2005 DRAFTING REQUEST

Bill

Received: **08/25/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-9791**

By/Representing: **Laura Rose**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **laura.rose@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protective placement and protective services

Instructions:

Same as 03-4212, as modified

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	dkennedy 08/26/2004	csicilia 12/01/2004		_____ _____			
/P1			rschluet 12/06/2004	_____ _____	sbasford 12/06/2004		
/P2	dkennedy 08/05/2005	csicilia 09/22/2005	rschluet 09/26/2005	_____ _____	sbasford 09/26/2005		S&L
/1	dkennedy	csicilia	chaugen	_____	mbarman	mbarman	

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	10/05/2005	10/13/2005	10/14/2005	_____	10/14/2005	10/14/2005	

FE Sent For:

<END>

→ At Intro.

2005 DRAFTING REQUEST

Bill

Received: **08/25/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-9791**

By/Representing: **Laura Rose**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **laura.rose@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protective placement and protective services

Instructions:

Same as 03-4212, as modified

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	dkennedy 08/26/2004	csicilia 12/01/2004		_____ _____			
/P1			rschluet 12/06/2004	_____ _____	sbasford 12/06/2004		
/P2	dkennedy 08/05/2005	csicilia 09/22/2005	rschluet 09/26/2005	_____ _____	sbasford 09/26/2005		S&L
/1	dkennedy	csicilia	chaugen	_____	mbarman		

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	10/05/2005	10/13/2005	10/14/2005	_____	10/14/2005		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **08/25/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-9791**

By/Representing: **Laura Rose**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **laura.rose@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protective placement and protective services

Instructions:

Same as 03-4212, as modified

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	dkennedy 08/26/2004	csicilia 12/01/2004		_____ _____			
/P1			rschluet 12/06/2004	_____ _____	sbasford 12/06/2004		
/P2	dkennedy 08/05/2005	csicilia 09/22/2005	rschluet 09/26/2005	_____ _____	sbasford 09/26/2005		

2005 DRAFTING REQUEST

Bill

Received: **08/25/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-9791**

By/Representing: **Laura Rose**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **laura.rose@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protective placement and protective services

Instructions:

Same as 03-4212, as modified

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	dkennedy 08/26/2004	csicilia 12/01/2004		_____ _____			
/P1			rschluet 12/06/2004	_____ _____	sbasford 12/06/2004		

/P2 gs 9/22 05

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **08/25/2004**

Received By: **dl**

Wanted: **As time permits**

Identical to LRI: replaces 03-4212/P2

For: **Legislative Council - JLC 6-9791**

By/Representin

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

Drafter: **dkenr**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **laura.rose@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protective placement and protective services

Instructions:

Same as 03-4212, as modified

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	dkennedy						

12/1/04 CJS 12 2 4 cH

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **02/06/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 266-9791**

By/Representing: **Laura Rose**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **laura.rose@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protective placement and protective services changes

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	dkennedy		LC Conversion ch 2/9				

FE Sent For:

<END>

LRB-4212

2003 DRAFTING REQUEST

Bill

Received: **02/06/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 266-9791**

By/Representing: **Laura Rose**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **laura.rose@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protective placement and protective services changes

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	dkennedy		LC conversion ch 2/9				

FE Sent For:

<END>

AN ACT ***to repeal*** 55.01 (3), 55.04 (1) to (3), 55.05 (2) (d), 880.01 (7m), 880.07 (1m), 880.33 (4m), 880.33 (4r) and 880.34 (6); ***to renumber*** 51.40 (2) (b) 2. a., b., c., and d., 55.05 (5) (title) and (a), 55.05 (5) (b) 1., 55.05 (5) (c) 1., 55.05 (5) (d), 55.06 (10) (a) 2., 55.06 (12), 55.06 (16), 55.06 (17), 55.07 and 880.24 (3) (a) 4.; ***to renumber and amend*** 51.40 (2) (f), 55.03, 55.04 (4), 55.05 (4) (title) and (a), 55.05 (4) (b) and (c), 55.05 (5) (b) 2., 55.05 (5) (c), 55.05 (5) (c) 2., 55.05 (5) (c) 3., 55.06 (18) and 880.24 (3) (b); ***to amend*** 20.435 (2) (gk), 46.27 (11) (b), 46.277 (2) (intro.), 46.278 (2) (a), 49.001 (8), 51.01 (3g), 51.10 (4m) (a) (intro.), 51.10 (8), 51.22 (4), 51.40 (2) (intro.), 51.40 (2) (a), 51.40 (2) (b), 51.40 (2) (b) 2., 51.40 (2) (g) 1., 55.001, 55.01 (4), 55.043 (1) (a), 55.043 (1) (a) 1. and 3., 55.043 (1) (b) 1. and 2. a. and b., 55.05 (title), 55.05 (2) (b), 55.05 (3), 880.06 (1), 880.08 (1), 880.24 (3) (a) (intro.), 880.331 (4) (a), (b), (d) and (e) and 880.38 (2); ***to repeal and recreate*** 46.275 (4) (b) 1., 51.40 (title), 51.40 (2) (f) (title), 55.02, 55.06, 55.07 and 880.06 (2); and ***to create*** 50.01 (2) (ad), 50.06 (2) (d) (intro.), 51.20 (13) (g) 4., 51.40 (1) (em), 51.40 (1) (k), 51.40 (1) (l) and (m), 51.40 (2) (c), 51.40 (2) (f) 2. and 3., 51.40 (2) (g) 6., 55.01 (1d), 55.01 (1v), 55.01 (5m), 55.01 (6) and (6m), 55.01 (6p) and (6r), 55.01 (6v), 55.055 (2) (c), 55.055 (3), 55.055 (4), 55.08, 55.09, 55.10, 55.11, 55.12, 55.13 (2) and (3), 55.135, 55.14, 55.15, 55.16, 55.17, 55.175, 55.18, 55.19, 55.21 (title), 55.22 (title), 851.72 (11), 880.01 (8m), 880.07 (2m), 880.33 (2) (f), 880.331 (4) (am), (ar), and (as), 880.331 (4) (dm), (dr) and (ds), 880.38 (4) and 977.05 (4) (i) 8. of the statutes; **relating to:** requiring a court to hold a hearing on a petition for protective placement or services within 60 days; responsibility for certain costs related to a

petition for protective services or placement; requiring a protective placement petition to be filed when a guardian is appointed for a person residing in a facility licensed for 16 or more beds; certain procedural rights in a hearing for protective placement; the attendance of the person sought to be placed at a hearing on protective placement; specifying the duties of the department of health and family services and county departments in the protective services and protective placement system; specifying the procedures for ordering protective services and emergency protective services; specifying the duties of a guardian ad litem in a proceeding to order protective placement or protective services; transfers from a locked unit to a less restrictive environment; participation of an interested person in a guardianship and protective placement proceeding; permitting the subject of a protective placement proceeding to secure an independent evaluation; involvement of certain health care agents in protective placement proceedings; creating definitions of degenerative brain disorder, protective services, and protective placement; revising the declaration of policy in ch. 55 of the statutes; admissions without court involvement; objections to short–term nursing home admissions; emergency protective placements; annual reviews of protective placements; providing notice of transfers of protective placements; involuntary transfers of protectively placed individuals to treatment facilities, voluntary admissions to treatment facilities, and voluntary receipt of medication by persons who are adjudicated incompetent; authorizing a guardian to consent to involuntary administration of psychotropic medication; ordering involuntary administration of psychotropic medication as a protective service; and authority of a guardian to consent to involuntary administration of other medications and involuntary medical treatment; transfers of

protectively placed persons and modification and termination of protective placements and court–ordered protective services; changing the term chronic mental illness to serious and persistent mental illness; requiring counties to establish a policy and requiring a register in probate to file annual statements regarding annual reviews of protective placements; public defender representation in cases involving persons subject to petitions for protective placement or services under ch. 55; consent by a legal representative for participation in the community integration program for residents of state centers; venue, residency, and county of responsibility for certain proceedings under chs. 51, 55, and 880; and annual review of an order authorizing involuntary administration of psychotropic medication

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Recodification of Chapter 55.

Legal Representative in Medical Assistance Waiver Programs

Current law creates the following medical assistance (MA) waiver programs: s. 46.27 (11), the long–term support community options waiver program; s. 46.275, the community integration program for residents of state centers for the developmentally disabled, also known as the "CIP IA" program; s. 46.277, the community integration program for persons relocated or meeting reimbursable levels of care; and s. 46.278, the community integration program and brain injury waiver program for persons with developmental disabilities, also known as the "CIP IB" program. The department of health and family services (DHFS) is required, pursuant to 42 CFR 441.302 (d), in its waiver application to the federal department of health and human services, to provide assurances that persons served under these waiver programs are given the choice of either institutional or community–based services. If the individual cannot make that choice, it must be made by the person's legal representative. The legal representative is designated in accordance with the laws of the state that is granted the waiver.

Under current law, a guardian must be appointed for an individual who is protectively placed. Although the guardian has authority to make many legal decisions on behalf of the ward, under Wisconsin law the guardian may not make a decision to permanently place a ward in a state center for the developmentally disabled. Under s. 55.06 (9) (a), the circuit court that conducts the hearing on the protective placement decision must make the determination regarding where the ward is placed.

Currently, one of the waiver statutes, s. 46.275 (4) (b) 1., provides that consent for participation in the CIP IA program must be given by the person or the person's guardian, if the person is age 18 or over. That statute also provides, however, that this provision does not limit the authority of the circuit court to order a placement under s. 55.06.

This bill clarifies that, pursuant to 42 CFR 441.302 (d), the person or his or her legal representative must be informed of the alternatives available under the waiver and given a choice whether to participate in the waiver program. For persons over age 18, the legal representative may be the person, the person's guardian or activated power of attorney for health care, or a court. For persons under age 18, the legal representative may be the person's parent, guardian, legal custodian, or a court. If the person is under guardianship and protective placement but the guardian does not consent to participation, the determination to participate is made under ss. 55.07 to 55.12 by the court that ordered protective placement.

Voluntary Admission of an Incompetent Person to an Inpatient Treatment Facility

Under current law, an evaluation that a person is mentally ill, developmentally disabled, alcoholic, or drug dependent and has the potential to benefit from inpatient care, treatment, or therapy is a criterion for voluntary admission to an inpatient treatment facility. An adult who desires admission to an inpatient treatment facility and whose admission is made through the DHFS or through a county department of community programs or developmental disabilities services may be admitted after applying, if the treatment director of the facility (or, if appropriate, the director of a center for the developmentally disabled) and the county department approve. An adult who desires admission to a state inpatient treatment facility may be admitted with the approval of the treatment facility director and the director of the appropriate county department. If the admission is approved in either of these ways, an adult may also be admitted to an inpatient treatment facility if he or she applies in writing or if the facility physician advises the person of certain rights, responsibilities, benefits, and risks of admission. If an admitted person does not sign a voluntary admission application within seven

days after admission, a hearing is held to determine whether the patient must remain as a voluntary patient.

Under current law, an adult for whom a guardian of the person has been appointed after an adjudication of incompetence may be voluntarily admitted to an inpatient treatment facility only if the guardian and the ward consent.

This bill also authorizes the voluntary admission to an inpatient treatment facility of an adult who has been adjudicated incompetent if his or her guardian consents to the admission and if the procedures requiring an explanation by a physician of the rights, responsibilities, risks, and benefits of admission and requiring a hearing after seven days are followed. Further, the bill authorizes voluntary admission of any adult under the procedures described above without also requiring admission through DHFS or a county department or approval of the county department or the treatment facility director.

Involuntary Transfer of a Protectively Placed Individual to an Acute Psychiatric Treatment Facility

Under current mental health laws, an individual who meets one of a number of standards may be detained on an emergency basis and transported for detention of up to 72 hours in a detention facility, an approved public treatment facility, a center for the developmentally disabled, a state treatment facility, or an approved private treatment facility.

If a petition is brought before a court, an individual who is found to meet one of several standards may be involuntarily committed for up to six months and may be subject to subsequent successive orders of commitment of up to one year each. For the involuntary commitment, a detained individual may automatically be appointed an attorney; receives notice of hearings and a copy of the petition and detention order; receives a written statement of his or her right to an attorney, and, if requested more than 48 hours prior to the final hearing, a jury trial; receives written notice of the standard under which he or she may be committed; and receives written notice of the right to a probable cause hearing within 72 hours after arrival at the detaining facility. An individual who is not detained receives written service of the documents and an oral explanation of his or her rights.

Involuntary commitment may not be made unless the court finds, after a hearing, that there is clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous. Procedures under the hearing must include the right to an open hearing, the right to

request a closed hearing, the right to counsel, the right to present and cross–examine witnesses, and the right to remain silent.

By contrast, under the current protective placement laws, an individual who has been adjudicated incompetent and has been protectively placed may be involuntarily transferred for up to 10 days, by his or her guardian or by court order, to a facility that provides acute psychiatric treatment for the purpose of psychiatric diagnostic procedures under s. 55.06 (9) (d) or may be temporarily transferred for up to 15 days to such a facility for emergency acute psychiatric inpatient treatment under s. 55.06 (9) (e). If the individual's guardian is not notified in advance of this transfer, the facility must provide written notice to the guardian immediately upon transfer and to the court, a county department, or a designated agency within 48 hours. If the guardian, ward, ward's attorney, or another interested person files a petition objecting to this emergency transfer, the court must order a hearing within 96 hours after the filing. The court must notify the ward, guardian, and petitioner of the time and place of the hearing, and a guardian ad litem must be appointed to represent the ward; the petitioner, ward, and guardian have the right to attend and to present and cross–examine witnesses. For both the involuntary and the temporary transfers, any hearing held must consider, among other factors, the best interests of the individual.

Under *State ex rel. Watts v. Combined Community Services*, 122 Wis. 2d 65 (1985), the court found that no rational basis existed for the difference between procedural protections that are afforded to persons who are involuntarily committed for mental health treatment under the mental health laws and the lack of any procedural protections (other than those that are self–requested) for involuntary transfers for psychiatric diagnostic procedures or acute psychiatric inpatient treatment under the protective placement laws. The court held that the constitutional guarantee of equal protection requires that the procedural requirements for emergency detention and involuntary commitment under the mental health laws must be provided to a protectively placed individual for involuntary transfer of that individual to a mental health facility for treatment.

This bill amends ch. 55 to comply with the court's ruling. The bill eliminates provisions in ch. 55 concerning transfer or temporary transfer of an individual who is protectively placed to a facility providing acute psychiatric treatment and specifies that procedures currently applied to such a transfer are inapplicable. Instead, the bill authorizes applying the mental health laws concerning emergency detention and involuntary commitment to protectively placed persons in appropriate cases. The bill prohibits the involuntary transfer of protectively placed persons to a

mental health treatment facility unless standards and procedures under the mental health laws concerning emergency detention or involuntary commitment are applied.

Residency, Venue, and County of Responsibility

Current law sets forth criteria to determine which county is responsible for the costs of services provided to an individual under chs. 46, 51, and 55.

The current criteria apply only to persons with a developmental disability or chronic mental illness. The bill replaces the term "chronic mental illness" with "serious and persistent mental illness", to correspond to similar changes elsewhere in the bill. The bill also expands applicability of the criteria to individuals with "degenerative brain disorder "or" another like incapacity".

The current criteria apply only to individuals in state facilities or nursing homes. The bill expands applicability of the criteria to individuals in any facility licensed or registered under ch. 50 of the statutes.

The bill specifies that the criteria apply to individuals receiving court–ordered protective services as well as placement; current law refers only to protective placement.

The bill specifies that for purposes of s. 51.40, "residence" has the meaning specified in s. 49.001 (6): "the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain".

The bill further specifies that for purposes of s. 51.40, "voluntary" has the meaning specified in s. 49.001 (8), and amends that definition to be: "according to a person's free choice, if competent, or by choice of a guardian if incompetent, when the person is not subject to a court–ordered placement under ch. 55, or is not placed by an agency having a court–ordered involuntary commitment of the person under ch. 51 and is not involuntarily committed to the department of corrections or the department under ch. 971 or 980".

The bill authorizes the court to make a specific finding of county of residence of a person who is under a court order of commitment under ch. 51 or an order for protective placement or services after notice and an opportunity to be heard has been given to all affected counties and parties, if there is no objection. Notice must be sent to the corporation counsel of each affected county by certified mail. If there is an objection to the proposed finding of a county of residence, the county or a party may request the department to make a determination of county of

responsibility. Any transfer of revenue must be suspended until the determination of county of responsibility is final.

Current law sets forth criteria to determine the residency of a person living in a nursing home. The bill specifies that determinations made pursuant to those criteria are presumptions that may be overcome by substantial evidence that clearly establishes residence in another county.

The bill specifies that placement of an individual by a county department or an agency of a county department into a facility outside the jurisdiction of the county does not transfer the individual's legal residency to the county of the facility's location. If a person is present in a county while being a resident of another county and is in need of immediate care, a county of appropriate venue may provide for the immediate needs of a person without being declared the person's county of residence.

The bill specifies that if it is not contrary to the other statutory criteria concerning residency, an individual residing in a facility who is incapable of indicating intent is a resident of the county in which he or she last resided before entering the facility.

Current law provides that a ward in a state facility or nursing home whose parent or sibling serves as his or her guardian is a resident of the guardian's county of residence if the state facility or nursing home is located in that county or if the guardian states in writing that the ward is expected to return to the guardian's county of residence when the purpose of entering the state facility or nursing home has been accomplished or when needed care and services can be obtained in that county.

The bill substantially amends this provision as follows:

1. Amends the title of the provision to "Guardian's authority to declare county of residence".

2. Makes the provisions applicable to all guardians (not just guardians who are a parent or sibling of a ward) of wards in any facility (not just a state facility or nursing home).

3. Provides that if other criteria to determine residency do not apply, a guardian may declare a ward's county of residence to be the county where the ward is physically present if all of the following apply:

The ward's presence in the county is voluntary.

There is no ch. 55 order in effect and the ward is not under an involuntary commitment to the county, other than the county

where the ward is physically present, or to the department of corrections.

The ward is living in a place of fixed habitation.

The guardian states in writing that it is the ward's intent to remain in the county for the foreseeable future.

The bill also provides that a guardian may, for good cause shown, if in the ward's best interests, clarify or change a ward's county of residence by filing with the probate court having jurisdiction of the guardianship and protective placement a written statement declaring the ward's domiciliary intent, subject to court approval, with notice and opportunity to appear by potentially affected counties and parties.

Current law provides a procedure for the department to make a determination of county of responsibility of an individual upon request. The bill specifies that any pending motion for change of venue shall be stayed until the department's determination is final. The bill also expands notice requirements pertaining to the residency determination procedure.

The bill provides that the county found to be responsible for providing services ordered under ch. 46, 51, or 55 to an individual must reimburse any other county that provided services to the individual for all services provided to the individual beginning on the date of the initial order under ch. 46, 51, or 55. Full reimbursement by the responsible county must be made within 120 days of the department's responsibility determination, or of the outcome of any appeal by the department's determination that is brought under ch. 227, or on a date or pursuant to a schedule of two or more payments agreed to by both counties.

The bill specifies that to be eligible for protective placement or services, a person must be a resident of Wisconsin or be present in Wisconsin having a need for protective placement or services until such time as appropriate protective services can be established in the person's place of residence.

Current law specifies that a petition under ch. 55 must be filed in the county of residence of the person sought to be protected. The bill provides that the petition may be filed in the county in which the person sought to be protected is physically present under extraordinary circumstances requiring medical aid or the prevention of harm to the person or others.

The bill provides that the court in which a petition under ch. 55 or 880 is filed must determine venue. The court must direct that proper notice be given to any potentially responsible or affected county. After all

potentially responsible or affected counties and parties have been given an opportunity to be heard, if it is determined that venue lies in another county, the court must order the entire record certified to the proper court. A court in which a subsequent petition is filed must, upon being satisfied of an earlier filing in another court, summarily dismiss such petition. If any county or party objects to the court's finding of venue, the issue must be referred to the department and the department must make a determination of county of responsibility pursuant to the procedure under current law. The court must suspend ruling on the motion for change of venue until the department's determination is final.

The bill provides that the county department under s. 51.42 or 51.437 to which an individual is involuntarily committed for treatment under ch. 51 retains responsibility for the person when the person voluntarily moves to another county until venue for the person is transferred to the county where the person is residing or until the person is no longer a proper subject of continued commitment.

The bill specifies that the residence of a person who is committed under ch. 51 and who is placed in a facility in another county by a county developmental disabilities board does not transfer to the county of the facility's location while the person is under commitment.

Definition and Terminology Changes

Current law, under s. 55.01 (3), defines "infirmities of aging" as "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 or her ability to adequately provide for his or her care or custody". This bill replaces the definition of "infirmities of aging" with a definition of "degenerative brain disorder". This definition is considered to be a more accurate reference to the types of organic brain disorders such as Alzheimer's disease and Parkinson's disease, which are not necessarily caused by the aging process.

Current law does not define "protective services" or "protective placement". This bill creates definitions of "protective services" and "protective placement".

Under current law, certain persons with chronic mental illness may be eligible for protective placement or services under ch. 55. The term "chronic mental illness" is defined in s. 51.01 (3g) as a mental illness which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, which may lead to an inability to maintain stable adjustment and independent functioning without long–term treatment and support and

which may be of lifelong duration. Under current law, "chronic mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include infirmities of aging or a primary diagnosis of mental retardation or of alcohol or drug dependence. The term is not defined in ch. 55, although it is used in that chapter.

This bill changes the term "chronic mental illness" in ch. 51 to "serious and persistent mental illness" to reflect updated terminology. It also creates a definition of the term in ch. 55 by cross–referencing the definition in s. 51.01 (3g).

Under current law, s. 55.001, the declaration of policy to ch. 55, refers to persons with "infirmities of aging, chronic mental illness, mental retardation, other developmental disabilities, or like incapacities incurred at any age" who are in need of protective services.

This bill revises some of the terminology in s. 55.001 by doing the following:

1. Deleting the term "infirmities of aging" and replacing it with the newly created term "degenerative brain disorders".

2. Deleting the outdated term "mental retardation". Persons who have cognitive disabilities are encompassed in the term "developmental disabilities".

3. Inserting references to protective placement, in addition to the current references to protective services.

4. Deleting the term "chronic mental retardation" and replacing it with "serious and persistent mental illness".

DHFS and County Responsibilities in Ch. 55 System

Current law (s. 55.02) requires the DHFS to establish a statewide system of protective services, in accordance with rules promulgated by the department. This statutory section refers to the department cooperating with the various types of county departments to develop a coordinated system of services.

Current law (s. 55.04) also requires the DHFS to administer specifically enumerated protective services, as well as evaluate, monitor, and provide protective placements.

This bill repeals and recreates s. 55.02 and repeals s. 55.04. The newly created s. 55.02 revises and combines the 2 statutes, ss. 55.02 and 55.04, to more accurately portray the department's role in cooperating with county departments in operating the protective services and placement

system, and the department's role in monitoring and supervising the system. This new section also more accurately portrays the county department's primary role in providing protective services and protective placement in Wisconsin. The bill also repeals the specific listing of types of protective services and creates a new definition of "protective services".

Admissions Without Court Involvement

Current law provides for certain admissions of persons who are under guardianship to certain facilities without court involvement. One type of admission without court involvement that is currently permitted is the admission of a person to a nursing home, if the person is admitted directly from a hospital inpatient unit for recuperative care for a period not to exceed 3 months, unless the hospital admission was for psychiatric care. Prior to providing consent to the admission, the guardian of the person to be admitted must review the ward's right to the least restrictive residential environment and consent only to admission to a nursing home that implements those rights. Following the 3–month period, a placement proceeding under s. 55.06 is required.

This bill does the following:

1. Amends current law to permit a guardian to consent to a ward's admission to a nursing home, or other facility for which protective placement is required, for a period not to exceed 60 days. This change permits a ward to be admitted for a short–term nursing home stay without having to be admitted from a hospital setting. However, the person must be in need of recuperative care or be unable to provide for his or her own care or safety so as to create a serious risk of substantial harm to oneself or others. The placement may be extended for an additional 60 days if a placement proceeding under ch. 55 has been commenced, or for an additional 30 days for the purpose of allowing the initiation of discharge planning for the person if no placement proceeding under ch. 55 has been commenced. Placement under this amended provision is not permitted for a person with a primary diagnosis of mental illness or developmental disability.

2. Creates a new provision that allows a guardian of a person under a guardianship that was imposed in another state to consent to admissions under current s. 55.05 (5) (b) (which is renumbered to s. 55.055 (2) in the bill) if the ward is currently a resident of Wisconsin, and if a petition for guardianship and protective placement is filed in Wisconsin within 60 days of the person's admission.

3. Creates a new provision that allows a guardian of a person who has been found incompetent in, and resides in, another state to consent to

admissions under current s. 55.05 (5) (b) (which is renumbered to s. 55.055 (2) in the bill) if the guardian intends to move the ward to Wisconsin within 30 days of the consent to the admission. A petition for guardianship and protective placement must be filed in Wisconsin within 60 days of the person's admission to the Wisconsin facility.

Under current law, s. 50.06 of the statutes creates a procedure for a short–term admission of an incapacitated person to a nursing home from a hospital without having a guardianship or protective placement in place. Admissions are authorized based on the consent of a statutorily specified person, for a time period not to exceed 60 days. The admission may be extended once for up to 30 days for the purpose of allowing discharge planning for the person to take place.

This bill creates a new provision in s. 50.06 that addresses a situation where the incapacitated person admitted to the nursing home protests the admission. In that situation, the person in charge of the facility must immediately notify the designated protective placement agency for the county in which the person is living. Representatives of that agency must visit the person as soon as possible, but not later than 72 hours after notification, and do the following:

1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the individual who consented to the admission regarding the reasons for the admission.

2. Attempt to have the person released within 72 hours if the protest is not withdrawn and necessary elements of s. 55.06 (2) or (11) (renumbered to s. 55.07 in the bill) are not present and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.06 (11) (renumbered to s. 55.135), relating to emergency protective placement, if all elements are present and emergency placement in that facility or another facility is necessary or file a petition for protective placement under s. 55.06 (2) (renumbered to s. 55.07). The court, with the permission of the facility, may order the person to remain in the facility pending the outcome of the protective placement proceedings.

Protective Placement Petition Required When Guardianship Petition Filed for Resident of a Nursing Home

The bill codifies the decision of the Wisconsin Supreme Court in *Agnes T. v. Milwaukee County*, 189 Wis. 2d 520, 525 N.W.2d 268 (1995). In that case, the court stated that a guardian may not consent to the continued residence of a person in a nursing home licensed for 16 or more beds without a protective placement order and that upon appointing

a guardian for an incompetent person in a nursing home licensed for 16 or more beds, the court must hold a protective placement hearing. The court specified that, when making a placement determination for such a person, a court may consider whether moving the person would create a serious risk of harm to that person.

This bill codifies the *Agnes T.* decision as follows:

1. Requiring, in newly created s. 880.07 (2m), that whenever a petition for guardianship on the ground of incompetency is filed with respect to a person residing in a facility licensed for 16 or more beds, a petition for protective placement of the person must also be filed.

2. Specifying that the person may continue to reside in the facility until the court issues a decision on the petition for protective placement of the person.

3. Authorizing a court, when protectively placing a person residing in a facility licensed for 16 or more beds, to consider whether moving the person would create a serious risk of harm to that person.

Fees and Costs of Petition Under Ch. 55

Chapter 55 does not currently specify who is responsible for the attorney fees and costs of a person who files a petition for protective services or placement under s. 55.06 (2). However, s. 880.24 (3) specifies that under certain circumstances, the court must award payment of reasonable attorney fees and costs to a person who petitions for appointment of a guardian and protective placement of the ward if a guardian is appointed.

The bill adds to ch. 55 similar provisions requiring the court to award payment of reasonable attorney fees and costs to a person who petitions for protective services or placement. These provisions apply when a petition for protective placement or services is brought independently of or at the same time as a petition for guardianship.

The bill creates a new provision which specifies that the court must award, from the estate of the person sought to be placed, the reasonable attorney fees and costs of a person who petitions for protective placement of the person unless the court finds it would be inequitable to do so. In determining whether it would be inequitable to award payment of costs and fees, the court must consider all of the following:

1. The petitioner's interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship or protective placement.

2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and costs.

3. Whether the petition was contested and, if so, the nature of the contest.

4. Whether the person sought to be protectively placed had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had provided advance consent to nursing home placement or engaged in other advance planning to avoid protective placement.

5. Any other factors that the court considers to be relevant.

With respect to guardianships under ch. 880, current law provides that if the court finds that a ward had executed a durable power of attorney or a power of attorney for health care or engaged in other advance planning to avoid guardianship, the court may not award payment of the petitioner's attorney fees and costs from the ward's estate. The bill provides, instead, that the court may consider these items as factors in determining whether to award the payment.

Time Limit for Protective Placement Hearing

The bill specifies that a court must hold a hearing on any petition for protective placement within 60 days after it is filed. The bill provides that the court may extend the date for the hearing by up to 45 days if an extension of time is requested by the petitioner, individual sought to be placed or his or her guardian ad litem, or the county department.

Attendance at Hearing of Person Sought to be Protected

Under current s. 55.06 (5), a person sought to be protectively placed is presumed able to attend the hearing on protective placement unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend. Chapter 55 does not require the court to hold the hearing in the presence of the person sought to be placed if that person is unable to attend the hearing, as is required in ch. 880 for hearings on guardianship.

The bill deletes language stating that the person sought to be protectively placed is presumed to be able to attend the hearing. The bill provides that the person sought to be protected shall be present at the hearing unless, after a personal interview, the guardian ad litem certifies in writing to the court specific reasons why the person is unable to attend or certifies in writing that the person is unwilling to participate or is unable to participate in a meaningful way. The bill also provides that, if the person is unable to attend a hearing because of physical inaccessibility or

lack of transportation, the court must hold the hearing in a place where the person may attend, if requested by the person sought to be placed, guardian ad litem, adversary counsel. This provision is similar to provisions which currently exist in ch. 880, relating to appointment of a guardian for a person alleged to be incompetent. The bill specifies, however, that the court is *not* required to hold the hearing in the presence of the person sought to be placed if the guardian ad litem, after a personal interview with the person, certifies in writing to the court that the person is unwilling to participate or unable to participate in a meaningful way.

The bill also amends s. 880.08 (1) relating to the appointment of a guardian in the same way.

Procedural Rights in Ch. 55 Proceedings

Currently, s. 55.06 (6), requires the appointment of a guardian ad litem for a person sought to be protectively placed and states that s. 880.33 (2), which sets forth certain procedural rights and the right to counsel in a guardianship hearing, applies to all hearings under ch. 55 except hearings regarding certain transfers of placement. This bill deletes that cross–reference and instead inserts the language to which it refers to into appropriate sections of ch. 55. The bill makes minor changes to that language necessary to reflect that the rights apply to ch. 55 proceedings rather than guardianship hearings. The bill also replaces the term "county of legal settlement" with the term "county in which the hearing is held", as recommended by the committee.

The provisions in current s. 880.33 (2) that are inserted into ch. 55 by the bill are the following:

1. The right to counsel.

2. The right to a jury trial.

3. The right of the person sought to be placed, his or her attorney and guardian ad litem to present and cross–examine witnesses.

4. The right to a copy of any medical, psychological, social, vocational, or educational evaluation of the person sought to be placed.

5. Provisions requiring the county in which the hearing is held to pay guardian ad litem and attorney fees of the person sought to be placed if the person is indigent.

6. The right of the person sought to be protected to request that the hearing be closed.

The bill retains the requirements in current s. 55.06 (6), relating to the appointment of a guardian ad litem for a person sought to be placed.

Right to an Independent Evaluation in Ch. 55 Proceedings

Under current law, s. 880.33 (2) (b) provides that the individual who is the subject of a guardianship petition, or anyone on the individual's behalf, has the right, at the individual's own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved at the hearing on the petition, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

This bill provides the same right to an independent evaluation to an individual who is the subject of a protective placement proceeding, if such an evaluation has not already been made.

Duties of Guardian ad Litem in Ch. 55 Proceedings

Under current law, protective placement hearings are held as provided under s. 55.06. Under s. 55.06 (5), notice of a petition for protective placement must be served on the individual who is the subject of the petition, as well as several other persons, including the guardian, if one has been appointed. Current law also requires a guardian to be provided a copy of the comprehensive evaluation of the individual who is the subject of the protective placement petition. However, current law does not specify that the guardian must be provided notice of the protective placement hearing. Also, current law does not specify the guardian's rights to participation at the hearing on protective placement.

Current law, under s. 880.331, specifies duties of a guardian ad litem in guardianship proceedings.

This bill specifies that the duties of a guardian ad litem in a guardianship proceeding in s. 880.331 also apply to a guardian ad litem in a protective placement proceeding. This bill also creates additional duties of a guardian ad litem in guardianship and protective placement proceedings. The new duties are: to interview the proposed guardian; to make a recommendation to the court regarding the fitness of the proposed guardian; to interview the guardian, if one has already been appointed, of a subject of a petition for protective placement or court–ordered protective services; to inform the court and the petitioner or the petitioner's counsel, if any, if the proposed ward requests representation by counsel; to attend all court proceedings related to the guardianship; and to notify any guardian of an individual who is the subject of a protective placement proceeding about the hearing on the petition, as

well as the right to be present at the hearing, the right to present and cross–examine witnesses, and the right to receive a copy of the evaluations.

Role of Power of Attorney for Health Care in Ch. 55 Proceedings

Under current law, in an incompetency proceeding, if the proposed incompetent has executed a power of attorney for health care under ch. 155, the court must make a finding as to whether the power of attorney for health care instrument should remain in effect. If the court so finds, the court shall so order and shall limit the power of the guardian to make those health care decisions for the ward that are to be made by the health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.

Currently, when reference is made to a guardian in ch. 55, no reference is made to a power of attorney for health care, where a court, in an incompetency proceeding, has found that the power of attorney should remain in effect for certain health care decisions.

This bill clarifies the role of the power of attorney for health care in ch. 55 proceedings. It provides that, if a court has made a determination under s. 880.33 (8) (b) that a power of attorney for health care under ch. 155 should remain in effect, and the courts limits the power of the guardian to make health care decisions, the provisions of ch. 55 that confer upon the guardian the rights to notice and participation, and the authority to act, in a proceeding under ch. 55, shall also apply to the health care agent.

Rights of "Interested Persons" in Ch. 55 Proceedings

Under current law, under s. 55.01 (4), an "interested person" is defined as "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 the person's welfare".

An interested person is given the opportunity, in guardianship and protective placement proceedings, to participate in many ways, including: requesting a different location for the hearing if the proposed ward is unable to attend due to physical inaccessibility or lack of transportation; complaining to the court if they suspect fraudulent activity by the guardian; and requesting an independent medical or psychological examination of the proposed ward.

This bill codifies the Wisconsin Court of Appeals' decision in *Coston v. Joseph P.*, 586 N.W.2d 52 (Ct. App. 1998), by providing that an interested person may participate in the hearing on the guardianship and

protective placement petition at the court's discretion. In that case, 2 interested persons, who were relatives of the subject of the petition, asserted that they had a right to participate in the hearing. The court disagreed, saying that the rights of interested persons to participate in guardianship and protective placement hearings are specific and limited. However, the court also stated that circuit courts are not foreclosed from allowing for the participation of interested persons, if the court decided to exercise its discretion to allow interested persons to participate to the extent it would deem appropriate.

Procedures for Protective Services Order

Current law provides that the court may order protective services for an individual for whom a determination of incompetency is made if the individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. However, no procedures are specified in statute for obtaining a court order for protective services.

This bill includes court–ordered protective services under the revised procedural provisions for protective placement.

Procedures for Emergency Protective Services

Under current law, s. 55.05 (4) provides that emergency protective services may be provided for not more than 72 hours when there is reason 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. No procedures are specified in the statute for obtaining a court order for emergency protective services.

This bill establishes procedures for obtaining emergency protective services. Under the bill, if the provider of the emergency protective services has reason to believe that protective services must continue to be provided beyond the 72–hour period, a petition for court–ordered protective services may be filed. If a petition is filed, a preliminary hearing must be held within 72 hours, excluding Saturdays, Sundays, and holidays, to establish probable cause to believe that the grounds for court–ordered protective services are present. If probable cause is found, the court may order protective services for up to 60 days, pending a hearing on the petition for court–ordered protective services.

Emergency Protective Placements

This bill makes several changes to the law governing emergency protective placements.

Current law provides that a sheriff, police officer, fire fighter, guardian, or authorized representative of a county board or an agency designated by a county board may make an emergency protective placement of an individual if, *based on their personal observation,* it appears probable that the individual meets the criteria for emergency placement. The bill provides that emergency placement may be made by the persons listed above *based on a reliable report made to them* as well as based on their personal observation.

Current law provides that an individual may be protectively placed on an emergency basis if it appears probable that the individual *will suffer irreparable injury or death or will present a substantial risk of serious physical harm to others* as a result of developmental disabilities, infirmities of aging, chronic mental illness, or other like incapacities. The bill amends this language to provide that an individual described above may be protectively placed on an emergency basis if it appears probable that the individual *is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious physical harm to himself or herself or others* as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities if not immediately placed. This new language is the same as current s. 55.06 (2) (c), which sets forth one of the standards which must be met for protective placement on a non–emergency basis.

Current law provides that a person may be protectively placed on an emergency basis in an appropriate medical or protective placement facility. The bill provides that emergency protective placement may also be made to a hospital.

The bill requires each county department to designate at least one appropriate medical facility, hospital, or other protective placement facility as an intake facility for the purpose of emergency protective placements.

Voluntary Administration of Medication, Including Psychotropic Medication, to an Incompetent Person

Under current laws relating to guardianship, a petition for guardianship of a person who is alleged to be incompetent may further allege that the person is not competent to refuse psychotropic medication and that the psychotropic medication is, under several criteria, necessary. If the petition contains these allegations, and if, at hearing, the court finds that the person is not competent to refuse psychotropic medication and that the medication is necessary, the court must appoint a guardian to consent to or refuse the medication on behalf of the person and order

development of a treatment plan, including psychotropic medication, for the person. If the person substantially fails to comply with the treatment plan and if certain conditions are met, the court may authorize the person's guardian to consent to the forcible administration of psychotropic medication to the person.

This bill defines "psychotropic medication" and authorizes the guardian of a nonprotesting ward with whom the guardian has discussed the receipt of medication, including psychotropic medication, to give an informed consent to the voluntary receipt by the ward of the medication, without the necessity of court procedures for approval.

Involuntary Administration of Psychotropic Medication

This bill provides that a guardian may be authorized to consent to involuntary administration of psychotropic medication to a ward and involuntary administration of psychotropic medication as a protective service if certain requirements are met. The bill also specifies that psychotropic medication may not be involuntarily administered to a person who has been protectively placed except by the procedure created in the bill.

In the bill, "psychotropic medication" is defined as a prescription drug that is used to treat or manage a psychiatric symptom or challenging behavior. "Involuntary administration of psychotropic medication" is defined to include all of the following: placing psychotropic medication in a person's food or drink with knowledge that the person protests receipt of the psychotropic medication; forcibly restraining a person to enable administration of psychotropic medication; or requiring a person to take psychotropic medication as a condition to receiving privileges or benefits.

Petition

The bill requires a petition for involuntary administration of psychotropic medication as a protective service to meet all requirements for a protective services petition under ch. 55 and in addition requires the petition to allege all of the following:

1. A physician has prescribed psychotropic medication for the person.

2. The person is not competent to refuse psychotropic medication. "Not competent to refuse psychotropic medication" means that as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, the individual is incapable of expressing an understanding of

the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment or the individual is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to treatment to his or her medical or psychiatric condition in order to make an informed choice as to whether to accept or refuse psychotropic medication.

3. The person has refused to take psychotropic medication voluntarily or attempting to administer psychotropic medications to the person voluntarily is not feasible or is not in the person's best interests. If the petition alleges that the person has refused to take psychotropic medication voluntarily, the petition must identify the reasons for the person's refusal. The petition must also contain evidence showing that a reasonable number of documented attempts to administer psychotropic medication voluntarily using appropriate interventions that could reasonably be expected to increase the person's willingness to take the medication voluntarily, have been made and have been unsuccessful. If the petition alleges that attempting to administer psychotropic medications to the person voluntarily is not feasible or is not in the best interests of the person, the petition must identify specific reasons supporting that allegation.

4. The person's condition for which psychotropic medication has been prescribed is likely to be improved by psychotropic medication and the person is likely to respond positively to psychotropic medication.

5. That unless psychotropic medication is administered involuntarily, the person will incur an immediate or imminent substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury, or debilitation may be shown either by evidence that the person has a history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act, or omissions that resulted from the person's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13), or by evidence that the subject individual meets one of the dangerousness criteria set forth in the mental health law, in s. 51.20 (1) (a) 2. a. through e.

The bill requires a petition for involuntary administration of psychotropic medication to include a written statement signed by a physician who has personal knowledge of the person that provides general clinical information regarding the appropriate use of

psychotropic medication for the person's condition and specific data indicates that the person's current symptoms necessitate the use of the psychotropic medication.

The bill specifies that the corporation counsel shall be provided notice of any petition for involuntary administration of psychotropic medication and may assist in the proceedings on any such petition.

Guardian ad Litem Report

The bill requires the guardian ad litem appointed for a person who is the subject of a petition for involuntary administration of psychotropic medication as a protective service to report to the court his or her conclusion as to whether the person is competent to refuse psychotropic medication, whether the allegations in the petition pertaining to the person's dangerousness are true, whether the person refuses to take the psychotropic medication voluntarily, and whether the involuntary administration of the psychotropic medication is in the best interest of the person.

Appointment of Legal Counsel

The bill requires the court to appoint legal counsel on behalf of a person who is the subject of a petition for involuntary administration of psychotropic medication as a protective service.

Independent Evaluation

The bill provides that if requested by the person who is the subject of the petition, or anyone on his or her behalf, the person has the right to an independent medical or psychological evaluation relevant to the person's competency to refuse psychotropic medication, whether the allegations in the petition pertaining to the person's dangerousness are true, and whether involuntary administration of psychotropic medication is in the best interest of the person. The person has the right to present a report of the independent evaluation or the evaluator's personal testimony as evidence at the hearing. The evaluation shall be performed at the expense of the person who is the subject of the petition unless the person is indigent. If the person is indigent, the evaluation shall be performed at the expense of the county where the petition is filed.

Court Order

The bill provides that the court may authorize a guardian to consent to involuntary administration of psychotropic medication to a ward and may order involuntary administration of psychotropic medication to the person as a protective service, with the guardian's consent, if the court or jury finds by clear and convincing evidence that the requirements for

involuntary administration of psychotropic medication established in the bill have been met, psychotropic medication is necessary for treating the specific condition outlined in the physician's statement and all other requirements for ordering protective services under ch. 55 have been met.

The bill specifies that if the court issues an order authorizing a guardian to consent to involuntary administration of psychotropic medications, the order must specify the methods of involuntary administration of psychotropic medication to which the guardian may consent. An order authorizing the forcible restraint of a person must require a registered nurse, a licensed practical nurse, a physician or a physician's assistant to be present at all times that psychotropic medication is administered in this manner. An order must require the person or facility administering psychotropic medication to maintain records noting each instance of involuntary administration of psychotropic medication that identify the methods of administration utilized.

The court must also order development of a treatment plan that includes a plan for involuntary administration of psychotropic medication to the person with consent of the guardian. If the person resides in a hospital or nursing home, the hospital or nursing home must develop the plan; otherwise the county department or an agency designated by it must develop the plan. The court must review the plan and approve or disapprove the plan. The court must order the county department or an agency designated by it to ensure that psychotropic medication is administered in accordance with the treatment plan.

Enforcement

The bill specifies that if a person who is subject to an order for involuntary administration of psychotropic medication refuses to take the medication and it is necessary for the person to be transported to an appropriate facility so that the person may be forcibly restrained for administration, the corporation counsel may file a statement of noncompliance with the court. The statement must be signed by the guardian and the director (or designee) of the county department or the agency designated by it to develop and administer the treatment plan. Upon receipt of the statement, the court may issue an order authorizing the sheriff or other law enforcement agency to take the person into custody and transport the person to an appropriate facility for administration of psychotropic medication using forcible restraint, with consent of the guardian.

Annual Review of Order Authorizing Involuntary Administration of Psychotropic Medication

The bill specifies an order authorizing a guardian to consent to involuntary administration of psychotropic medication as a protective service must be reviewed by the court annually under generally the same procedure that protective placements are reviewed ("*Watts*" reviews).

County Department Review and Report

The bill requires the county department of the county of residence of any individual who is subject to an order authorizing involuntary administration of psychotropic medication as a protective service to annually review the status of the individual. If, in an annual review, the individual or his or her guardian or guardian ad litem request termination of the order and the court provides a full due process hearing or a full due process hearing is provided pursuant to a petition for termination of the order, the county is not required to review the status of the individual until one year after the court issues a final order after the full due process hearing.

If the individual is, or subsequently becomes, subject to an order for protective placement, the annual review shall be conducted simultaneously with the annual review of the individual's protective placement.

The county of residence of an individual who is subject to an order authorizing involuntary administration of psychotropic medication and whose placement is in a different county may enter into an agreement under which the county of placement performs all or a part of the county duties specified in the bill.

The county review must include a written evaluation of the physical, mental, and social condition of the individual that are relevant to the continued need for the order for involuntary administration of psychotropic medication. The review must be made part of the individual's permanent record. The county department must inform the individual's guardian of the review and invite the individual and his or her guardian to submit comments concerning the individual's need for protective placement or protective services. In performing the review, the county department or contractual agency staff member performing the review must visit the individual and must contact the individual's guardian. The review may not be conducted by a person who is an employee of a facility in which the individual resides or from which the individual receives services.

By the first day of the 11th month after the initial order is made, and annually thereafter, the county must do all of the following:

1. File a report of the review with the court that issued the order.

2. File with the court a petition for annual review of the order.

3. Provide the report to the individual and the individual's guardian.

The report must contain information on all of the following:

1. Whether the individual continues to meet the standards for protective services.

2. Whether the individual is competent to refuse psychotropic medication as set forth in s. 55.06 (9) (am) 3. b.

3. Whether the individual continues to refuse to take psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not in the best interests of the individual as set forth in s. 55.06 (9) (am) 3. c.

4. Whether the individual's condition for which psychotropic medication has been prescribed has been improved by psychotropic medication and the person has responded positively to psychotropic medication.

5. Whether the individual continues to meet the dangerousness criteria set forth in s. 55.06 (9) (am) 3. e.

6. A summary of the comments of the individual and the individual's guardian and the county's response to those comments.

7. The comments, if any, of any staff member at any facility at which the individual is placed, receives services or at which psychotropic medication is administered to the individual which are relevant to the continued need for the order.

Responsibilities of the Guardian Ad Litem

The court is required to appoint a guardian ad litem after it receives the report from the county described above. The guardian ad litem is required to do all of the following:

1. Review the report filed by the county, the annual report of the guardian, and any other reports on the individual's condition that are relevant to the continued need for involuntary administration of psychotropic medication.

2. Meet with the individual and contact the individual's guardian and explain to the individual and guardian all of the following:

a. The procedure for review of the order for involuntary administration of psychotropic medication.

b. The right to appointment of legal counsel.

c. The right to request performance of an independent evaluation.

d. The contents of the report submitted to the court by the county.

e. That a termination of the order may be ordered by the court.

f. That a full due process hearing may be requested by the individual or individual's guardian.

The guardian ad litem must provide all of the information described above to the individual in writing.

3. Review the individual's condition and rights with the individual's guardian.

4. Ascertain whether the individual wishes to exercise any of his or her rights (the right to appointment of legal counsel, to request an independent evaluation, and to request a full due process hearing).

5. File a written report with the court within 30 days after appointment, which includes a discussion of whether the individual appears to continue to meet the standards for the order. The report must also state whether any of the following applies:

a. The guardian ad litem, the individual, or the individual's guardian request an independent evaluation.

b. The individual or the individual's guardian requests termination of the order.

c. The individual requests, or his or her guardian or the guardian ad litem recommends, that legal counsel be appointed for the individual.

d. The individual or his or her guardian or guardian ad litem requests a full due process hearing.

6. Certify to the court that he or she has complied with the requirements described under items 2., 3., and 4., above.

Court Review of Reports, Hearing, and Order

The bill requires the court that issues an order for involuntary administration of psychotropic medication to, not more than 12 months after the initial order and annually thereafter, review the reports of the county and the guardian ad litem, described above, and the annual report filed by the guardian under s. 880.38 (3), stats. In its review, the court must determine whether any of the following is necessary:

1. Performance of an independent evaluation of the physical, mental, and social condition of the individual that are relevant to the issue of the continued need for the order. If the court determines that an independent

evaluation is necessary, the evaluation shall be performed at the expense of the individual unless the individual is indigent. If the individual is indigent, the evaluation is performed at the expense of the responsible county department. The court must order the performance of an independent evaluation if any of the following applies:

a. The report submitted by the county is not timely filed or the court determines that the report fails to meet the statutory requirements.

b. Following review of the guardian ad litem's report, the court determines that independent evaluation is necessary.

c. The individual or the individual's guardian or guardian ad litem requests an independent evaluation.

2. Obtaining any other information with respect to the individual.

3. Appointment of legal counsel. If the court appoints legal counsel and it appears that the individual is indigent, the court shall refer the individual to the authority for indigency determinations under s. 977.07 (1). The court must order legal counsel for an individual if any of the following applies:

a. Following review of the guardian ad litem's report, the court determines that legal counsel for the individual is necessary.

b. The individual or the individual's guardian or guardian ad litem requests appointment of legal counsel.

4. Holding of a full due process hearing.

Upon completion of its review, the court must order either a summary hearing or a full due process hearing. A summary hearing may be held in court or may be held by other means such as by telephone or by a videoconference. The court must hold a full due process hearing if any of the following applies:

a. The individual or the individual's guardian or guardian ad litem requests a full due process hearing.

b. The report of the guardian ad litem indicates that the individual no longer meet standards for the order.

c. The report of the guardian ad litem indicates that the individual objects to the order.

Following the summary hearing or the full due process hearing, the court must do one of the following: