

**ASSEMBLY BILL 785****SECTION 183**

1 **SECTION 183.** 809.30 (3) of the statutes is amended to read:

2 809.30 (3) APPEALS BY STATE OR OTHER PARTY; APPOINTMENT OF COUNSEL. In a case
3 in which the state of Wisconsin, the representative of the public, any other party, or
4 any person who may appeal under s. 51.13 (5), 51.20 (15), or ~~55.06 (18)~~ 55.20 appeals
5 and the person who is the subject of the case or proceeding is a child or claims to be
6 indigent, the court shall refer the person who is the subject of the case or proceeding
7 to the state public defender for the determination of indigency and the appointment
8 of legal counsel under ch. 977.

NOTE: Changes a cross-reference in current law regarding appeal procedures in cases under ch. 55, to reflect renumbering and amending of ch. 55.

9 **SECTION 184.** 813.123 (4) (a) (intro.) of the statutes is amended to read:

10 813.123 (4) (a) (intro.) Unless the vulnerable adult, guardian or guardian ad
11 litem consents in writing and the judge or circuit court commissioner agrees that the
12 contact is in the best interests of the vulnerable adult, a judge or circuit court
13 commissioner shall issue a temporary restraining order ordering the respondent to
14 avoid interference with an investigation of the vulnerable adult under s. 55.043, or
15 the delivery of protective services to or a protective placement of the vulnerable adult
16 ~~under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 ch.~~
17 55 if all of the following occur:

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

18 **SECTION 185.** 813.123 (4) (a) 2. of the statutes is amended to read:

19 813.123 (4) (a) 2. The judge or circuit court commissioner finds reasonable
20 grounds to believe that the respondent has interfered with, or, based on prior conduct
21 of the respondent, may interfere with, an investigation of the vulnerable adult under
22 s. 55.043, or the delivery of protective services to or a protective placement of the

ASSEMBLY BILL 785

1 vulnerable adult under ~~s. 55.05 or a protective placement of the vulnerable adult~~
2 ~~under s. 55.06 ch. 55.~~

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

3 **SECTION 186.** 813.123 (5) (a) (intro.) of the statutes is amended to read:

4 813.123 (5) (a) (intro.) Unless the vulnerable adult, guardian or guardian ad
5 litem consents to that contact in writing and the judge agrees that the contact is in
6 the best interests of the vulnerable adult, a judge may grant an injunction ordering
7 the respondent to avoid interference with an investigation of the vulnerable adult
8 under s. 55.043, or the delivery of protective services to or a protective placement of
9 ~~the vulnerable adult under s. 55.05 or a protective placement of the vulnerable adult~~
10 ~~under s. 55.06 ch. 55~~ if all of the following occur:

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

11 **SECTION 187.** 813.123 (5) (a) 3. b. of the statutes is amended to read:

12 813.123 (5) (a) 3. b. That the respondent has interfered with the delivery ~~to the~~
13 ~~vulnerable adult~~ of protective services ~~under s. 55.05 to~~ or a protective placement of
14 ~~the vulnerable adult under s. 55.06 ch. 55~~ after the offer of services or placement has
15 been made and the vulnerable adult or his or her guardian, if any, has consented to
16 receipt of the protective services or placement.

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

17 **SECTION 188.** 813.123 (6) (c) of the statutes is amended to read:

18 813.123 (6) (c) That the respondent interfered with, or, based on prior conduct
19 of the respondent, may interfere with, an investigation of the vulnerable adult under
20 s. 55.043, or the delivery of protective services to ~~the vulnerable adult under s. 55.05~~
21 ~~or a protective placement of the vulnerable adult under s. 55.06 ch. 55.~~

ASSEMBLY BILL 785**SECTION 188**

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

1 **SECTION 189.** 813.123 (7) of the statutes is amended to read:

2 813.123 (7) INTERFERENCE ORDER. Any order under this section directing a
3 person to avoid interference with an investigation of a vulnerable adult under s.
4 55.043, or the delivery of protective services to a ~~vulnerable adult under s. 55.05~~ or
5 a protective placement of a vulnerable adult under ~~s. 55.06~~ ch. 55 prohibits the
6 person from intentionally preventing a representative or employee of the county
7 protective services agency from meeting, communicating, or being in visual or audio
8 contact with the vulnerable adult, except as provided in the order.

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

9 **SECTION 190.** 813.123 (11) of the statutes is amended to read:

10 813.123 (11) APPLICABILITY. This section does not apply to vulnerable adults
11 who are patients or residents of state-operated or county-operated inpatient
12 institutions unless the alleged interference with an investigation of the vulnerable
13 adult under s. 55.043 or with the delivery ~~to the vulnerable adult~~ of protective
14 services ~~under s. 55.05~~ to or a protective placement of the vulnerable adult under s.
15 ~~55.06~~ ch. 55 is alleged to have been done by a person other than an employee of the
16 inpatient institution.

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

17 **SECTION 191.** 851.72 (11) of the statutes is created to read:

18 851.72 (11) Annually submit to the chief judge of the judicial administrative
19 district the statement required under s. 55.18 (5) regarding the completion of annual
20 reviews of protective placement orders under s. 55.18 (1).

NOTE: Requires the register in probate of each county to submit a statement to the chief judge of the judicial administrative district indicating whether each report and

ASSEMBLY BILL 785

petition for annual review of protective placement required to be filed by the county department that year has been filed.

1 **SECTION 192.** 880.01 (2) of the statutes is amended to read:

2 880.01 (2) "Developmentally disabled person" means any individual having a
3 disability attributable to mental retardation, cerebral palsy, epilepsy, autism or
4 another neurological condition closely related to mental retardation or requiring
5 treatment similar to that required for mentally retarded individuals, which has
6 continued or can be expected to continue indefinitely, substantially impairs the
7 individual from adequately providing for his or her own care or custody, and
8 constitutes a substantial handicap to the afflicted individual. The term does not
9 include a person affected by senility which is primarily caused by the process of aging
10 or ~~the infirmities of aging~~ degenerative brain disorder.

NOTE: Replaces the term "infirmities of aging" with the term "degenerative brain disorder."

11 **SECTION 193.** 880.01 (4) of the statutes is amended to read:

12 880.01 (4) "Incompetent" means a person adjudged by a court of record to be
13 substantially incapable of managing his or her property or caring for himself or
14 herself by reason of ~~infirmities of aging~~ degenerative brain disorder, developmental
15 disabilities, or other like incapacities. Physical disability without mental incapacity
16 is not sufficient to establish incompetence.

NOTE: Replaces the term "infirmities of aging" with the term "degenerative brain disorder."

17 **SECTION 194.** 880.01 (5) of the statutes is renumbered 880.01 (1t) and amended
18 to read:

19 880.01 (1t) "~~Infirmities of aging~~ Degenerative brain disorder" means ~~organic~~
20 ~~brain damage caused by advanced age or other physical degeneration in connection~~
21 ~~therewith to the extent that the person so afflicted~~ the loss or dysfunction of brain

ASSEMBLY BILL 785**SECTION 194**

1 cells to the extent that an individual is substantially impaired in his or her ability
2 to adequately provide adequately for his or her own care or custody.

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder.”

3 **SECTION 195.** 880.01 (7m) of the statutes is renumbered 55.14 (1) (b) and
4 amended to read:

5 55.14 (1) (b) “Not competent to refuse psychotropic medication” means that,
6 ~~because of chronic mental illness, as defined in s. 51.01 (3g) as a result of~~
7 developmental disabilities, degenerative brain disorder, serious and persistent
8 mental illness, or other like incapacities, and after the advantages and
9 disadvantages of and alternatives to accepting the particular psychotropic
10 medication have been explained to an individual, one of the following is true:

11 1. The individual is incapable of expressing an understanding of the
12 advantages and disadvantages of accepting treatment and the alternatives to
13 accepting treatment.

14 2. The individual is substantially incapable of applying an understanding of
15 the advantages, disadvantages and alternatives to his or her ~~chronic mental illness~~
16 condition in order to make an informed choice as to whether to accept or refuse
17 psychotropic medication.

NOTE: Relocates a provision in ch. 880 that defines “not competent to refuse psychotropic medication” to the newly-created section of ch. 55 that establishes the procedure and requirements for a court order authorizing a guardian to consent to the involuntary administration of psychotropic medication to a ward. Also revises that definition to reflect terminology changes made elsewhere in the bill.

18 **SECTION 196.** 880.01 (8m) of the statutes is created to read:

19 880.01 (8m) “Psychotropic medication” means a prescription drug, as defined
20 in s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging
21 behavior.

ASSEMBLY BILL 785

1 **SECTION 197.** 880.07 (1m) of the statutes is repealed.

NOTE: Repeals a provision describing the required contents of a petition alleging that a proposed ward is incompetent to refuse psychotropic medications to reflect that the bill creates a new procedure for these types of petitions in s. 55.14.

2 **SECTION 198.** 880.07 (2m) of the statutes is created to read:

3 **880.07 (2m)** Whenever a petition for guardianship on the ground of
4 incompetency is filed with respect to an individual who resides in a facility licensed
5 for 16 or more beds, a petition for protective placement of the individual shall also
6 be filed.

NOTE: Requires the filing of a protective placement petition whenever a petition for guardianship on the ground of incompetency is filed with respect to a person who resides in a facility licensed for 16 or more beds.

7 **SECTION 199.** 880.08 (1) of the statutes is amended to read:

8 **880.08 (1) ~~INCOMPETENTS~~ PROPOSED WARD OR WARD.** A petitioner shall have
9 notice served of a petition for appointment or change of a guardian upon ~~the a~~
10 ~~proposed incompetent~~ ward or ward and existing guardian, if any, by personal
11 service at least 10 days before the time set for hearing. If such ~~the~~ proposed
12 ~~incompetent~~ ward or ward is in custody or confinement, a petitioner shall have notice
13 served by registered or certified mail on the proposed ~~incompetent's~~ ward's or ward's
14 custodian, who shall immediately serve it on the proposed ~~incompetent~~ ward or
15 ward. The custodian shall inform the proposed ~~incompetent~~ ward or ward of the
16 complete contents of the notice and, certify ~~thereon~~ on it that the custodian served
17 and informed the proposed ~~incompetent~~ ward or ward, and returned ~~return~~
18 certificate and notice to the circuit judge. The notice shall include the names of all
19 persons who are petitioning for guardianship. A copy of the petition shall be attached
20 to the notice. The court shall cause the proposed incompetent, if able to attend, to
21 be produced ~~ward or ward shall be present at~~ the hearing. The proposed incompetent

INS.
1-11

INS. 1-12

ASSEMBLY BILL 785

SECTION 199

INS. 1-13

INS. 1-14

INS. 1-15

INS. 1-16

1 is presumed able to attend unless, after a personal interview, the guardian ad litem
 2 certifies in writing to the court ~~that the proposed ward or ward is unwilling to~~
 3 ~~participate or unable to participate in a meaningful way or certifies other specific~~
 4 ~~reasons why the person proposed ward or ward is unable to attend. If the person~~
 5 proposed ward or ward is unable to attend a hearing only because of physical
 6 inaccessibility or lack of transportation, the court shall hold the hearing in a place
 7 where the person may attend, if requested by the proposed ward or ward, guardian
 8 ad litem, adversary counsel for the proposed ward or ward, or other interested
 9 person. Such, hold the hearing in a place where the proposed ward or ward is able
 10 to attend. The notice shall also be given personally or by mail at least 10 days before
 11 the hearing to the proposed incompetent's ward's or ward's counsel, if any, guardian
 12 ad litem, presumptive adult heirs or other persons who have legal or physical custody
 13 of the proposed incompetent ward or ward whose names and addresses are known
 14 to the petitioner or can with reasonable diligence be ascertained, to any
 15 governmental or private agency, charity or foundation from which the proposed
 16 incompetent ward or ward is receiving aid and to such other persons or entities as
 17 the court may require. The court shall then proceed under s. 880.33.

NOTE: Specifies that the court need not hold a hearing on appointment of a guardian for a person alleged to be incompetent in the presence of the person under certain circumstances. These provisions are identical to provisions inserted into ch. 55 by SECTION 160 of the bill.

18 SECTION 200. 880.24 (3) (a) of the statutes is renumbered 880.24 (3), and 880.24
 19 (3) (intro.), as renumbered, is amended to read:

20 880.24 (3) (intro.) ~~Except as provided in par. (b), when~~ When a guardian is
 21 appointed, the court shall award from the ward's estate payment of the petitioner's
 22 reasonable attorney fees and costs, ~~including those fees and costs, if any, related to~~

ASSEMBLY BILL 785

1 protective placement of the ward, unless the court finds, after considering all of the
2 following, that it would be inequitable to do so:

3 **SECTION 201.** 880.24 (3) (b) of the statutes is renumbered 880.24 (3) (cm) and
4 amended to read:

5 880.24 (3) (cm) ~~If the court finds that~~ Whether the ward had executed a durable
6 power of attorney under s. 243.07 or a power of attorney for health care under s.
7 155.05 or had engaged in other advance planning to avoid guardianship, ~~the court~~
8 ~~may not make the award specified in par. (a).~~

NOTE: Specifies that the court may consider whether the ward engaged in advance
planning to avoid guardianship when deciding whether to award payment of the
petitioner's attorney fees and costs from the ward's estate.

9 **SECTION 202.** 880.33 (1) of the statutes is amended to read:

10 880.33 (1) Whenever it is proposed to appoint a guardian on the ground of
11 incompetency, a licensed physician or licensed psychologist, or both, shall furnish a
12 written statement concerning the mental condition of the proposed ward, based upon
13 examination. The privilege under s. 905.04 shall not apply to this statement. A copy
14 of the statement shall be provided to the proposed ward, guardian ad litem, and
15 attorney. ~~Prior to the examination, under this subsection, of a person alleged to be~~
16 ~~not competent to refuse psychotropic medication under s. 880.07 (1m), the person~~
17 ~~shall be informed that his or her statements may be used as a basis for a finding of~~
18 ~~incompetency and an order for protective services, including psychotropic~~
19 ~~medication.~~ The person individual shall also be informed that he or she has a right
20 to remain silent and that the examiner is required to report to the court even if the
21 person individual remains silent. The issuance of such a warning to the person
22 individual prior to each examination establishes a presumption that the person
23 individual understands that he or she need not speak to the examiner.

ASSEMBLY BILL 785**SECTION 203**

1 **SECTION 203.** 880.33 (2) (a) 1. of the statutes is amended to read:

2 880.33 (2) (a) 1. The proposed ward has the right to counsel whether or not
3 present at the hearing on determination of competency. The court shall in all cases
4 require the appointment of an attorney as guardian ad litem in accordance with s.
5 757.48 (1) and shall in addition require representation by full legal counsel ~~whenever~~
6 ~~the petition contains the allegations under s. 880.07 (1m) or~~ if, at least 72 hours
7 before the hearing, the alleged incompetent requests; the guardian ad litem or any
8 other person states that the alleged incompetent is opposed to the guardianship
9 petition; or the court determines that the interests of justice require it. The proposed
10 ward has the right to a trial by a jury if demanded by the proposed ward, attorney,
11 or guardian ad litem, ~~except that if the petition contains the allegations under s.~~
12 ~~880.07 (1m) and if notice of the time set for the hearing has previously been provided~~
13 ~~to the proposed ward and his or her counsel, a jury trial is deemed waived unless~~
14 ~~demanded at least 48 hours prior to the time set for the hearing.~~ The number of
15 jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney, or
16 guardian ad litem shall have the right to present and cross-examine witnesses,
17 including the physician or psychologist reporting to the court under sub. (1). The
18 attorney or guardian ad litem for the proposed ward shall be provided with a copy
19 of the report of the physician or psychologist at least 96 hours in advance of the
20 hearing. Any final decision of the court is subject to the right of appeal.

21 **SECTION 204.** 880.33 (2) (a) 2. of the statutes is amended to read:

22 880.33 (2) (a) 2. If the ~~person~~ proposed ward requests but is unable to obtain
23 legal counsel, the court shall appoint legal counsel. If the ~~person~~ proposed ward is
24 represented by counsel appointed under s. 977.08 in a proceeding ~~for~~ under a petition
25 for protective placement brought under s. 55.06 ~~or for the appointment of a guardian~~

ASSEMBLY BILL 785

1 under ~~s. 880.07 (1m)~~ 55.075, the court shall order the counsel appointed under s.
2 977.08 to represent the person proposed ward.

NOTE: SECTIONS 202 to 204 replace the term “person” with “individual” or “proposed ward” as appropriate.

3 **SECTION 205.** 880.33 (2) (d) of the statutes is repealed.

4 **SECTION 206.** 880.33 (2) (e) of the statutes is repealed.

NOTE: SECTIONS 205 and 206 repeal provisions pertaining to a hearing on a petition alleging that a proposed ward is incompetent to refuse psychotropic medications, to reflect that the bill creates a new procedure for these types of petitions in s. 55.14.

5 **SECTION 207.** 880.33 (2) (f) of the statutes is created to read:

6 880.33 (2) (f) An interested person may participate in the hearing on the
7 petition at the court’s discretion.

NOTE: This provision is taken from the decision of the Wisconsin Court of Appeals in *Coston v. Joseph P.*, 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. App. 1998).

8 **SECTION 208.** 880.33 (3) of the statutes is amended to read:

9 880.33 (3) In a finding of limited incompetency, guardianship of the person
10 shall be limited in accordance with the order of the court accompanying the finding
11 of incompetence. If the proposed incompetent has executed a power of attorney for
12 health care under ch. 155, the court shall give consideration to the appointment of
13 the health care agent for the individual as the individual’s guardian. The court shall
14 make a specific finding as to which legal rights the person individual is competent
15 to exercise. Such rights include but are not limited to the right to vote, to marry, to
16 obtain a motor vehicle operator’s license or other state license, to hold or convey
17 property, and the right to contract. The findings of incompetence must be based upon
18 clear and convincing evidence. The court shall determine if additional medical or
19 psychological testimony is necessary for the court to make an informed decision
20 respecting competency to exercise legal rights and may obtain assistance in the
21 manner provided in s. ~~55.06 (8)~~ 55.11 whether or not protective placement is made.

ASSEMBLY BILL 785**SECTION 208**

1 The guardian, ward, or any interested person may at any time file a petition with the
2 court requesting a restoration of any such legal right, and specifying the reasons
3 therefor. ~~Such~~ The petition may request that a guardianship of the person be
4 terminated and a guardianship of property be established.

NOTE: Replaces the term “person” with individual and amends a cross-reference
to reflect renumbering if ch. 55 in the bill.

5 **SECTION 209.** 880.33 (4m) of the statutes is repealed.

NOTE: Repeals a provision in ch. 880 authorizing a court to appoint a guardian to
consent to or refuse psychotropic medications on behalf of a ward to reflect that the bill
creates a new procedure in s. 55.14 authorizing a guardian to make these decisions.

6 **SECTION 210.** 880.33 (4r) of the statutes is repealed.

NOTE: Repeals a provision in ch. 880 under which a court may authorize a guardian
to consent to forcible administration of psychotropic medications to a ward under certain
circumstances, to reflect that the bill creates a new procedure in s. 55.14 for a court to
provide this authorization.

7 **SECTION 211.** 880.33 (6) of the statutes is amended to read:

8 880.33 (6) All court records pertinent to the finding of incompetency are closed
9 but subject to access as provided in s. ~~55.06 (17)~~ 55.22. The fact that a person an
10 individual has been found incompetent is accessible to any person who demonstrates
11 to the custodian of the records a need for that information.

NOTE: Amends a cross-reference to reflect renumbering and amendment of ch. 55
in a provision of current law pertaining to guardianship.

12 **SECTION 212.** 880.33 (7) of the statutes is amended to read:

13 880.33 (7) A finding of incompetency and appointment of a guardian under this
14 subchapter is not grounds for involuntary protective placement. ~~Such placement~~ A
15 protective placement may be made only in accordance with s. ~~55.06~~ ch. 55.

NOTE: Amends a cross-reference to reflect renumbering and amendment of ch. 55
in a provision of current law pertaining to guardianship.

16 **SECTION 213.** 880.331 (1) of the statutes is amended to read:

17 880.331 (1) APPOINTMENT. The court shall appoint a guardian ad litem
18 whenever it is proposed that the court appoint a guardian on the ground of

ASSEMBLY BILL 785

1 incompetency under s. 880.33, ~~protectively place a person~~ provide protective
2 placement to an individual or order protective services under s. ~~55.06 ch. 55~~, review
3 any protective placement or protective service order under s. ~~55.06~~ 55.18, or
4 terminate a protective placement under s. ~~55.06~~ 55.17.

NOTE: Amends a cross-reference to reflect renumbering and amendment of ch. 55 in a provision in current law that requires the court to appoint a guardian ad litem in incompetency cases.

5 **SECTION 214.** 880.331 (4) (am) and (ar) of the statutes are created to read:
6 880.331 (4) (am) Interview the proposed guardian and any other person
7 seeking appointment as guardian.
8 (ar) Make a recommendation to the court regarding the fitness of the proposed
9 guardian.

NOTE: Adds two items to the list of duties of a guardian ad litem in incompetency cases: the duty to interview the proposed guardian and any other person seeking appointment as a guardian and the duty to make a recommendation to the court regarding the fitness of the proposed guardian.

10 **SECTION 215.** 880.331 (4) (dm), (dr) and (ds) of the statutes are created to read:
11 880.331 (4) (dm) Inform the court and the petitioner or petitioner's counsel, if
12 any, if the proposed ward requests representation by counsel.
13 (dr) Attend all court proceedings related to the guardianship.
14 (ds) Notify the guardian of the right to be present at and participate in the
15 hearing, to present and cross-examine witnesses, to receive a copy of any evaluation
16 under s. 55.11 (1) (intro.) or (2), and to secure and present a report on an independent
17 evaluation under s. 880.33 (2) (b).

NOTE: Adds three items to the list of duties of a guardian ad litem in incompetency cases: the duty to inform the court and the petitioner or his or her counsel if the proposed ward requests representation by counsel; the duty to attend all court proceedings relating to the guardianship; and the duty to notify the guardian of certain rights of the guardian.

18 **SECTION 216.** 880.331 (5) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 785**SECTION 216**

1 880.331 (5) DUTIES IN PROTECTIVE SERVICES REVIEWS. (intro.) In any review of
2 a ~~protective placement under s. 55.06~~ or of a protective ~~service~~ services order made
3 under s. ~~55.05~~ 55.12, the guardian ad litem shall do all of the following:

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55 in a provision in current law that sets forth the duties of a guardian ad litem in incompetency cases.

4 **SECTION 217.** 880.34 (6) of the statutes is repealed.

NOTE: Repeals provisions in current law pertaining to annual review of an order authorizing a guardian to consent to forcible administration of psychotropic medications to a ward under certain circumstances, to reflect that the bill creates a new annual review procedure of that type of authorization in s. 55.19.

5 **SECTION 218.** 880.38 (1) of the statutes is amended to read:

6 880.38 (1) A guardian of the person of an incompetent, upon order of the court,
7 may have custody of the ~~person~~ ward, may receive all notices on behalf of the person
8 ward, and may act in all proceedings as an advocate of the ~~person~~ ward, but may not
9 have the power to bind the ward or the ward's property, or to represent the ward in
10 any legal proceedings pertaining to the property, unless the guardian of the person
11 is also the guardian of the property. A guardian of the person of an incompetent or
12 a temporary guardian of the person of an incompetent may not make a permanent
13 protective placement of the ward unless ordered by a court under s. ~~55.06~~ 55.12 but
14 may admit a ward to certain residential facilities under s. ~~55.05 (5)~~ 55.055 or make
15 an emergency protective placement under s. ~~55.06 (11)~~ 55.135. The guardian of the
16 person ~~has the power to apply~~ may petition for protective placement under s. ~~55.06~~
17 55.075 (1) and for commitment under s. 51.20 or 51.45 (13).

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55 in a provision of current law that sets forth the rights and duties of guardians.

18 **SECTION 219.** 880.38 (2) of the statutes is amended to read:

19 880.38 (2) A guardian of the person shall endeavor to secure necessary care,
20 services, or appropriate protective placement on behalf of the ward. Subject to any

ASSEMBLY BILL 785

1 limitation imposed by the court under s. 880.33 (8) (b), a guardian may consent,
2 without further court involvement, to involuntary administration of medication,
3 other than psychotropic medication, and involuntary medical treatment that is in
4 the ward's best interest. A guardian may consent to involuntary administration of
5 psychotropic medication only under a court order under s. 55.14 or s. 880.33 (4m) or
6 (4r), 2003 stats. In determining whether medication, other than psychotropic
7 medication, or medical treatment is in the ward's best interest, the guardian shall
8 consider the invasiveness of the medication or treatment and the likely benefits and
9 side effects of the medication or treatment.

NOTE: Authorizes a guardian to 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. In determining whether 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 or treatment. A guardian may not consent to involuntary administration of psychotropic medication unless the guardian has been authorized to do so under s. 55.14 (8).

10 **SECTION 220.** 880.38 (3) of the statutes is amended to read:

11 880.38 (3) A guardian of the person of an incompetent appointed under s.
12 880.33 shall make an annual report on the condition of the ward to the court that
13 ordered the guardianship and to the county department designated under s. 55.02
14 (2). That county department shall develop reporting requirements for the guardian
15 of the person. The report shall include, but not be limited to, the location of the ward,
16 the health condition of the ward, any recommendations regarding the ward, and a
17 statement of whether or not the ward is living in the least restrictive environment
18 consistent with the needs of the ward. ~~The guardian may fulfill the requirement~~
19 ~~under this subsection by submitting the report required under s. 55.06 (10).~~

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55 in a provision of current law that requires a guardian to make an annual report on the condition of the ward to the court and the county.

ASSEMBLY BILL 785**SECTION 221**

1 **SECTION 221.** 880.38 (4) of the statutes is created to read:

2 880.38 (4) (a) In this subsection, “protest” means make more than one
3 discernible negative response, other than mere silence, to the offer of,
4 recommendation for, or other proffering of voluntary receipt of psychotropic
5 medication. “Protest” does not mean a discernible negative response to a proposed
6 method of administration of the psychotropic medication.

7 (b) A guardian may, without court approval, give an informed consent to the
8 voluntary receipt by the guardian’s ward of medication, including any appropriate
9 psychotropic medication, if the guardian has first made a good-faith attempt to
10 discuss with the ward the voluntary receipt of the medication and if the ward does
11 not protest.

NOTE: Creates a definition of “protest” and creates a provision under which a guardian may provide informed consent to voluntary receipt of medication, including psychotropic medication, by a ward.

12 **SECTION 222.** 940.285 (1) (a) of the statutes is renumbered 940.285 (1) (am).

13 **SECTION 223.** 940.285 (1) (b) of the statutes is renumbered 940.285 (1) (ag) and
14 amended to read:

15 940.285 (1) (ag) “~~Infirmities of aging~~ “Degenerative brain disorder” has the
16 meaning ~~specified in s. 55.01 (3)~~ given in s. 55.01 (1v).

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” and amends cross-references to reflect renumbering and amendment of ch. 55, in the statute that establishes certain crimes related to the maltreatment of vulnerable adults.

17 **SECTION 224.** 940.285 (1) (e) (intro.) of the statutes is amended to read:

18 940.285 (1) (e) (intro.) “Vulnerable adult” means any person 18 years of age or
19 older who either is a developmentally disabled person or has ~~infirmities of aging~~
20 degenerative brain disorder, mental illness or other like incapacities and who is:

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” and amends cross-references to reflect renumbering and amendment of ch. 55,

ASSEMBLY BILL 785

in the statute that establishes certain crimes related to the maltreatment of vulnerable adults.

1 **SECTION 225.** 940.295 (1) (hm) of the statutes is renumbered 940.295 (1) (cg)
2 and amended to read:

3 940.295 (1) (cg) “~~Infirmities of aging~~ Degenerative brain disorder” has the
4 meaning given in s. 55.01 (3) (1v).

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” and amends a cross-reference to reflect renumbering and amendment of ch. 55, in the statute that establishes crimes related to the abuse and neglect of patients and residents of certain facilities.

5 **SECTION 226.** 940.295 (1) (t) (intro.) of the statutes is amended to read:

6 940.295 (1) (t) (intro.) “Vulnerable person” means any person who either is a
7 developmentally disabled person or has ~~infirmities of aging~~ degenerative brain
8 disorder, mental illness or other like incapacities and who is:

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” in the statute that establishes crimes related to the abuse and neglect of patients and residents of certain facilities.

9 **SECTION 227.** 971.14 (6) (b) of the statutes is amended to read:

10 971.14 (6) (b) When the court discharges a defendant from commitment under
11 par. (a), it may order that the defendant be taken immediately into custody by a law
12 enforcement official and promptly delivered to a facility specified in s. 51.15 (2), an
13 approved public treatment facility under s. 51.45 (2) (c), or an appropriate medical
14 or protective placement facility. Thereafter, detention of the defendant shall be
15 governed by s. 51.15, 51.45 (11), or ~~55.06 (11)~~ 55.135, as appropriate. The district
16 attorney or corporation counsel may prepare a statement meeting the requirements
17 of s. 51.15 (4) or (5), 51.45 (13) (a), or ~~55.06 (11)~~ 55.135 based on the allegations of the
18 criminal complaint and the evidence in the case. This statement shall be given to the
19 director of the facility to which the defendant is delivered and filed with the branch
20 of circuit court assigned to exercise criminal jurisdiction in the county in which the

ASSEMBLY BILL 785**SECTION 227**

1 criminal charges are pending, where it shall suffice, without corroboration by other
2 petitioners, as a petition for commitment under s. 51.20, or 51.45 (13) or ~~55.06 (2)~~ a
3 petition for protective placement under s. 55.075. This section does not restrict the
4 power of the branch of circuit court in which the petition is filed to transfer the matter
5 to the branch of circuit court assigned to exercise jurisdiction under ch. 51 in the
6 county. Days spent in commitment or protective placement pursuant to a petition
7 under this paragraph shall not be deemed days spent in custody under s. 973.155.

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55
in a provision of current law pertaining to detention of a criminal defendant found to be
incompetent.

8 **SECTION 228.** 977.05 (4) (i) 8. of the statutes is created to read:

9 977.05 (4) (i) 8. Cases involving individuals who are subject to petitions for
10 protective placement under ch. 55.

NOTE: Requires the state public defender to provide legal services in cases
involving individuals who are subject to petitions for protective placement.

11 **SECTION 229. Nonstatutory provisions.**

12 (1) REVIEW OF ORDER; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.

13 For an individual who is subject to an order appointing a guardian under section
14 880.33 (4m), 2003 stats., and to an order initially issued under section 880.33 (4r),
15 2003 stats., that is in effect on the effective date of this subsection, the county
16 department of the individual's county of residence shall, no later than 9 months after
17 the effective date of this subsection, review the individual's status under the
18 requirements of section 55.19 of the statutes, as created by this act.

19 (2) TRANSITION; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.

20 Notwithstanding the treatment of sections 55.05 (2) (d) and 880.33 (4m) and (4r) of
21 the statutes by this act, all orders issued under sections 55.05 (2) (d), 2003 stats., and
22 880.33 (4m) and (4r), 2003 stats., in effect on the effective date of this subsection,

ASSEMBLY BILL 785

1 remain in effect until modified or terminated by a court order under section 55.16,
2 55.17, or 55.19 of the statutes, as created by this act.

3 (3) **TRANSITION; ORDERS FOR PROTECTIVE PLACEMENT AND PROTECTIVE SERVICES.**
4 Notwithstanding the treatment of sections 55.05 and 55.06 of the statutes by this act,
5 all orders issued under section 55.05 (2) (d), 2003 stats., or section 55.06 (9) (a) or (11)
6 (c), 2003 stats., in effect on the effective date of this subsection, remain in effect until
7 modified or terminated by a court order under section 55.16, 55.17, 55.18, or 55.19
8 of the statutes, as created by this act or section 55.175 or 55.20 of the statutes, as
9 affected by this act.

10 (4) **RULES; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.** The
11 department of health and family services shall submit in proposed form the rules
12 required under section 50.02 (2) (ad) of the statutes, as created by this act, to the
13 legislative council staff under section 227.15 (1) of the statutes no later than the first
14 day of the 6th month beginning after the effective date of this subsection.

15 **SECTION 230. Initial applicability.**

16 (1) **EMERGENCY PROTECTIVE SERVICES OR EMERGENCY AND TEMPORARY PROTECTIVE**
17 **PLACEMENT.** The treatment of sections 46.011 (2), 46.10 (2), 46.279 (4) (e) and (5),
18 49.001 (5m), 49.45 (30m) (b), 51.15 (5), 51.39, 51.40 (2) (a) 2., 51.42 (1) (b) and (3) (ar)
19 4. d., 51.437 (4) (c), 55.02 (2) (b) 4., 55.043 (4) (b), 55.05 (3), (4) (title), (a), (b), and (c),
20 and (5) (c) 2. and 3., 55.06 (1) (intro.) and (d), (11) (a), (am), (ar), (b), (c), and (d), and
21 (12), 55.13 (2) and (3), 55.135 (title), 165.85 (4) (b) 1d. b., 165.86 (2) (b), 301.01 (2)
22 (intro.), 757.69 (1) (h), 880.38 (1), and 971.14 (6) (b) of the statutes first applies to
23 emergency protective services provided and emergency and temporary protective
24 placements made on the effective date of this subsection.

ASSEMBLY BILL 785**SECTION 230**

1 (2) PROTECTIVE PLACEMENT OR PROTECTIVE SERVICES. The treatment of sections
2 46.10 (2), 46.275 (4) (b) 1., 46.279 (2), (4) (c), (d), and (e), 49.001 (8), 49.45 (30m) (b),
3 50.03 (5m) (c), 51.20 (1) (am), 51.39, 51.40 (2) (a) 1., 55.001, 55.01 (1d), (4g), (4t), (6),
4 (6m), (6p), (6r), (6t), (6v), (6x), and (6y), 55.02, 55.03, 55.04 (title), (1), (2), (3), and (4),
5 55.045, 55.05 (3), and (5) (b) 2. and (c) 3., 55.055 (2), 55.06 (1) (intro.), (a), (b), (c), and
6 (d), (2) (intro.), (a), (b), (c), and (d), (3) (a), (b), and (c), (4), (5), (5m), (6), (7), (8) (intro.),
7 (a), (b), and (c), (9) (a), (11) (b) and (c), (15), (16), and (18), 55.075, 55.08, 55.09, 55.10,
8 55.11, 55.12, 609.65 (1) (intro.), 809.30 (1) (b) 5. and (3), 880.07 (2m), 880.33 (2) (a)
9 2., (3), and (7), 880.331 (1), and (5) (intro.), 971.14 (6) (b), and 977.05 (4) (i) 8. of the
10 statutes, the renumbering and amendment of section 55.01 (4) of the statutes, and
11 the creation of section 55.01 (4) (c) of the statutes first apply to petitions for protective
12 placement or protective services brought on the effective date of this subsection.

13 (3) DIAGNOSES OF SERIOUS AND PERSISTENT MENTAL ILLNESS. The treatment of
14 sections 46.27 (6r) (b) 2., 49.43 (10v), 49.45 (6m) (i) 2. and (25) (am) 2., 51.01 (3g) and
15 (3s), 51.20 (7) (d) 1. (intro.) and b., 51.35 (4m) (intro.), 51.40 (2) (intro.), 51.421 (1),
16 (2), and (3) (c), 51.67 (intro.) and (2), 55.001, 55.01 (6r) and (6v), 55.06 (2) (c), and (11)
17 (a), 55.08 (2) (b), 560.9811 (1) and (2), and 880.01 (7m) of the statutes first applies
18 to diagnoses of serious and persistent mental illness made on the effective date of this
19 subsection.

20 (4) DIAGNOSES OF DEGENERATIVE BRAIN DISORDER. The treatment of sections
21 46.286 (1) (intro.) and (3) (a) (intro.), 46.90 (1) (c) and (d), 51.01 (2g) (b), (3g), and (5)
22 (a), 55.001, 55.01 (1v), (2), (3), and (6r), 55.06 (2) (c) and (11) (a), 55.08 (2) (b), 880.01
23 (2), (4), (5), and (7m), 940.285 (1) (a), (b), and (e) (intro.), and 940.295 (1) (hm) and
24 (t) (intro.) of the statutes first applies to diagnoses of degenerative brain disorder
25 made on the effective date of this subsection.

ASSEMBLY BILL 785

1 (5) REQUEST FOR VOLUNTARY PROTECTIVE SERVICES. The treatment of sections
2 55.05 (title), (2) (intro.), (a), (b), and (c), and (3) of the statutes first applies to a
3 request made on the effective date of this subsection.

4 (6) ADMISSIONS. The treatment of sections 46.10 (2), 51.10 (4m) (a) (intro.), 51.10
5 (8), 51.39, 55.05 (5) (title), (a), (b) 1. and 2., (c) (intro.), 1., 2., and 3. and (d), 55.055
6 (1) (c) and (d) and (2), 55.06 (1) (d) and (12), and 880.38 (1) of the statutes first applies
7 to admissions made on the effective date of this subsection.

8 (7) INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION. The treatment
9 of sections 55.05 (2) (d), 55.09 (3), 55.10 (4) (a), 55.14, 55.16 (2) (c) 2., 55.17 (4) (b),
10 55.18 (1) (bm), 609.65 (1) (intro.), 880.01 (7m) and (8m), 880.07 (1m), 880.33 (1), (2)
11 (a) 1. and 2., (d), (e), and (f), (4m), and (4r), 880.34 (6), and 880.38 (2) of the statutes
12 first applies to a petition for the involuntary administration of psychotropic
13 medication brought on the effective date of this subsection.

14 (8) ANNUAL REVIEW OF ORDER FOR PROTECTIVE PLACEMENTS. The treatment of
15 sections 46.279 (2), (3), and (4) (d), 49.45 (30m) (c) 2., 55.02 (2) (b) 3., 55.06 (4) and
16 (10) (a) 1. and 2., 55.18, 609.65 (1) (intro.), 808.075 (4) (c) 1., 851.72 (11), 880.331 (1)
17 and (5) (intro.), and 880.38 (3) of the statutes first applies to a review conducted on
18 the effective date of this subsection.

19 (9) PROTECTIVE PLACEMENT TRANSFER. The treatment of sections 20.435 (2) (gk),
20 51.39, 55.06 (9) (b), (c), (d), and (e), 55.15, and 808.075 (4) (c) 2. of the statutes first
21 applies to a transfer of an individual under a protective placement order made on the
22 effective date of this subsection.

23 (10) MODIFICATION OF ORDERS FOR PROTECTIVE PLACEMENT OR PROTECTIVE SERVICES.
24 The treatment of sections 55.16 and 808.075 (4) (c) 1. of the statutes first applies to

ASSEMBLY BILL 785**SECTION 230**

1 a petition for modification of an order for protective placement or protective services
2 brought on the effective date of this subsection.

3 (11) TERMINATION OF PROTECTIVE PLACEMENTS OR PROTECTIVE SERVICES. The
4 treatment of sections 55.06 (10) (b) and (c) and (14), 55.17, 808.075 (4) (c) 1., and
5 880.331 (1) of the statutes first applies to a petition for termination of an order for
6 protective placement or protective services brought on the effective date of this
7 subsection.

8 (12) PETITIONS FOR GUARDIANSHIP. The treatment of sections 880.07 (1m) and
9 (2m), 880.08 (1), 880.24 (3) (a) and (b), 880.33 (2) (a) 1. and 2., (d), (e), and (f), (3), (4m),
10 (4r), (6), and (7), 880.331 (4) (am), (ar), (dm), (dr), and (ds), 880.34 (6), and 880.38 (1),
11 (2), (3), and (4) of the statutes first applies to petitions for guardianship made on the
12 effective date of this subsection.

13 (13) ADMISSIONS OF INCAPACITATED INDIVIDUALS. The treatment of section 50.06
14 (2) (c) and (d) of the statutes first applies to an admission of an incapacitated
15 individual made on the effective date of this subsection.

16 (14) INVESTIGATIONS BY COUNTY PROTECTIVE SERVICES AGENCIES. The treatment
17 of sections 55.043 (1) (a) (intro.), 1., and 3. and (b) 1. and 2. a. and b. and (4) (a) and
18 (b) and 813.123 (4) (a) (intro.) and 2., (5) (a) (intro.) and 3. b., (6) (c), (7), and (11) of
19 the statutes first applies to conduct of an investigation made on the effective date of
20 this subsection.

21 (15) RECORDS. The treatment of sections 46.21 (2m) (c), 46.215 (1m), 46.22 (1)
22 (dm), 46.23 (3) (e), 46.283 (7) (b), 46.284 (7) (b), 51.42 (3) (e), 51.437 (4r) (b), 55.06 (17),
23 55.22 (title), 767.24 (7) (b), and 880.33 (6) of the statutes first applies to a record made
24 on the effective date of this subsection.

**ASSEMBLY AMENDMENT 1,
TO 2005 ASSEMBLY BILL 785**

February 1, 2006 - Offered by COMMITTEE ON AGING AND LONG-TERM CARE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 39, line 18: delete "senility which" and substitute "senility which
3 dementia". 1-1

4 **2.** Page 56, line 16: delete "senility which" and substitute "senility which
5 dementia". 1-2

6 **3.** Page 66, line 22: delete lines 22 and 23 and substitute "Admission under
7 this paragraph is not permitted for an individual for whom the primary purpose of
8 admission is for treatment or services related to the individual's mental illness or
9 developmental disability". 1-3

10 **4.** Page 68, line 22: delete "for guardianship and" and substitute "to transfer
11 a foreign guardianship and, if applicable, a petition for". 1-4

12 **5.** Page 69, line 7: delete "petition for".

1-6

1 **6.** Page 69, line 8: delete "guardianship and" and substitute "petition to
2 transfer a foreign guardianship and, if applicable, a petition for".

1-7

3 **7.** Page 70, line 10: delete lines 10 and 11 and substitute "placement or
4 protective services, an individual shall have filed a petition to transfer a foreign
5 guardianship, whether present in the state or not, or shall be a resident of the state;
6 and shall have a need for protective placement or protective services. The
7 individual".

1-8

8 **8.** Page 74, line 5: after "others" insert "or in the county in which the
9 individual intends to reside".

1-9

10 **9.** Page 85, line 6: after "made" insert "by a person who identifies himself or
11 herself".

1-10

12 **10.** Page 94, line 14: delete lines 14 to 19 and substitute:

13 "(2) ATTENDANCE. The petitioner shall ensure that the individual sought to be
14 protected attends the hearing on the petition unless, after a personal interview, the
15 guardian ad litem waives the attendance and so certifies in writing to the court the
16 specific reasons why the individual is unable to attend. In determining whether to
17 waive attendance by the individual, the guardian ad litem shall consider the ability
18 of the individual to understand and meaningfully participate, the effect of the
19 individual's attendance on his or her physical or psychological health in relation to
20 the importance of the proceeding, and the individual's expressed desires. If the
21 individual is unable to attend a hearing only because of residency in a nursing home
22 or other facility, physical inaccessibility, or lack of transportation, the court shall, if".

1-11

23 **11.** Page 139, line 20: after "cause the" insert "petitioner shall ensure that
24 the".

1-12

1 **12.** Page 139, line 21: delete "ward or ward shall be present at" and substitute
2 "at ward or ward attends".

1-13

3 **13.** Page 140, line 1: after "litem" insert "waives the attendance and so".

1-14

4 **14.** Page 140, line 2: delete lines 2 to 4 and substitute "certifies in writing to
5 the court the specific reasons why the person proposed ward or ward is unable to
6 attend. In determining whether to waive attendance by the proposed ward or ward,
7 the guardian ad litem shall consider the ability of the proposed ward or ward to
8 understand and meaningfully participate, the effect of the proposed ward's or ward's
9 attendance on his or her physical or psychological health in relation to the
10 importance of the proceeding, and the proposed ward's or ward's expressed desires.
11 If the person".

1-15

12 **15.** Page 140, line 5: after "of" insert "residency in a nursing home or other
13 facility".

14 **16.** Page 140, line 6: delete "or" and substitute ", or".

1-16

15 (END)

**ASSEMBLY AMENDMENT 2,
TO 2005 ASSEMBLY BILL 785**

February 1, 2006 - Offered by COMMITTEE ON AGING AND LONG-TERM CARE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 39, line 23: delete the material beginning with that line and ending
3 with page 40, line 3, and substitute:

4 **SECTION 40m.** 51.10 (4m) (a) (intro.) of the statutes is repealed and recreated
5 to read:

6 51.10 (4m) (a) (intro.) An adult who has an identified funding source that is not
7 obtained through the county department and who meets the criteria for voluntary
8 admission under sub. (4) or an adult whose admission is approved under sub. (1) or
9 (2) and who meets the criteria for voluntary admission under sub. (4) may be
10 admitted to an inpatient treatment facility if all of the following requirements are
11 met:"

2-1

12 (END)

**ASSEMBLY AMENDMENT 3,
TO 2005 ASSEMBLY BILL 785**

March 2, 2006 - Offered by Representative JESKEWITZ.

3-1

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 154, line 24: after that line insert:

3 **SECTION 230m. Effective date.**

4 (1) This act takes effect on the first day of the 7th month beginning after
5 publication.

6 (END)

CCC to AB 785

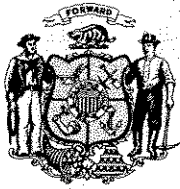
In enrolling, the following correction was made:

Page 140, line 7: delete "~~attend~~" and substitute
"attends".

↑
comma is
stricken
and
scored

END

wlj 3/15



State of Wisconsin
2005-2006 LEGISLATURE

CORRECTIONS IN:

2005 ASSEMBLY BILL 785

Prepared by the Legislative Reference Bureau
(March 15, 2006)

In enrolling, the following correction was made:

1. Page 140, line 7: delete "attend_x" and substitute "attend₂".

(END)