

CHAPTER 55

PROTECTIVE SERVICES

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55.001 Declaration of policy. The legislature recognizes that there are many citizens of the state who, because of the infirmities of aging, mental retardation, other developmental disabilities or like incapacities incurred at any age, are in need of protective services. Such services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect.

History: 1973 c 284

55.01 Definitions. In this chapter:

(1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a community developmental disability services board under s. 51.437 or community board established pursuant to s. 51.42.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely and substantially impairs the individual from adequately providing for his own care or custody.

(3) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care or custody.

(4) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with his welfare.

(5) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from adequately providing for his own care or custody.

History: 1973 c 284

55.02 Protective service system; establishment. The department shall develop a statewide system of protective service for mentally retarded and other developmentally disabled persons, for aged infirm persons and for persons with other like incapacities incurred at any age in accordance with regulations and standards established by the department. The system shall utilize the planning and advice of agencies as defined in s. 55.01 (1) and of the community boards under s. 51.42 or 51.437, as appropriate. The department and such boards shall cooperate in developing a coordinated system of services. With respect to this program, the department shall provide direct services and enter into contracts with any responsible agency, public or private, for provision of protective services.

History: 1973 c 284

55.03 Status of guardian. No agency acting as a guardian appointed under ch. 880 shall be a provider of protective services or placement for its ward under this chapter. Nothing in this chapter shall be construed to prohibit the transfer of guardianship and legal custody under s. 48.43.

History: 1973 c 284

55.04 Program responsibilities. (1) The department shall have the following responsibilities in the administration of this chapter:

(a) *Protective services.*

1. Outreach;
2. Identification of persons in need of services;
3. Counseling and referral for services;
4. Coordination of services for individuals;
5. Tracking and follow-up;
6. Provision of social services;
7. Case management;
8. Legal counseling or referral;
9. Guardianship referral; and
10. Diagnostic evaluation;
11. Such other responsibilities as the department deems appropriate.

(b) *Protective placement.* Evaluation, monitoring and provision of protective placements.

(2) All agencies providing protective services shall make such reports as the department may require.

(3) If service is obtained by order of a court, the provider of service shall make reports under sub. (2) as the court may direct.

History: 1973 c. 284

55.05 Protective services. (1) PREFERENCE. The department in administering the protective services program may contract with community boards under s. 51.42 or 51.437 and other agencies as defined in s. 55.01 (1). In contracting for protective services, the department and the community boards under s. 51.42 or 51.437 shall give preference to agencies with consumer and other citizen representation. The department shall provide services only if no other suitable agency is available. Courts shall adhere to the same preferences in ordering protective services.

(2) CONDITIONS REQUIRED. The department or an agency providing protective services under s. 55.04 may provide such services under any of the following conditions:

(a) The person who needs or believes he needs protective service may seek such service.

(b) Any interested person may request protective services on behalf of a person in need of services.

(c) The department may provide protective services on behalf of any person in need of such services.

(d) The court may order such services.

(3) VOLUNTARY SERVICES PREFERRED. An individual shall receive protective services voluntarily unless ordered by the court, requested by a guardian or provided in accordance with sub. (4).

(4) EMERGENCY SERVICES. (a) Emergency services may be provided for not more than 72

hours where there is probable cause to believe that if the services are not provided, the person entitled to the services or others will incur a substantial risk of serious physical harm or deterioration.

(b) Where it is necessary to forcibly enter a premises, the representative of an agency may make the entry, accompanied by a sheriff, police officer or member of a fire department.

(c) Where emergency services are rendered, a report of the exact circumstances including the time, place, date, factual basis for the need for such services and the exact services rendered shall be made and forwarded to the appropriate community board under s. 51.42 or 51.437 or to the department if no board exists, within 14 days of the time that rendering of services is completed.

History: 1973 c. 284.

55.06 Protective placement. (1) A protective placement under this section is a placement of a ward for the primary purpose of providing care and custody. No protective placement may be ordered unless there is a determination of incompetency in accordance with ch. 880 and a finding of a need for protective placement in accordance with sub. (2) except as provided in subs. (11) and (12).

(2) The department, an agency, or a guardian may petition the county court to provide protective placement for an individual who:

(a) Has a primary need for full-time residential care and custody;

(b) Has either been determined to be incompetent by a county court or has had submitted on his behalf a petition for a guardianship;

(c) As a result of developmental disabilities, infirmities of aging or other like incapacities, is so totally incapable of providing for his own care or custody that his condition creates a substantial risk of serious harm to himself or others. Serious harm may be occasioned by overt acts or acts of omission; and

(d) Has a disability which is permanent or likely to be permanent.

(3) (a) The petition shall state with particularity the factual basis for the allegations specified in sub. (2).

(b) A petition may be signed by an employe of the department, a representative of an agency, a guardian, or a person who has applied for guardianship.

(c) The petition under sub. (2) shall be based on personal knowledge of the individual alleged to need protective placement.

(4) A petition for guardianship under sub. (2) (b) must be heard prior to application under

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this section. If incompetency has been determined under s. 880.33 more than one year preceding the filing of an application for protective placement, the court shall review the finding of incompetency.

(5) Notice of a petition for placement shall be served upon the person sought to be placed by personal service at least 10 days prior to the time set for a hearing. Upon service of the notice the person sought to be protected shall be informed of the complete contents of the notice. The person serving the notice shall return a certificate to the county judge verifying that the petition has been delivered and notice given. The notice shall include the names of all petitioners. Notice shall also be served upon the person's guardian ad litem, legal counsel, and upon parents, children or other persons who have physical custody of the person to be protected whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private body or group from whom the person to be protected is known to be receiving aid and to such other persons or entities as the court may require. The incompetent or proposed incompetent is presumed able to attend the hearing unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend.

(6) Section 880.33 (2) applies to all hearings under this chapter.

(7) Except for emergency placement or temporary placement under subs. (11) and (12), before placement may be ordered under this chapter the court or jury must find by clear and convincing evidence that the individual to be placed is in need of placement as provided in sub. (2).

(8) Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The department and the community boards under s. 51.42 or 51.437 shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate community board under s. 51.42 or 51.437 having responsibility for the place of legal settlement of the individual shall make a recommendation for placement. A copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or his attorney. The court or the cooperating agency obtaining the evaluation shall request appropriate information which shall include at least the following:

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

(b) A resume of professional treatment and services provided to the person by the department or agency, if any, in connection with the problem creating the need for placement.

(c) A medical, psychological, social, vocational and educational evaluation and review, where necessary, and any recommendations for or against maintenance of partial legal rights as provided in s. 880.33. Such evaluation and review shall include recommendations for placement consistent with the least restrictive environment required.

(9) The court, on the basis of the evaluation and other relevant evidence shall order placement in the least restrictive environment consistent with the needs of the person to be placed. Placement under this section does not replace commitment of a person in need of acute psychiatric treatment under s. 51.01 or 51.09. Placement may be made to such facilities as nursing homes, personal medical institutions, colonies, foster care services and other home placements, or to other appropriate facilities but may not be made to facilities for the acutely mentally ill.

(10) The department or any agency which is responsible for a protective placement shall review the status of each person placed at least once every 12 months from the date of admission. The court in its order of placement may, however, require that such review be conducted more frequently. The review shall include in writing an evaluation of the physical, mental and social condition of each such person, and shall be made a part of the permanent record of such person. The review shall include recommendations for discharge or placement in services which place less restrictions on personal freedom, where appropriate. The results of the review shall be furnished to the department in such form as the department may require.

(11) (a) When from personal observation of a sheriff, police officer or fireman, it appears probable that an individual will suffer irreparable injury or death as a result of developmental disabilities, infirmities of aging or other like incapacities if not immediately placed, the person making such observation may take into custody and transport an individual to an appropriate medical or protective services facility.

(b) Upon detention, a petition shall be filed under sub. (2) and a preliminary hearing shall be held within 72 hours to establish probable cause to believe the grounds for protective placement under sub. (2).

(c) Upon a finding of probable cause under par. (b), the court may order temporary placement up to 14 days pending the hearing for a permanent placement.

(12) When a ward lives with his guardian, the guardian may make temporary placement of the ward. Placement may be made to provide the guardian with a vacation or to temporarily release the guardian for a family emergency. Such placement may be made for not more than 18 days but the court may upon application grant an additional period not to exceed 30 days. The application shall include such information as the court may reasonably deem necessary. When reviewing the application, the court shall provide the least restrictive placement which is consistent with the needs of the ward.

(13) Reasonable expenses for the evaluations required by this section shall be assumed by the department from the appropriation under s. 20.435 (2) (a). The department shall seek appropriate federal reimbursement for such evaluations. Payment and collections for protective services provided in public facilities specified in s. 46.10 shall be governed in accordance with that section. Where applicable by reason of the nature of the disability and county of legal settlement, the appropriate board under s. 51.42 or 51.437 shall be charged for the cost of care and custody resulting from placement under this section. Such charges shall be determined in the manner provided in s. 51.42 or 51.437, whichever is applicable.

(14) Prior to discharge from the protective placement of the department or an agency

appointed to provide protective placement under this section, the department or agency shall review the need for continued protective services after discharge, including the necessity for a guardian or limited guardian. Such recommendation shall be made to the appropriate board under s. 51.22 (4) and (5) and the court where appropriate.

(15) A guardian of a ward placed under this section shall have the duty to take reasonable steps to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise his legal rights. Notice of discharge under s. 51.22 (4) and (5) shall be given to the guardian.

(16) Placements to colonies and discharges from such institutions shall be in compliance with s. 51.22 (4) and (5).

(17) Any records of the department or other agency pertaining to a person who is protected under this chapter or for whom application has ever been made for such protection are not open to public inspection. Information contained in such records may not be disclosed publicly in such a manner as to identify individuals, but the record shall be available on application for cause to persons approved by the court.

(18) Any person may request voluntary protective placement under this chapter. No legal rights are relinquished as a result of such placement.

History: 1973 c 284.