

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0026/1dn
DAK:cjs:ch

October 13, 2005

To Laura Rose and Mary Matthias:

1. According to my notes of our July 25, 2005, meeting, the following issues should be revisited, possibly in a future amendment to or substitute amendment of this bill:

a. Section 55.10 (3), stats. (as created). The term “persons in interest” (which, as used here, specifically includes service providers, their representatives, and witnesses) is unclear. The bill defines “interested person” at s. 55.01 (4), and the terms are not congruent. Your decision was to not change this provision, as it was modeled on s. 880.33 (2) (e), stats.

b. The reference to “legal” residence in s. 55.11 (4) (as created), which seems unnecessary and confusing.

c. The required written consent of the guardian under s. 55.15 (3).

d. Adding reference to s. 55.13 in ss. 165.85 (4) (b) 1d. b., 165.86 (2) (b), and 880.38 (1), stats.

e. Clarifying what “assistance” means in s. 880.33 (3), stats., i.e., whether it may mean that a court may request a county department to provide an evaluation for an individual.

f. Renumbering s. 880.331 (5), stats., into ch. 55, if the Committee wants to retain these provisions.

g. Amending s. 880.38 (3), stats., to tie into ch. 55; at your instruction, I have for now repealed the last sentence. Note that this subsection is referred to in s. 55.02 (2) (b) 3.

2. Under the National Probate Court Standards referenced in *In the Matter of the Guardianship of Jane E. P. v. Unified Board of Grant and Iowa Counties*, Wis. Sup. Ct. (July 7, 2005), standards and procedures are provided for two situations: (1) the transfer of a guardianship to a foreign jurisdiction; and (2) the receipt and acceptance of a guardianship transferred from a foreign jurisdiction.

For receipt and acceptance of a transferred guardianship, the standards and procedures include all of the following:

- a. Court receives, for a transfer of a guardianship, a properly-executed petition that is certified by a foreign jurisdiction.
- b. Court accepts petition without a formal hearing unless requested by the court on its own motion or by motion of the ward or another interested person.
- c. Court notifies the foreign court of the receipt and acceptance of the petition.
- d. Court notifies the guardian of any administrative procedures necessary to bring the foreign guardianship into compliance with state law.
- e. Not later than 90 days after acceptance of the transfer, court conducts a hearing for review of the guardianship and, if necessary to bring into compliance with state law, modification.
- f. Unless a change in the ward's circumstances warrants otherwise, court gives effect to the foreign determination of incompetence and recognizes the appointment of the guardian.

At least these questions arise:

- a. Do you want these procedures to replace language in the bill under s. 55.055 (1) (c) or (d)? (Note that the *Jane E. P.* opinion seems to provide two different deadlines (60 days and 90 days) for conduct of a hearing for review of the guardianship.)
- b. Note that the *Jane E. P.* opinion indicates that, if receipt and acceptance procedures are followed, it is unnecessary to file a petition for guardianship as required under s. 55.06 (3) (c), stats. (renumbered s. 55.075 (5) (a)); that provision would need an exception, if the opinion's standards are followed.
- c. Should any provision be made under the *Watts* review language for review of a ward who is transferred from a foreign jurisdiction?
- d. Do you want the standards and procedures set forth in *Jane E. P.* for transfer of a guardianship to a foreign jurisdiction?
- e. Are these matters better addressed in the Legislative Council bill on residency and county of responsibility, under s. 51.40, stats.?

3. At your instruction, I have renumbered s. 55.06 (10) (a) 2., stats., to be s. 55.18 (1) (ar) and have technically amended it. This provision concerns an individual with a developmental disability who is protectively placed in an intermediate facility for the mentally retarded or in a nursing home. The agency that is responsible for the protective placement must notify the county department of the individual's county of residence, if that county department is participating in the CIP IB MA waiver program under s. 46.278 at least 120 days before a court review of the placement (I am unsure if the "review" is the *Watts* review.). (If the individual resides in Jefferson County, DHFS must be notified.) The county department that is notified (or the DHFS contractor if DHFS is notified) must develop a plan under s. 46.279 (4), stats., to provide home or community-based care for the individual in a noninstitutional setting. Unless the court finds that placement in the ICFMR or nursing facility is the

most integrated setting that is appropriate to the needs of the individual, taking into account information presented by all affected parties, the court must order that the individual be transferred to a noninstitutional community setting in accordance with the plan.

The problem with this provision is that the standard used (“the most integrated setting”) is not the same as the standard specified in s. 55.18 (3) (e) (“least restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5)”).

The provision in question, s. 55.06 (10) (a) 2., stats., has three cross-references. Assuming that the “review” is a *Watts* review, I have included it and the cross-references in the Initial Applicability provision, concerning annual reviews.

The Committee may wish to review this issue.

4. The repeal of s. 55.06 (10) (c), stats., concerns the termination of a guardianship and revocation of a protective placement or protective services. So far as I can find in the draft, this provision is not elsewhere created, as in s. 55.17, where it would seem appropriate. Should it be renumbered?

5. I have, as requested, removed the draft’s treatment of s. 880.06 (2), stats. (which was repealed and recreated in 05-0026/P1), and I will place it, along with its accompanying ****NOTE, in 05-2339, which is the residency and venue bill.

6. I have conflicting notes on the ****Note under SECTION 231 (2) in 05-0026/P1. I had added reference to s. 880.33 (4m), stats., in SECTION 231 (1) and (2); one of my notes indicates that this action was okay, and another says that Laura will review it and get back to me. Please take a look at it.

7. One of the most difficult aspects of this bill concerns the initial applicability section. Please carefully review the provisions in SECTION 231, especially SECTION 231 (7), relating to involuntary administration of psychotropic medication, in relationship to the nonstatutory transition provisions and to the wording of s. 55.19 (intro.).

8. I discovered notes from our February 3, 2005, meeting with Betsy Abramson and Gerard Gierl. Those notes indicate all of the following, which I have done in this draft and for which I would appreciate review:

a. Remove underscored “extraordinary circumstances” language from s. 55.075 (5) (a) (renumbered from s. 55.06 (3) (c) and state “The county of residence, as determined by the court, under s. 51.40, or by the guardian, is the county of responsibility.”

b. Change, in s. 55.075 (5) (a) the language referring to s. 51.22 (4) to “due to circumstances, including those specified in s. 51.22 (4)”. I think this language change is important, because it indicates the possibility of circumstances such as those under s. 51.40 (2) (b), but it’s also very broad.

In addition, I believe that it is important to note that Gerard has specifically indicated to me the circumstances under which a court would determine the county of residence: if an individual has not received services under ch. 46, 51, or 55 or if an individual has received services under ch. 46, 51, or 55 that have been terminated and has established

residence in a county other than that in which the individual resided when the services were received. I think it would improve the provision greatly to have these circumstances specified in it.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us