (1) (c) If par. (a) 1., 2., or 3. applies but the proposed ward or ward is  
 10 unable to obtain legal counsel, the court shall appoint legal counsel. If the proposed  
 11 ward or ward is represented by counsel appointed under s. 977.08 in a proceeding  
 12 under a petition for protective placement brought under s. 55.075, the court shall  
 13 order the counsel appointed under s. 977.08 to represent the proposed ward or ward.

14 **SECTION 22.** 54.48 of the statutes, as affected by 2005 Wisconsin Acts 264 and  
 15 387, is repealed and recreated to read:

16 **54.48 Protective placement and protective services.** A finding of  
 17 incompetency and appointment of a guardian under this chapter is not grounds for  
 18 involuntary protective placement or the provision of protective services. Protective  
 19 placement and the provision of protective services may be made only in accordance  
 20 with ch. 55.

INSERT 10-20

21 **SECTION 23.** 54.75 of the statutes, as affected by 2005 Wisconsin Acts 264 and  
 22 387, is repealed and recreated to read:

23 **54.75 Access to court records.** All court records pertinent to the finding of  
 24 incompetency are closed but subject to access as provided in s. 51.30, 55.22, or under  
 25 an order of a court under this chapter. The fact that an individual has been found

## SENATE BILL 731

1 incompetent and the name of and contact information for the guardian is accessible  
2 to any person who demonstrates to the custodian of the records a need for that  
3 information.

4 **SECTION 24.** 55.001 of the statutes, as affected by 2005 Wisconsin Acts 264 and  
5 388, is repealed and recreated to read:

6 **55.001 Declaration of policy.** The legislature recognizes that many citizens  
7 of the state, because of serious and persistent mental illness, degenerative brain  
8 disorders, developmental disabilities, or other like incapacities, are in need of  
9 protective services or protective placement. Except as provided in s. 49.45 (30m) (a),  
10 the protective services or protective placement should, to the maximum degree of  
11 feasibility under programs, services and resources that the county board of  
12 supervisors is reasonably able to provide within the limits of available state and  
13 federal funds and of county funds required to be appropriated to match state funds,  
14 allow the individual the same rights as other citizens, and at the same time protect  
15 the individual from financial exploitation, abuse, neglect, and self-neglect. This  
16 chapter is designed to establish those protective services and protective placements,  
17 to assure their availability to all individuals when in need of them, and to place the  
18 least possible restriction on personal liberty and exercise of constitutional rights  
19 consistent with due process and protection from abuse, financial exploitation,  
20 neglect, and self-neglect.

✓  
INSERT  
11-20

21 **SECTION 25.** 55.01 (1v) of the statutes, as created by 2005 Wisconsin Acts 264,  
22 387 and 388, is repealed and recreated to read:

23 55.01 (1v) "Degenerative brain disorder" means the loss or dysfunction of brain  
24 cells to the extent that the individual is substantially impaired in his or her ability

## SENATE BILL 731

1 to provide adequately for his or her own care or custody or to manage adequately his  
2 or her property or financial affairs.

3 **SECTION 26.** 55.01 (2) of the statutes, as affected by 2005 Wisconsin Acts 264 ✓  
4 and 388, is repealed and recreated to read:

5 55.01 (2) "Developmental disability" means a disability attributable to mental  
6 retardation, cerebral palsy, epilepsy, autism or another neurological condition  
7 closely related to mental retardation or requiring treatment similar to that required  
8 for individuals with mental retardation, which has continued or can be expected to  
9 continue indefinitely, substantially impairs an individual from adequately providing  
10 for his or her own care or custody, and constitutes a substantial handicap to the  
11 afflicted individual. The term does not include dementia that is primarily caused by  
12 degenerative brain disorder. ✓

13 **SECTION 27.** 55.01 (4g) of the statutes, as created by 2005 Wisconsin Act 388,  
14 is renumbered 55.01 (4i).

15 **SECTION 28.** 55.01 (6) of the statutes, as created by 2005 Wisconsin Act 388, ✓  
16 is renumbered 55.01 (6u).

17 **SECTION 29.** 55.01 (6d) of the statutes, as created by 2005 Wisconsin Act 388, ✓  
18 is renumbered 55.01 (6vm).

19 **SECTION 30.** 55.01 (6g) of the statutes, as created by 2005 Wisconsin Act 388,  
20 is renumbered 55.01 (6w). ✓

21 **SECTION 31.** 55.01 (6t) of the statutes, as created by 2005 Wisconsin Act 387,  
22 is renumbered 55.01 (6s). ✓

23 **SECTION 32.** 55.01 (6v) of the statutes, as created by 2005 Wisconsin Acts 264  
24 and 387, is repealed and recreated to read: ✓

**SENATE BILL 731**

1           55.01 (6v) "Serious and persistent mental illness" means a mental illness that  
2 is severe in degree and persistent in duration, that causes a substantially diminished  
3 level of functioning in the primary aspects of daily living and an inability to cope with  
4 the ordinary demands of life, that may lead to an inability to maintain stable  
5 adjustment and independent functioning without long-term treatment and support,  
6 and that may be of lifelong duration. "Serious and persistent mental illness" includes  
7 schizophrenia as well as a wide spectrum of psychotic and other severely disabling  
8 psychiatric diagnostic categories, but does not include degenerative brain disorder  
9 or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

10           **SECTION 33.** 55.02 of the statutes, as affected by 2005 Wisconsin Acts 264, 387  
11 and 388, is repealed and recreated to read:

12           **55.02 Protective services and protective placement: duties. (1)**

13           DEPARTMENT DUTIES. (a) The department shall do all of the following:

14           1. Cooperate with county departments to develop and operate a coordinated,  
15 statewide system for protective services and protective placement. The protective  
16 services and protective placement system shall be designed to encourage  
17 independent living and to avoid protective placement whenever possible.

18           2. Monitor and supervise the implementation and operation of the protective  
19 services and protective placement system.

20           3. Provide technical assistance to county departments providing protective  
21 services and protective placement.

22           4. Evaluate the protective services and protective placement system.

23           (b) The department may provide protective services and protective placement  
24 directly or contract for the provision of protective services or protective placement.

SENATE BILL 731

1 (2) COUNTY DEPARTMENT DUTIES. (a) The chairperson of each county board of  
 2 supervisors shall designate a county department under s. 46.215, 46.22, 46.23, 51.42,  
 3 or 51.437 that is providing services in the county on its own or through a joint  
 4 mechanism with another county department or county to have the responsibility for  
 5 planning for the provision of protective services and protective placement and for  
 6 directly providing protective services, protective placement, or both, or entering into  
 7 a contract under s. 46.036 with a responsible agency for the provision of protective  
 8 services, protective placement, or both.

9 (b) In addition to the responsibilities specified in par. (a), the county  
 10 department shall:

11 1. Monitor and evaluate protective services and protective placements.

12 2. Prepare and submit reports required by the department, or by a court if  
 13 protective services or protective placement are ordered by a court.

14 3. Develop requirements for submittal by guardians of the person of reports to  
 15 the county department under s. 54.25 (1) (a).

16 4. Designate at least one appropriate medical facility or protective placement  
 17 facility as an intake facility for the purpose of emergency protective placements  
 18 under s. 55.135.

19 SECTION 34. 55.03 (1) of the statutes, as affected by 2005 Wisconsin Act 264,  
 20 is amended to read:

21 55.03 (1) ~~AGENCY AS GUARDIAN~~ GUARDIAN AS PROVIDER. No agency acting as a  
 22 guardian appointed under ~~ch. 54~~ or ch. 880, 2003 stats., may be a provider of  
 23 protective services or protective placement for its ward under this chapter.

24 SECTION 35. 55.03 (3) of the statutes, as affected by 2005 Wisconsin Act 264,  
 25 is amended to read:

INSERT 14-23

for ch. 54

RESTORE TO PLAIN TEXT

Acts and 887

SENATE BILL 731

1           55.03 (3) GUARDIAN AUTHORITY AND RESPONSIBILITY APPLICABLE TO PARENT OF  
 2 MINOR. Where any responsibility or authority is created under this chapter upon or  
 3 in relation to a guardian, the responsibility or authority is deemed to apply to a  
 4 parent or person in the place of a parent in the case of a minor who is or who is alleged  
 5 to be developmentally disabled have<sup>a</sup> developmental disability.

✓  
 INSERT  
 15-5

6           **SECTION 36.** 55.043 (1r) (b) 2. of the statutes, as affected by 2005 Wisconsin Acts  
 7 264 and 388, is repealed and recreated to read:

8           55.043 (1r) (b) 2. Observation of or an interview with the adult at risk, in  
 9 private to the extent practicable, and with or without consent of his or her guardian  
 10 or agent under an activated power of attorney for health care, if any.

11           **SECTION 37.** 55.043 (1r) (c) 2. c. of the statutes, as affected by 2005 Wisconsin  
 12 Acts 264 and 388, is repealed and recreated to read:

13           55.043 (1r) (c) 2. c. The examination is authorized by order of a court.

14           **SECTION 38.** 55.043 (4) (am) of the statutes, as created by 2005 Wisconsin Act  
 15 388, is amended to read:

16           55.043 (4) (am) Upon responding to a report, the adult-at-risk agency or the  
 17 investigative agency shall determine whether the adult at risk or any other  
 18 individual involved in the alleged abuse, financial exploitation, neglect, or  
 19 self-neglect is in need of services under this chapter or ch. 46, 47, 59 49, 51, or 880  
 20 54. If provided, direct services shall be rendered under the least restrictive  
 21 conditions necessary to achieve their objective.

22           ~~**SECTION 39.** 55.043 (6) (bt) 8. of the statutes, as created by Wisconsin Act 388,~~  
 23 ~~is amended to read:~~

SENATE BILL 731

SECTION 39

1 55.043 (6) (bt) 8. To the attorney or guardian ad litem for the adult at risk who  
 2 is the alleged victim named in the record, to assist in preparing for any proceeding  
 3 under ch. 48, 51, 54, 55, 813, 880, 971, or 975 pertaining to the alleged victim.

INSERT 16-3  
 4

SECTION 40. 55.055 (1) (a) of the statutes, as affected by 2005 Wisconsin Acts

5 264, is amended to read:

and 387

repealed and recreated

6 55.055 (1) (a) The guardian of an individual who has been found adjudicated  
 7 incompetent under s. 880.33 may consent to the individual's admission to a foster

PLAIN

8 home, group home, or community-based residential facility, as defined under s.  
 9 50.01 (1g), without a protective placement order under s. 55.12 if the home or facility  
 10 is licensed for fewer than 16 beds. Prior to providing that consent, and annually  
 11 thereafter, the guardian shall review the ward's right to the least restrictive  
 12 residential environment and may consent only to admission to a home or facility that  
 13 implements that right.

14 SECTION 41. 55.055 (1) (b) of the statutes, as affected by 2005 Wisconsin Act

15 264, is amended to read:

and 387

repealed and recreated

16 55.055 (1) (b) The guardian of an individual who has been found adjudicated  
 17 incompetent under s. 880.33 may consent to the individual's admission to a nursing

18 home or other facility not specified in par. (a) for which protective placement is  
 19 otherwise required for a period not to exceed 60 days. In order to be admitted under  
 20 this paragraph, the individual must be in need of recuperative care or be unable to  
 21 provide for his or her own care or safety so as to create a serious risk of substantial  
 22 harm to himself or herself or others. Prior to providing that consent, the guardian  
 23 shall review the ward's right to the least restrictive residential environment and  
 24 consent only to admission to a nursing home or other facility that implements that  
 25 right. Following the 60-day period, the admission may be extended for an additional

fix component

fix component

SENATE BILL 731

1 60 days if a petition for protective placement under s. 55.075 has been brought, or,  
 2 if no petition for protective placement under s. 55.075 has been brought, for an  
 3 additional 30 days for the purpose of allowing the initiation of discharge planning for  
 4 the individual. Admission under this paragraph is not permitted for an individual  
 5 for whom the primary purpose of admission is for treatment or services related to the  
 6 individual's mental illness or developmental disability.

INSECT  
17.6

and 387

7 SECTION 42. 55.06 of the statutes, as affected by 2005 Wisconsin Act <sup>s</sup> 264, is  
 8 repealed and recreated to read:

55.08(1)

9 **55.06 Protective services and protective placement; eligibility.** To be  
 10 eligible for court-ordered protective placement or protective services, an individual  
 11 shall have filed a petition to transfer a foreign guardianship, whether present in the  
 12 state or not, or shall be a resident of the state; and shall have a need for protective  
 13 placement or protective services. The individual shall have attained the age of 18,  
 14 but an individual who is alleged to have <sup>a</sup>developmental disability may receive  
 15 protective placement or protective services upon attaining the age of 14. Protective  
 16 placement or protective services may be ordered under this chapter only for an  
 17 individual who is adjudicated incompetent in this state or for a minor who is alleged  
 18 to have <sup>a</sup>developmental disability, and only if there is a finding of a need for protective  
 19 placement under s. ~~55.12~~ and ss. 55.055 (5), 55.13, and 55.135 are inappropriate or  
 20 do not apply. A procedure for court-ordered protective placement or protective  
 21 services may be initiated 6 months before a minor attains age 18.

22 SECTION 43. ~~55.06(3)(d)~~ <sup>55.075(5)(bm)</sup> of the statutes, as created by 2005 Wisconsin Act 387,  
 23 is ~~renumbered 55.075(5)(bm) and~~ amended to read:

24 55.075 (5) (bm) The court in which a petition is first filed under par. (e) ~~sub. (1)~~  
 25 shall determine venue. The court shall direct that proper notice be given to any

SENATE BILL 731

SECTION 43

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

and 387

14 SECTION 44. 55.075 (3) of the statutes, as affected by 2005 Wisconsin Act 264,  
 15 is repealed and recreated to read:

16 55.075 (3) A petition for guardianship described in s. 55.08 (1) (b) or (2) (a) shall  
 17 be heard prior to ordering protective placement or protective services. If the  
 18 individual is adjudicated incompetent in this state more than 12 months before the  
 19 filing of an application for protective placement or protective services on his or her  
 20 behalf, the court shall review the finding of incompetency.

INSERT 18-20

21 SECTION 45. 55.075 (5) (a) of the statutes, as affected by 2005 Wisconsin Act  
 22 264, is repealed and recreated to read: and 387

23 55.075 (5) (a) A petition under sub. (1) shall be filed in the county of residence  
 24 of the individual to be protected, as determined under s. 51.40 or by the individual's  
 25 guardian or where the individual is physically present due to circumstances

extraordinary

SENATE BILL 731

1 including those specified under s. 51.22 (4). If an individual has not received services  
 2 under ch. 46, 51, or 55 or if an individual has received services under ch. 46, 51, or  
 3 55 that have been terminated and has established residence in a county other than  
 4 that in which the individual resided when the services were received, the court may  
 5 determine the individual's county of residence. The county of residence under this  
 6 paragraph is the county of responsibility.

this chapter or

this chapter or

and 387

INSERT 19-6

7 **SECTION 46.** 55.08 (1) (b) of the statutes, as affected by 2005 Wisconsin Act 264,  
 8 is repealed and recreated to read:

9 55.08 (1) (b) Except in the case of a minor who is alleged to have developmental  
 10 disability, the individual has either been adjudicated incompetent by a circuit court,  
 11 or has had submitted on the minor's behalf a petition for a guardianship.

12 **SECTION 47.** 55.08 (2) (a) of the statutes, as created by 2005 Wisconsin Act 264,  
 13 is repealed and recreated to read:

14 55.08 (2) (a) The individual has been determined to be incompetent by a circuit  
 15 court or is a minor who is alleged to have developmental disability and on whose  
 16 behalf a petition for a guardianship has been submitted.

17 **SECTION 48.** 55.09 (1) of the statutes, as affected by 2005 Wisconsin Act 264,  
 18 is repealed and recreated to read:

and 387

19 55.09 (1) NOTICE TO INDIVIDUAL. Notice of a petition for protective placement  
 20 or protective services shall be served upon the individual sought to be protected, by  
 21 personal service, at least 10 days before the time set for a hearing. The person  
 22 serving the notice shall inform the individual sought to be protected of the complete  
 23 contents of the notice and shall return a certificate to the circuit judge verifying that  
 24 the petition has been delivered and notice given. The notice shall include the names  
 25 of all petitioners.

SENATE BILL 731

SECTION 49

1 SECTION 49. 55.10 (4) (a) of the statutes, as created by 2005 Wisconsin Act 264,  
2 is amended to read:

3 55.10 (4) (a) *Counsel; costs.* The individual sought to be protected has the right  
4 to counsel whether or not the individual is present at the hearing on the petition.  
5 The court shall require representation by full legal counsel whenever the petition  
6 alleges that the individual is not competent to refuse psychotropic medication under  
7 s. 55.14, the individual sought to be protected requested such representation at least  
8 72 hours before the hearing, the guardian ad litem or any other person states that  
9 the individual sought to be protected is opposed to the petition, or the court  
10 determines that the interests of justice require it. If the individual sought to be  
11 protected or any other person on his or her behalf requests but is unable to obtain  
12 legal counsel, the court shall appoint legal counsel. Counsel shall be provided at  
13 public expense, as provided under s. 967.06 and ch. 977, if the individual is indigent.  
14 If the individual sought to be protected is an adult who is indigent, and if counsel was  
15 not appointed under s. 977.08, the county in which the hearing is held is liable for  
16 any fees due the individual's legal counsel. If the individual sought to be protected  
17 is represented by counsel appointed under s. 977.08 in a proceeding for the  
18 appointment of a guardian under s. 880.33 ~~54.10~~, the court shall order the counsel  
19 appointed under s. 977.08 to represent under this section the individual sought to  
20 be protected.

ch. 54

21 SECTION 50. 55.10 (4) (b) of the statutes, as affected by 2005 Wisconsin Act 264,  
22 is repealed and recreated to read:

23 55.10 (4) (b) *Guardian ad litem; duties; fees.* Sections 54.42, 54.44, and 54.46  
24 apply to all hearings under this chapter except for transfers of placement under s.  
25 ~~55.15~~ The court shall in all cases require the appointment of an attorney as

and 387

SENATE BILL 731

1 guardian ad litem in accordance with s. 757.48 (1). The responsibilities and duties  
 2 of a guardian ad litem on behalf of a proposed ward or individual who is alleged  
 3 incompetent specified in s. 54.40 apply to a guardian ad litem appointed in a  
 4 proceeding for protective services or protective placement on behalf of an individual  
 5 sought to be protected. If a guardian has been appointed for an individual who is the  
 6 subject of a petition for court-ordered protective placement or protective services,  
 7 the guardian ad litem shall interview the guardian. The guardian ad litem shall be  
 8 present at all hearings under this chapter if the individual sought to be protected  
 9 does not have full legal counsel. The court may, however, excuse a personal  
 10 appearance by a guardian ad litem based on information contained in a written  
 11 report by the guardian ad litem to the court. If the individual sought to be protected  
 12 is an adult who is indigent, the county shall be liable for any fees due the guardian  
 13 ad litem. If the individual sought to be protected is a minor, the minor's parents or  
 14 the county in which the hearing is held shall be liable for any fees due the guardian  
 15 ad litem as provided in s. 48.235 (8).

and 387

INSERT 21-15

SECTION 51. 55.11 (1) (c) of the statutes, as affected by 2005 Wisconsin Act 264,

is amended to read:

repealed and recreated

fix component

17 55.11 (1) (c) A medical, psychological, social, vocational, and educational  
 18 evaluation and review, if necessary, and any recommendations for or against  
 19 maintenance of partial legal rights as provided in s. ~~54.25~~ 54.25 (2). The evaluation  
 20 and review shall include recommendations for the individual's placement that are  
 21 consistent with the requirements of s. 55.12 (3), (4), and (5).

PLAIN

INSERT 21-23

SECTION 52. 55.13 (2) of the statutes, as created by 2005 Wisconsin Act 264, is

amended to read:

23

24

SENATE BILL 731

SECTION 52

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

13           SECTION 53. 55.135 (4) of the statutes, as affected by 2005 Wisconsin Act 264,  
 14 is ~~repealed and recreated~~ to read: amended

15           55.135 (4) When an individual is detained under this section, a petition shall  
 16 be filed under s. 55.075 by the person making the emergency protective placement  
 17 and a preliminary hearing shall be held within 72 hours, excluding Saturdays,  
 18 Sundays and legal holidays, to establish probable cause to believe the grounds for  
 19 protective placement under s. 55.08 (1). The sheriff or other person making  
 20 emergency protective placement under sub. (1) shall provide the individual with  
 21 written notice and orally inform him or her of the time and place of the preliminary  
 22 hearing. If the detainee is not under guardianship, a petition for guardianship shall  
 23 accompany the protective placement petition, except in the case of a minor who is  
 24 alleged to <sup>(a)</sup> have developmental disability. In the event that protective placement is

be developmentally disabled

SENATE BILL 731

1 not appropriate, the court may elect to treat a petition for protective placement as  
2 a petition for commitment under s. 51.20 or 51.45 (13).

INSERT  
23-2

3 SECTION 54. 55.14 (2) of the statutes, as created by 2005 Wisconsin Acts 264  
4 and 387, is repealed and recreated to read:

5 55.14 (2) Involuntary administration of psychotropic medication, with consent  
6 of a guardian, may be ordered as a protective service only under the requirements  
7 of this section.

8 SECTION 55. 55.14 (3) (c) of the statutes, as created by 2005 Wisconsin Acts 264  
9 and 387, is repealed and recreated to read:

10 55.14 (3) (c) The individual has refused to take the psychotropic medication  
11 voluntarily or attempting to administer psychotropic medication to the individual  
12 voluntarily is not feasible or is not in the best interests of the individual. If the  
13 petition alleges that the individual has refused to take psychotropic medication  
14 voluntarily, the petition shall identify the reasons, if known, for the individual's  
15 refusal to take psychotropic medication voluntarily. The petition also shall provide  
16 evidence showing that a reasonable number of documented attempts to administer  
17 psychotropic medication voluntarily using appropriate interventions that could  
18 reasonably be expected to increase the individual's willingness to take psychotropic  
19 medication voluntarily have been made and have been unsuccessful. If the petition  
20 alleges that attempting to administer psychotropic medications to the individual  
21 voluntarily is not feasible or is not in the best interests of the individual, the petition  
22 <sup>shall</sup> ~~must~~ identify specific reasons supporting that allegation.

23 SECTION 56. 55.14 (3) (e) (intro.) of the statutes, as created by 2005 Wisconsin  
24 Acts 264 and 387, is repealed and recreated to read:

SENATE BILL 731

1           55.14 (3) (e) (intro.) Unless psychotropic medication is administered  
 2 involuntarily, the individual will incur a substantial probability of physical harm,  
 3 impairment, injury, or debilitation or will present a substantial probability of  
 4 physical harm to others. The substantial probability of physical harm, impairment,  
 5 injury, or debilitation shall be evidenced by one of the following:

6           **SECTION 57.** 55.14 (3) (e) 1. of the statutes, as created by 2005 Wisconsin Acts  
 7 264 and 387, is repealed and recreated to read:

8           55.14 (3) (e) 1. The individual's history of at least 2 episodes, one of which has  
 9 occurred within the previous 24 months, that indicate a pattern of overt activity,  
 10 attempts, threats to act, or omissions that resulted from the individual's failure to  
 11 participate in treatment, including psychotropic medication, and that resulted in a  
 12 finding of probable cause for commitment under s. 51.20 (7), a settlement agreement  
 13 approved by a court under s. 51.20 (8) (bg), or commitment ordered under s. 51.20  
 14 (13).

15           **SECTION 58.** 55.14 (5) of the statutes, as created by 2005 Wisconsin Acts 264  
 16 and 387, is repealed and recreated to read:

17           55.14 (5) The guardian ad litem appointed under s. 55.10 (4) (b) for an  
 18 individual who is the subject of a petition under this section shall report to the court  
 19 whether the allegations in the petition required under sub. (3) are true, and whether  
 20 involuntary administration of psychotropic medication is in the best interests of the  
 21 individual

INSE 24-21

22           **SECTION 59.** 55.14 (7) of the statutes, as created by 2005 Wisconsin Acts 264  
 23 and 387, is repealed and recreated to read: