

1 **55.09 Notice of petition and hearing for protective services or placement. (1)**

2 PERSON SOUGHT TO BE PROTECTED. Notice of a petition for placement or services shall be served
3 upon the person sought to be protected, by personal service, at least 10 days prior to the time
4 set for a hearing. Upon service of the notice, the person sought to be protected shall be
5 informed of the complete contents of the notice. The person serving the notice shall return
6 a certificate to the circuit judge verifying that the petition has been delivered and notice given.
7 The notice shall include the names of all petitioners.

8 (2) OTHER NOTICE REQUIRED. Notice shall also be served personally or by mail upon the
9 person's guardian ad litem, legal counsel, and guardian, if any; agent under an activated power
10 of attorney for health care, if any; presumptive adult heirs; other persons who have physical
11 custody of the person to be protected whose names and addresses are known to the petitioner
12 or can with reasonable diligence be ascertained; the county department; any governmental or
13 private body or group from whom the person to be protected is known to be receiving aid; and
14 to such other persons or entities as the court may require. Notice shall also be served
15 personally or by mail upon the department at least 10 days prior to the time set for hearing if
16 the person sought to be protected may be placed in a center for the developmentally disabled.
17 Notice shall also be served personally or by mail, at least 10 days before the time set for
18 hearing, upon the county department that is participating in the program under s. 46.278 of
19 the county of residence of the person sought to be protected, if the person has a developmental
20 disability and may be placed in an intermediate facility or a nursing facility, except that, for
21 a person sought to be protected to whom s. 46.279 (4m) applies, this notice shall instead be
22 served on the department.

1 **(3) NOTICE OF PETITION FOR INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.**

2 Notice of a petition under s. 55.14 shall be served personally or by mail upon the corporation
3 counsel and county department.

4 **SECTION 72.** 55.10 of the statutes is created to read:

5 **55.10 Hearing on petition for protective services or placement. (1) TIME LIMITS.**

6 A petition for protective services or placement shall be heard within 60 days after it is filed
7 unless an extension of this time is requested by the petitioner, the person sought to be protected
8 or his or her guardian ad litem, or the county department, in which case the court may extend
9 the date for hearing by up to 45 days. If an individual under s. 50.06 (3) alleges that an
10 individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests
11 of the incapacitated individual or if the incapacitated individual verbally objects to or
12 otherwise actively protests the admission, the petition shall be heard as soon as possible within
13 the 60-day period.

14 **(2) ATTENDANCE.** The person sought to be protected shall be present at the hearing on
15 the petition unless, after a personal interview, the guardian ad litem certifies in writing to the
16 court specific reasons why the person is unable to attend or certifies in writing that the person
17 is unwilling to participate or unable to participate in a meaningful way. If the person is unable
18 to attend a hearing because of physical inaccessibility or lack of transportation, the court shall
19 hold the hearing in a place where the person may attend if requested by the person sought to
20 be protected, guardian ad litem, adversary counsel, or other interested person. The court is
21 not required to hold the hearing in the presence of the person sought to be protected if the
22 guardian ad litem, after a personal interview with the person, certifies in writing to the court
23 that the person is unwilling to participate or unable to participate in a meaningful way.

1 (3) HEARING TO BE OPEN. The hearing shall be open, unless the person sought to be
2 protected, or his or her attorney acting with the consent of the person sought to be protected,
3 moves that it be closed. If the hearing is closed, only persons in interest, including
4 representatives of providers of service and their attorneys and witnesses, may be present.

5 (4) RIGHTS. The following provisions apply to all hearings under this chapter except
6 transfers of placement under s. 55.15:

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

22 (b) *Guardian ad litem; costs.* The court shall in all cases require the appointment of an
23 attorney as guardian ad litem in accordance with s. 757.48 (1). The responsibilities and duties
24 of a guardian ad litem specified in s. 880.331 (3) and (4) apply to a guardian ad litem appointed

1 in a proceeding for protective services or placement . The guardian ad litem shall be present
2 at all hearings under this chapter if the person sought to be protected does not have full legal
3 counsel. The court may, however, excuse a personal appearance by a guardian ad litem based
4 on information contained in a written report by the guardian ad litem to the court. If the person
5 sought to be protected is an adult who is indigent, the county in which the hearing is held shall
6 be liable for any fees due the guardian ad litem. If the person sought to be protected is a minor,
7 the parents of the person sought to be protected or the county in which the hearing is held shall
8 be liable for any fees due the guardian ad litem as provided in s. 48.235 (8).

9 (c) *Trial by jury; right to cross examine witnesses.* The person sought to be protected
10 has the right to a trial by a jury if demanded by the person sought to be protected, attorney, or
11 guardian ad litem. The number of jurors shall be determined under s. 756.06 (2) (b). The
12 person sought to be protected, and the person's attorney and guardian ad litem shall have the
13 right to present and cross-examine witnesses, including any person making an evaluation or
14 review under s. 55.11.

15 (d) *Standard of proof.* Before placement or services may be ordered under s. 55.12, the
16 court or jury must find by clear and convincing evidence that the individual to be protected
17 is in need of placement as provided in s. 55.08 (1) or services as provided in s. 55.08 (2).

18 (e) *Independent evaluation.* The person sought to be protected has the right to secure
19 an independent evaluation as provided in s. 55.11 (2)

20 **SECTION 73.** 55.11 of the statutes is created to read:

21 **55.11 Comprehensive evaluation; recommendations; statements.** (1) Before
22 ordering the protective placement of or services for any individual, the court shall direct a
23 comprehensive evaluation of the person in need of placement or services, if such an evaluation
24 has not already been made. The court may utilize available multidisciplinary resources in the

1 community in determining the need for placement or services. The county department
2 designated under s. 55.02 (2) or an agency designated by it shall cooperate with the court in
3 securing available resources. The court or the cooperating agency obtaining the evaluation
4 shall request appropriate information which shall include at least the following:

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

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

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

14 (2) If requested by the person in need of placement, or anyone on the person's behalf,
15 the person in need of placement has the right at his or her own expense, or if indigent at the
16 expense of the county where the petition is filed, to secure an independent comprehensive
17 evaluation, if an independent comprehensive evaluation has not already been made. The
18 person, or anyone on the person's behalf, may present a report of this independent evaluation
19 or the evaluator's personal testimony as evidence at the hearing.

20 (3) A copy of the comprehensive evaluation and the independent evaluation, if any,
21 shall be provided to the guardian, the agent under any activated health care power of attorney,
22 the guardian ad litem, and to the individual or the individual's attorney at least 96 hours in
23 advance of the hearing to determine placement or services.

1 (4) Where applicable by reason of the particular disability, the county department or an
2 agency designated by it having responsibility for the place of legal residence of the individual
3 as provided in s. 49.001 (6) shall make a recommendation for placement or services.

4 (5) If the court is considering placement of the individual in a center for the
5 developmentally disabled, the court shall request a statement or testimony from the
6 department regarding whether the placement is appropriate for the person's needs and whether
7 it is consistent with the purpose of the center under s. 51.06 (1).

8 (6) If the individual has a developmental disability and the court is considering
9 placement of the individual in an intermediate facility or a nursing facility, the court shall
10 request a statement or testimony from the county department of the individual's county of
11 residence that is participating in the program under s. 46.278 as to whether the individual's
12 needs could be met in a noninstitutional setting, except that, if s. 46.279 (4m) applies to the
13 individual, the court shall request the statement or testimony from the department, rather than
14 the county department.

15 **SECTION 74.** 55.12 of the statutes is created to read:

16 **55.12 Order for protective services or placement.** (1) When ordering placement or
17 services, the court, on the basis of the evaluation and other relevant evidence, shall order the
18 county department or an agency designated by it to protectively place the individual or to
19 provide protective services to the individual.

20 (2) Subject to s. 46.279, placement may be made to such facilities as nursing homes,
21 public medical institutions, centers for the developmentally disabled under the requirements
22 of s. 51.06 (3), foster care services and other home placements, or to other appropriate
23 facilities but may not be made to units for the acutely mentally ill. An individual who is subject
24 to an order for protective placement or services may be detained on an emergency basis under

1 s. 51.15 or involuntarily committed under s. 51.20 or may be voluntarily admitted to a
2 treatment facility for inpatient care under s. 51.10 (8). No individual who is subject to an order
3 for protective placement or services may be involuntarily transferred to, detained in, or
4 committed to a psychiatric facility for care except under s. 51.15 or 51.20. Placement in a
5 locked unit shall require a specific finding of the court as to the need for such action.

6 (3) Placement or services provided by the county department or designated agency is
7 subject to s. 46.279 and shall be provided in the least restrictive environment consistent with
8 the needs of the person to be placed and with the placement resources of the county department
9 specified under s. 55.02 (2).

10 (4) Factors to be considered in providing protective placement or services shall include
11 the needs of the person to be protected for health, social, or rehabilitative services; the level
12 of supervision needed; the reasonableness of the placement or services given the cost and the
13 actual benefits in the level of functioning to be realized by the individual; the limits of
14 available state and federal funds and of county funds required to be appropriated to match state
15 funds; and the reasonableness of the placement or services given the number or projected
16 number of individuals who will need protective placement or services and given the limited
17 funds available.

18 (5) Except as provided in s. 49.45 (30m), the county may not be required to provide
19 funding, in addition to its funds that are required to be appropriated to match state funds, in
20 order to protectively place or serve an individual. Placement under this section does not
21 replace commitment of a person in need of acute psychiatric treatment under s. 51.20 or 51.45
22 (13).

23 (6) If the county department or designated agency proposes to place an individual who
24 has a developmental disability in an intermediate facility or a nursing facility under an order

1 under this paragraph, the county department, or, if s. 46.279 (4m) applies to the individual,
2 the department or the department's contractor shall develop a plan under s. 46.279 (4) and
3 furnish the plan to the county department or designated agency and to the individual's
4 guardian. The county department or designated agency shall place the individual in a
5 noninstitutional community setting in accord with the plan unless the court finds that
6 placement in the intermediate facility or nursing facility is the most integrated setting, as
7 defined in s. 46.279 (1) (bm), that is appropriate to the needs of the individual taking into
8 account information presented by all affected parties.

9 (7) If a person to be placed is a resident of a facility licensed for 16 or more beds, the
10 court may consider whether moving the person would create a serious risk of harm to that
11 person.

12 (8) The court may order protective services as an alternative to placement.

13 (9) The court may order psychotropic medication as a protective service only as
14 provided in s. 55.14.

15 **SECTION 75.** 55.13 (2) and (3) of the statutes are created to read:

16 55.13 (2) If the county department or other agency providing emergency protective
17 services to an individual under sub. (1) has reason to believe that the individual meets the
18 criteria for protective services under s. 55.08 (2), the county department or agency may file
19 a petition under s. 55.08 (2). If a petition is filed, a preliminary hearing shall be held within
20 72 hours, excluding Saturdays, Sundays, and legal holidays, to establish probable cause that
21 the criteria under s. 55.08 (2) are present. The county department or agency shall provide the
22 individual with written notice and orally inform the individual of the time and place of the
23 preliminary hearing. If the individual is not under guardianship, a petition for guardianship

1 shall accompany the petition under s. 55.08 (2), except in the case of a minor who is alleged
2 to be developmentally disabled.

3 (3) Upon a finding of probable cause under sub. (2), the court may order protective
4 services to be provided for up to 60 days pending the hearing on court-ordered protective
5 services.

6 **SECTION 76.** 55.135 of the statutes is created to read:

7 **55.135 Emergency protective placement.** (1) If from personal observation of, or a
8 reliable report made to, a sheriff, police officer, fire fighter, guardian, if any, or authorized
9 representative of a county department under s. 55.02 (2) or an agency designated by it it
10 appears probable that an individual is so totally incapable of providing for his or her own care
11 or custody as to create a substantial risk of serious physical harm to himself or herself or others
12 as a result of developmental disabilities, degenerative brain disorder, serious and persistent
13 mental illness, or other like incapacities if not immediately placed, the person making the
14 observation may take into custody and transport the individual to an appropriate medical or
15 protective placement facility. The person making placement shall prepare a statement at the
16 time of detention providing specific factual information concerning the person's observations
17 or reports made to the person and the basis for emergency placement. The statement shall be
18 filed with the director of the facility and shall also be filed with any petition under s. 55.07.
19 At the time of placement the individual shall be informed by the director of the facility or the
20 director's designee, both orally and in writing, of his or her right to contact an attorney and
21 a member of his or her immediate family and the right to have an attorney provided at public
22 expense, as provided under s. 967.06 and ch. 977, if the individual is a child or is indigent.
23 The director or designee shall also provide the individual with a copy of the statement by the
24 person making emergency placement.

1 (2) Whoever signs a statement under sub. (1) knowing the information contained
2 therein to be false is guilty of a Class H felony.

3 (3) A person who acts in accordance with this subsection is not liable for any actions
4 performed in good faith.

5 (4) Upon detention, a petition shall be filed under s. 55.07 by the person making such
6 emergency placement and a preliminary hearing shall be held within 72 hours, excluding
7 Saturdays, Sundays and legal holidays, to establish probable cause to believe the grounds for
8 protective placement under s. 55.08 (1). The sheriff or other person making placement under
9 sub. (1) shall provide the individual with written notice and orally inform him or her of the
10 time and place of the preliminary hearing. If the detainee is not under guardianship, a petition
11 for guardianship shall accompany the placement petition, except in the case of a minor who
12 is alleged to be developmentally disabled. In the event that protective placement is not
13 appropriate, the court may elect to treat a petition for placement as a petition for commitment
14 under s. 51.20 or 51.45 (13).

15 (5) Upon a finding of probable cause under sub. (4), the court may order temporary
16 placement up to 30 days pending the hearing for a permanent placement, or the court may
17 order such protective services as may be required. If an individual who has a developmental
18 disability is ordered, under this paragraph, to be temporarily placed in an intermediate facility
19 or in a nursing facility, and if at the hearing for permanent placement the court orders that the
20 individual be protectively placed, the court may, before permanent placement, extend the
21 temporary placement order for not more than 90 days if necessary for the county department
22 that is participating in the program under s. 46.278 or, if s. 46.279 (4m) applies, the
23 department's contractor to develop the plan required under s. 46.279 (4).

1 (6) A law enforcement agency, fire department, county department designated under
2 s. 55.02 (2) or an agency designated by it shall designate at least one employee authorized to
3 take an individual into custody under this subsection who shall attend the in-service training
4 on emergency detention and emergency protective placement offered by a county department
5 of community programs under s. 51.42 (3) (ar) 4. d., if the county department of community
6 programs serving the designated employee's jurisdiction offers an in-service training
7 program.

8 **SECTION 77.** 55.14 of the statutes is created to read:

9 **55.14 Involuntary administration of psychotropic medication.** (1) Involuntary
10 administration of psychotropic medication, with consent of a guardian, may be ordered as a
11 protective service pursuant to the requirements of this section.

12 (2) In this section, "involuntary administration of psychotropic medication" means any
13 of the following: placing psychotropic medication in a person's food or drink with knowledge
14 that the person protests receipt of the psychotropic medication; forcibly restraining a person
15 to enable administration of psychotropic medication; or requiring a person to take
16 psychotropic medication as a condition of receiving privileges or benefits.

17 (3) In this section, "psychotropic medication" means a prescription drug, as defined in
18 s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

19 (4) In addition to the other requirements of ch. 55 pertaining to petitions for protective
20 services, a petition under this section shall allege the following:

21 (a) A physician has prescribed psychotropic medication for the person.

22 (b) The person is not competent to refuse psychotropic medication. "Not competent
23 to refuse psychotropic medication" means that as a result of developmental disabilities,
24 degenerative brain disorder, serious and persistent mental illness, or other like incapacities,

1 and after the advantages and disadvantages of and alternatives to accepting the particular
2 psychotropic medication have been explained to the individual, the individual is incapable of
3 expressing an understanding of the advantages and disadvantages of accepting treatment, and
4 the alternatives to accepting treatment, or the individual is substantially incapable of applying
5 an understanding of the advantages, disadvantages, and alternatives to treatment to his or her
6 condition in order to make an informed choice as to whether to accept or refuse psychotropic
7 medication.

8 (c) The person has refused to take the psychotropic medication voluntarily or
9 attempting to administer psychotropic medications to the person voluntarily is not feasible or
10 is not in the best interests of the person. If the petition alleges that the person has refused to
11 take psychotropic medication voluntarily, the petition shall identify the reasons the person
12 refuses to take psychotropic medication voluntarily and shall contain evidence showing that
13 a reasonable number of documented attempts to administer psychotropic medication
14 voluntarily using appropriate interventions that could reasonably be expected to increase the
15 person's willingness to take psychotropic medication voluntarily have been made and have
16 been unsuccessful. If the petition alleges that attempting to administer psychotropic
17 medications to the person voluntarily is not feasible or is not in the best interests of the person,
18 the petition must identify specific reasons supporting that allegation.

19 (d) The person's condition for which psychotropic medication has been prescribed is
20 likely to be improved by administration of psychotropic medication and the person is likely
21 to respond positively to psychotropic medication.

22 (e) That unless psychotropic medication is administered involuntarily, the person will
23 incur an immediate or imminent substantial probability of physical harm, impairment, injury,
24 or debilitation or will present a substantial probability of physical harm to others. The

1 substantial probability of physical harm, impairment, injury, or debilitation shall be evidenced
2 by either the person's history of at least 2 episodes, one of which has occurred within the
3 previous 24 months, that indicate a pattern of overt activity, attempts, threats to act or
4 omissions that resulted from the person's failure to participate in treatment, including
5 psychotropic medication, and that resulted in a finding of probable cause for commitment
6 under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or
7 commitment ordered under s. 51.20 (13) or by evidence that the subject individual meets one
8 of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. through e.

9 (5) A petition under this section must include a written statement signed by a physician
10 who has personal knowledge of the person that provides general clinical information
11 regarding the appropriate use of psychotropic medication for the person's condition and
12 specific data that indicates that the person's current symptoms necessitate the use of
13 psychotropic medication.

14 (6) The guardian ad litem appointed under s. 55.10 (4) (b) for a person who is the subject
15 of a petition under this section shall report to the court whether the allegations in the petition
16 required under sub. (4) are true, and whether involuntary administration of psychotropic
17 medication is in the best interests of the person.

18 (7) If requested by the person who is the subject of a petition under this section or anyone
19 on his or her behalf, the person has the right at his or her own expense, or if indigent at the
20 expense of the county where the petition is filed, to secure an independent medical or
21 psychological examination relevant to the issue of whether the allegations in the petition
22 required under sub. (4) are true, and whether involuntary administration of psychotropic
23 medication is in the best interest of the person, and to present a report of this independent
24 evaluation or the evaluator's personal testimony as evidence at the hearing.

1 person to take psychotropic medications, the medications may be administered involuntarily
2 with consent of the guardian. The order shall specify the methods of involuntary
3 administration of psychotropic medication to which the guardian may consent. An order
4 authorizing the forcible restraint of a person shall specify that a person licensed under s.
5 441.06, 441.10, or 448.05 (2) or (5) shall be present at all times that psychotropic medication
6 is administered in this manner and shall require the person or facility using forcible restraint
7 to maintain records stating the date of each administration, the medication administered, and
8 the method of forcible restraint utilized.

9 (10) If a person who is subject to an order under this section is not in compliance with
10 the order because he or she refuses to take psychotropic medication as ordered under the
11 treatment plan, and it is necessary for the person to be transported to an appropriate facility
12 so that the person may be forcibly restrained for administration of psychotropic medications,
13 the corporation counsel may file with the court a statement of the facts which constitute the
14 basis for the belief that the person is not in compliance. The statement shall be sworn to be
15 true and shall be based upon the information and belief of the person filing the statement. The
16 statement shall be signed by the person's guardian and by the director or designee of the county
17 department or an agency designated by it to develop and administer the treatment plan. Upon
18 receipt of the statement of noncompliance, if the court finds by clear and convincing evidence
19 that the person has substantially failed to comply with the administration of psychotropic
20 medication as ordered under the treatment plan, the court may issue an order authorizing the
21 sheriff or any other law enforcement agency in the county in which the person is found or in
22 which it is believed that the person may be present to take the person into custody and transport
23 the person to an appropriate facility for administration of psychotropic medication using
24 forcible restraint, with consent of the guardian.

1 (11) Nothing in this section prohibits the involuntary administration of psychotropic
2 medication as an emergency protective service under s. 55.13.

3 (12) The county department or an agency designated by it shall provide to the
4 department a copy of any order issued under this section that applies to any protectively placed
5 person in the county.

6 (13) The department shall annually submit to the legislature under s. 13.172 (2) a report
7 regarding orders under this section.

8 (14) An order under this section is subject to annual review under s. 55.19.

9 **SECTION 78.** 55.15 of the statutes is created to read:

10 **55.15 Transfer of an individual under a protective placement order. (1) TRANSFERS**
11 **AUTHORIZED.** An individual under a protective placement order may be transferred between
12 placement units, between placement facilities, or from a placement unit to a medical facility
13 provided that the medical facility is not a psychiatric facility.

14 (2) **WHO MAY TRANSFER.** A guardian, a county department or agency designated by it
15 that placed the individual pursuant to the order of the court, the department, or a placement
16 facility may seek the transfer of an individual under a protective placement order as provided
17 in this section. Transfers may be made pursuant to this section notwithstanding any court order
18 that named a specific facility for the protective placement of the individual.

19 (3) **CONSENT OF GUARDIAN REQUIRED.** An entity in sub. (2), other than the guardian, who
20 seeks a transfer of an individual under a protective placement order shall obtain the written
21 consent of the guardian prior to making the transfer, except in the case of an emergency
22 transfer.

23 (4) **CONSENT OF COUNTY DEPARTMENT.** Except in the case of an emergency transfer, a
24 person or entity in sub. (2) who seeks a transfer of an individual under a protective placement

1 shall obtain the written consent of the county department prior to making the transfer if the
2 transfer is to a facility that is more costly to the county.

3 (5) NOTICE OF TRANSFER. (a) *Nonemergency transfer.* A person or entity who initiates
4 a transfer shall provide 10 days' prior written notice of a transfer to the court that ordered the
5 placement and to any of the other persons or entities specified in sub. (2) who did not initiate
6 the transfer. The notice of transfer shall include notice of the right of the guardian, the
7 individual under a protective placement, the individual's attorney, if any, or other interested
8 person to petition the court for a hearing on the transfer.

9 (b) *Emergency transfer.* If an emergency precludes providing the notice specified in
10 par. (a), or obtaining the prior written consent of the guardian specified in sub. (3), the
11 individual may be transferred, and the written notice shall be provided immediately upon
12 transfer. Notice of emergency transfers shall also be provided to the court that ordered the
13 placement within a reasonable time, not to exceed 48 hours from the time of transfer.

14 (6) PETITION. An individual under protective placement, the individual's guardian, the
15 individual's attorney, if any, or other interested person may file a petition with the court
16 objecting to the proposed transfer. The petition shall specify the reasons for the person's
17 objection to the transfer.

18 (7) HEARING. (a) The court shall order a hearing within 10 days after filing of a petition
19 in sub. (6).

20 (b) The court shall notify the petitioner, individual under protective placement, the
21 individual's guardian, the individual's attorney, if any, and county department of the time and
22 place of the hearing.

23 (c) A guardian ad litem shall be appointed to represent the individual under protective
24 placement at the hearing. If the individual is an adult who is indigent, the county in which the

1 hearing is held shall be liable for guardian ad litem fees. If the individual is a minor, the
2 individual's parents or the county in which the hearing is held shall be liable for guardian ad
3 litem fees as provided in s. 48.235 (c).

4 (cm) The court shall appoint counsel for the individual under protective placement if
5 the individual, the individual's guardian ad litem, or anyone on the individual's behalf requests
6 that counsel be appointed for the individual

7 (d) The petitioner, individual under protective placement, the individual's guardian,
8 and the individual's attorney, if any, have the right to attend the hearing and to present and
9 cross-examine witnesses.

10 **(8) STANDARD FOR TRANSFER.** In determining whether to approve a proposed transfer,
11 the court shall consider all of the following:

12 (a) Whether the proposed placement meets the standards of s. 55.12.

13 (b) Whether the proposed placement is in the least restrictive environment consistent
14 with the person's needs and with the factors in s. 55.12 (3), (4), and (5) or, if the transfer is to
15 an intermediate facility or nursing facility, is in the most integrated setting as defined in s.
16 46.279 (1) (bm).

17 (c) Whether the placement is in the best interests of the ward.

18 **(9) ORDER RELATING TO TRANSFER.** Following the hearing under sub. (7), the court shall
19 do one of the following:

20 (a) If the court finds that the individual continues to meet the standards under s. 55.08
21 (1) and the individual's current placement does not meet the standard for transfer under sub.
22 (9), the court shall issue an order prohibiting the transfer. The court shall include the
23 information relied upon as a basis for the order and shall make findings based on the factors
24 in s. 55.08 (1) in support of the denial of the transfer.

1 (b) If the court finds that the individual continues to meet the standards under s. 55.08
2 (1) and the proposed transfer meets the standard under sub. (9), the court shall order the
3 transfer of the individual to a proposed facility. The court may order protective services along
4 with transfer of placement. The court shall include the information relied upon as a basis for
5 the order and shall make findings based on the standards in s. 55.08 (1) in support of the need
6 for continued protective placement.

7 (c) If the court finds that the individual no longer meets the standards under s. 55.08 (1),
8 the court shall terminate the protective placement, as provided in s. 55.17.

9 **SECTION 79.** 55.16 of the statutes is created to read:

10 **55.16 Modification of an order for protective placement or services.** (1) USE OF
11 TRANSFER PROVISIONS. If a petitioner is an entity authorized under s. 55.15 (2) to transfer an
12 individual under a protective placement and the modification sought is a transfer of an
13 individual between placement units, between placement facilities, or from a placement unit
14 to a medical facility, the petitioner may utilize the procedure in s. 55.15 in lieu of the procedure
15 under this subsection.

16 (2) PETITION. An individual under protective placement, the individual's guardian or
17 guardian ad litem, the department, the county department that placed the individual pursuant
18 to an order of the court, a contractual agency, or any interested person, may file a petition at
19 any time for modification of an order for protective services or protective placement. The
20 petition shall be served on the individual; the individual's guardian; the individual's legal
21 counsel and guardian ad litem, if any; and the county department.

22 (a) *Modification of an order for protective placement; allegations.* A petition for
23 modification of an order for a protective placement shall allege that the protective placement
24 order should be modified for one of the following reasons:

1 1. The protective placement is not in the least restrictive environment that is consistent
2 with the person's needs.

3 2. A protective placement in a facility with a higher level of restrictiveness would be
4 more consistent with the individual's current needs.

5 3. A protective placement in a different facility with the same level of restrictiveness
6 as the current placement would be more consistent with the individual's current needs for
7 reasons unrelated to the level of restrictiveness.

8 (b) *Modification of an order for protective services; allegations.* 1. A petition for
9 modification of an order for protective services, other than an order under s. 55.14, shall allege
10 that the order should be modified because the protective services are not provided in the least
11 restrictive manner that is consistent with the individual's needs or are not otherwise consistent
12 with his or her current needs.

13 2. A petition for modification of an order under s. 55.14 shall allege that modification
14 of the order or the treatment plan for the individual would be in the best interests of the person.

15 (3) HEARING. (a) The court shall order a hearing within 21 days after the filing of the
16 petition, and may order a hearing if a hearing on a protective placement or petition for
17 court-ordered protective services or transfer of protective placement with respect to the
18 individual has been held within the previous 6 months.

19 (b) The court may extend the 21-day limitation in par. (a) if requested by the individual
20 or the individual's guardian, guardian ad litem, or legal counsel.

21 (c) The hearing shall be subject to the requirements of s. 55.10 (4).

22 (4) ORDER FOR INDIVIDUAL UNDER PROTECTIVE PLACEMENT. The court, in making a
23 determination with respect to the modification of an order for protective placement under this

1 section, may make one of the following findings and, if made, shall issue an order that includes
2 the information relied on as a basis for that order:

3 (a) If the court finds that individual continues to meet the standards under s. 55.08 (1)
4 and the individual's protective placement is in the least restrictive environment that is
5 consistent with his or her needs and with the factors in s. 55.12 (3), (4), and (5), the court shall
6 order continuation of the protective placement in the facility in which the individual resides
7 at the time of the hearing.

8 (b) If the court finds that the individual continues to meet the standards under s. 55.08
9 (1) and the protective placement of the individual is not in an environment that is consistent
10 with his or her needs and with the factors in s. 55.12 (3), (4), and (5), the court shall order
11 transfer of the individual to a protective placement that is in the least restrictive environment
12 consistent with the individual's needs and with the factors in s. 55.12 (3), (4), and (5). In lieu
13 of ordering transfer of the individual to a specific facility, the court may order the county
14 department of residence to develop or recommend a protective placement that is in the least
15 restrictive environment consistent with the individual's needs and with the factors in s. 55.12
16 (3), (4), and (5), and arrange for the individual's transfer to that protective placement within
17 60 days after the court's order. The court may extend this time period to permit development
18 of a protective placement. The court may order protective services along with transfer of
19 placement.

20 (c) If the court finds that individual no longer meets the standards under s. 55.08 (1),
21 the court shall terminate the protective placement, as provided in s. 55.17 (3) (c).

22 **(5) ORDER FOR INDIVIDUAL RECEIVING COURT-ORDERED PROTECTIVE SERVICES.** (a) The
23 court, in making a determination with respect to the modification of an order for protective
24 services under this section, other than an order under s. 55.14, may make one of the following

1 findings and, if made, shall issue an order that includes the information relied on as a basis for
2 that order:

3 1. If the court finds that the individual continues to meet the standard under s. 55.08 (2)
4 and the current protective services are provided in the least restrictive manner that is consistent
5 with his or her needs and with the factors in s. 55.12 (3), (4), and (5), the court shall continue
6 the order for protective services.

7 2. If the court finds that the individual continues to meet the standard under s. 55.08 (2)
8 and the protective services ordered for the individual are not provided in the manner that is
9 consistent with his or her needs or with the factors in s. 55.12 (3), (4), and (5), the court shall
10 order protective services that are more consistent with his or her current needs. The services
11 shall be provided in the least restrictive manner consistent with the individual's needs and with
12 the factors in s. 55.12 (3), (4), and (5).

13 3. If the court finds that the individual no longer meets the standard for protective
14 services under s. 55.08 (2), the court shall terminate the order for protective services.

15 (b) The court, in making a determination with respect to the modification of an order
16 under s. 55.14, may make one of the findings set forth in s. 55.19 (3) (e) 1., 2., or 3. and if made,
17 shall issue an order that includes the information relied upon as a basis for that order.

18 **SECTION 80.** 55.17 of the statutes is created to read:

19 **55.17 Termination of an order for protective placement or services. (1) PETITION.**
20 An individual, the individual's guardian or guardian ad litem, the department, the county
21 department, a contractual agency, or any interested person, may file a petition at any time for
22 termination of order for a protective placement or services. The petition shall be served on
23 the individual; the individual's guardian; the individual's attorney and guardian ad litem, if
24 any; and the county department. The petition shall allege that the protective placement or

1 court-ordered protective services order shall be terminated because the individual no longer
2 meets the standards under s. 55.08 (1) for protective placement or under s. 55.08 (2) for
3 court-ordered protective services.

4 (2) HEARING. A hearing under this subsection shall comply with s. 55.16 (3).

5 (3) ORDER FOR INDIVIDUAL UNDER PROTECTIVE PLACEMENT. The court, in making a
6 determination with respect to the termination of an order for protective placement under this
7 section, may make one of the following findings and, if made, shall issue an order that includes
8 the information relied on as a basis for that order:

9 (a) If the individual continues to meet the standards under s. 55.08 (1) and the
10 individual's protective placement is in the least restrictive environment that is consistent with
11 his or her needs and with the factors in s. 55.12 (3), (4), and (5), the court shall order
12 continuation of the individual's protective placement in the facility in which he or she resides
13 at the time of the hearing.

14 (b) If the court finds that the individual continues to meet the standards under s. 55.08
15 (1) and the protective placement of the individual is not in an environment that is consistent
16 with his or her needs and with the factors in s. 55.12 (3), (4), and (5), the court shall make an
17 order specified in s. 55.16 (4) (b).

18 (c) If the individual no longer meets the standards under s. 55.08 (1), the court shall
19 terminate the protective placement. If the protective placement is terminated, all of the
20 following shall apply:

21 1. The court shall review the needs of the individual with respect to protective services
22 If the court determines that the individual meets the standard for protective services under s.
23 55.08 (2), the court may order protective services. The services shall be provided in the least

1 restrictive manner consistent with the individual's needs and with the factors in s. 55.12 (3),
2 (4), and (5).

3 2. If the court determines that the individual does not meet the standard for protective
4 services under s. 55.08 (2), and the individual is being transferred or discharged from his or
5 her current residential facility, the county department shall assist the residential facility with
6 discharge planning for the individual, including planning for a proper residential living
7 arrangement and the necessary support services for the individual.

8 3. Any individual whose protective placement is terminated under this subdivision is
9 permitted to reside in his or her current residential facility for up to 60 days after a
10 determination under subd. 1. or 2. in order to arrange for an alternative living arrangement.
11 If the residential facility has fewer than 16 beds, the individual may remain in the residential
12 facility as long as the requirements of s. 55.055 are met. Admission by the individual, if an
13 adult, to another residential facility shall be under s. 55.055.

14 **(4) ORDER FOR INDIVIDUAL RECEIVING COURT-ORDERED PROTECTIVE SERVICES.** (a) The
15 court, in making a determination with respect to termination of an order for protective services
16 under this section, other than an order under s. 55.14, may make one of the following findings
17 and, if made, shall issue an order that includes the information relied on as a basis for that
18 order:

19 1. If the individual continues to meet the standard under s. 55.08 (2) and the current
20 protective services are provided in the least restrictive manner that is consistent with his or her
21 needs and with the factors under s. 55.12 (3), (4), and (5), the court shall continue the order
22 for protective services.

23 2. If the individual continues to meet the standard under s. 55.08 (2) and the protective
24 services ordered for the individual are not provided in the manner that is consistent with his

1 or her needs and with the factors under s. 55.12 (3), (4), and (5), the court shall make an order
2 for protective services as provided in s. 55.16 (5) (b).

3 3. If the individual no longer meets the standard for protective services under s. 55.08
4 (2), the court shall terminate the order for protective services.

5 (b) The court, in making a determination with respect to termination of an order under
6 s. 55.14, may make one of the findings set forth in s. 55.19 (3) (e) 1., 2., or 3. and, if made,
7 shall issue an order that includes the information relied upon as a basis for that order.

8 **SECTION 81.** 55.175 of the statutes is created to read:

9 **55.175 Discharge from protective placement.** Prior to any discharge from a
10 protective placement the county department which is responsible for placement shall review
11 the need for provision of continuing protective services or for continuation of full or limited
12 guardianship or provision for such guardianship if the individual has no guardian.
13 Recommendation shall be made to the court if the recommendation includes a course of action
14 for which court approval would be required. Prior to discharge from any state institute or
15 center for the developmentally disabled, the department shall make such review under s.
16 51.35.

17 **SECTION 82.** 55.18 of the statutes is created to read:

18 **55.18 Annual review of protective placement.** All of the following shall be
19 performed with respect to any individual who is protectively placed under s. 55.12:

20 **(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW.** (a) The county department of the
21 individual's county of residence shall, except as provided in pars. (b) and (bm), annually
22 review the status of each individual who has been protectively placed. The review shall
23 include a written evaluation of the physical, mental, and social condition of the individual and
24 the service needs of the individual. The review shall be made a part of the permanent record

1 of the individual. The county department shall inform the guardian of the individual of the
2 review at the time the review is made and shall invite the individual and the guardian to submit
3 comments or information concerning the individual's need for protective placement or
4 protective services before completing a report of the review. Not later than the first day of the
5 11th month after the initial order is made for protective placement for an individual, and,
6 except as provided in par. (b), annually thereafter, the county department shall:

7 1. File a report of the review with the court that ordered the protective placement under
8 s. 55.12.

9 2. File with the court under subd. 1. a petition for annual review by the court of the
10 protective placement ordered under s. 55.12 for the individual.

11 3. Provide the report under subd. 1. to the individual and the guardian of the individual,
12 and to the person's agent under an activated power of attorney for health care, if any.

13 (b) If, in an annual review of an individual's status under par. (a), the individual or the
14 individual's guardian or guardian ad litem requests modification or termination of the
15 individual's protective placement and a full due process hearing is provided, or a full due
16 process hearing is provided pursuant to a petition for modification or termination of the
17 protective placement, the county is not required to initiate a subsequent review of the
18 individual's status under this section until the first day of the 11th month after the date that the
19 court issues a final order after the full due process hearing.

20 (bm) If the individual is subject to an order for involuntary administration of
21 psychotropic medication under s. 55.14, the review under this section shall be conducted
22 simultaneously with the review under s. 55.19.

23 (c) The county department or contractual agency staff member performing the review
24 under par. (a) shall visit the individual and shall contact the individual's guardian, as provided

1 under par. (a) (intro.). The review may not be conducted by a person who is an employee of
2 the facility in which the individual resides. The report of the review shall include information
3 on all of the following:

4 1. The functional abilities and disabilities of the individual at the time the review is
5 made including the needs of the individual for health, social, or rehabilitation services, and
6 the level of supervision needed.

7 2. The ability of community services to provide adequate support for the individual's
8 needs.

9 3. The ability of the individual to live in a less restrictive setting.

10 4. Whether sufficient services are available to support the individual and meet the
11 individual's needs in the community and if so, an estimate of the cost of such services,
12 including the use of county funds.

13 5. Whether the protective placement order should be terminated or whether the
14 individual should be placed in another residential facility with adequate support services that
15 places fewer restrictions on the individual's personal freedom, is closer to the individual's
16 home community or more adequately meets the individual's needs, including any
17 recommendation that is made during the reporting period by the department with respect to
18 termination of the protective placement or placement of the individual in another residential
19 facility.

20 6. The comments of the individual and the individual's guardian during the performance
21 of the review, as summarized by the county department, and the response of the county
22 department to the comments.

23 7. The comments, if any, of any staff member at the facility in which the individual is
24 placed which are relevant to the review of the individual's placement.

1 **(1m)** The county of residence of an individual whose placement is in a different county
2 may enter into an agreement under which the county of the individual's placement performs
3 all or part of the duties of the county of residence under this subsection.

4 **(2) GUARDIAN AD LITEM APPOINTMENT AND REPORT.** After a county department has filed
5 a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad litem who is
6 an attorney appointed in accordance with s. 757.48 (1). The guardian ad litem shall do all of
7 the following:

8 (a) Review the report filed under sub. (1) (a) 1., the report under s. 880.38 (3), and any
9 other relevant reports on the individual's condition and placement.

10 (b) Meet with the individual and contact the individual's guardian and explain to the
11 individual and guardian all of the following:

12 1. The procedure for review of protective placement.

13 2. The right to appointment of legal counsel.

14 3. The right to performance of an evaluation under sub. (3) (a) 1.

15 4. The contents of the report under sub. (1) (a) 1.

16 5. That a change in or termination of protective placement or protective services may
17 be ordered by the court.

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

20 (c) Provide the information under par. (b) to the individual in writing.

21 (d) Review the individual's condition, placement, and rights with the individual's
22 guardian.

23 (e) Ascertain whether the individual wishes to exercise any of his or her rights under
24 par. (b) 2., 3. or 6.

1 (f) File a written report with the court within 30 days after appointment, using
2 information obtained under this paragraph and any other evaluations or records of the
3 individual. The report shall discuss whether the individual appears to continue to meet the
4 standards for protective placement under s. 55.08 (1) and whether the protective placement
5 is in the least restrictive environment that is consistent with the individual's needs. The report
6 shall also state whether any of the following apply:

7 1. An evaluation under sub. (3) (a) 1. is requested by the guardian ad litem, the
8 individual, or the individual's guardian.

9 2. The individual or the individual's guardian requests modification or termination of
10 the protective placement.

11 3. The individual or his or her guardian requests or the guardian ad litem recommends
12 that legal counsel be appointed for the individual.

13 4. The individual or his or her guardian or guardian ad litem requests a full due process
14 hearing under this section for the individual.

15 (g) Certify to the court that he or she has complied with the requirements of pars. (b),
16 (c), and (d).

17 **(3) COURT REVIEW OF REPORTS; HEARING; ORDER.** (a) The court that ordered protective
18 placement for an individual under s. 55.12 shall review the report of the guardian ad litem
19 under sub. (2) (f), the annual review report filed under sub. (1) (a) 1., and the report filed under
20 s. 880.38 (3). The court shall determine whether any of the following is necessary:

21 1. Performance of an evaluation of the physical, mental, and social condition of the
22 individual and the individual's service needs by an individual who is not an employee of the
23 county department and that, if the individual is indigent, is performed at the expense of the
24 responsible county department under sub. (1) (a).

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

2 3. Appointment of legal counsel.

3 4. Holding of a full due process hearing.

4 (b) The court shall order performance of an evaluation of the physical, mental, and
5 social condition of the individual and the service needs of the individual that is independent
6 of the review performed under sub. (1) (a) if any of the following apply:

7 1. The review report required under sub. (1) (a) 1. is not timely filed, or the court
8 determines that the report fails to meet the requirements of sub. (1) (c).

9 2. Following review of the guardian ad litem's report under sub. (2) (f), the court
10 determines that an independent evaluation for the individual is necessary.

11 3. The individual or the individual's guardian or guardian ad litem so requests.

12 (bm) If an evaluation is ordered under par. (b), it shall be performed at the expense of
13 the individual unless the individual is indigent. If the individual is indigent, the evaluation
14 shall be performed at the expense of the county of residence under sub. (1) (a).

15 (c) The court shall order legal counsel for an individual and, if the individual appears
16 to be indigent, refer him or her to the authority for indigency determinations under s. 977.07
17 (1) if any of the following apply:

18 1. Following review of the guardian ad litem's report under sub. (2) (f), the court
19 determines that legal counsel for the individual is necessary.

20 2. The individual or the individual's guardian or guardian ad litem so requests.

21 (d) The court shall order either a summary hearing or a full due process hearing. A
22 summary hearing may be held in court or may be held by other means such as by telephone
23 or videoconference. The court shall hold a full due process hearing if any of the following
24 apply:

1 1. The individual or the individual's guardian or guardian ad litem so requests.

2 2. The report under sub. (2) (f) indicates that the individual no longer meets the
3 standards for protective placement.

4 3. The report under sub. (2) (f) indicates that the current placement is not in the least
5 restrictive environment consistent with the individual's needs.

6 4. The report under sub. (2) (f) indicates that the individual objects to the current
7 placement.

8 (e) Following the hearing under par. (d), the court shall do one of the following:

9 1. If the court finds that the individual continues to meet the standards under s. 55.08
10 (1) and the protective placement of the individual is in the least restrictive environment that
11 is consistent with his or her needs and with the factors in s. 55.12 (3), (4), and (5), the court
12 shall order the continuation of the protective placement in the facility in which he or she
13 resides at the time of the hearing. The court shall include the information relied upon as a basis
14 for the order and shall make findings based on the factors in s. 55.08 (1) in support of the need
15 for continuation of the protective placement.

16 2. If the court finds that the individual continues to meet the standards under s. 55.08
17 (1) and the protective placement of the individual is not in the least restrictive environment
18 that is consistent with his or her needs and with the factors in s. 55.12 (3), (4), and (5), the court
19 shall order transfer of the individual to a protective placement that is in the least restrictive
20 environment consistent with the individual's needs and with the factors in s. 55.12 (3), (4), and
21 (5). In lieu of ordering transfer of the individual to a specific facility, the court may order the
22 county department of residence to develop or recommend a protective placement that is in the
23 least restrictive environment consistent with the individual's needs and with the factors in s.
24 55.12 (3), (4), and (5) and arrange for the individual's transfer to that protective placement

1 within 60 days after the court's order. The court may extend this period to permit development
2 of a protective placement. The court may order protective services along with transfer of
3 placement. The court shall include the information relied upon as a basis for the order and shall
4 make findings based on the factors in s. 55.08 (1) in support of the need for continued
5 protective placement.

6 3. If the court finds that the individual no longer meets the standards under s. 55.08 (1),
7 terminate the protective placement. If the protective placement is terminated, s. 55.17 (3) (c)
8 shall apply.

9 (f) The court shall provide a copy of the order made under par. (e) to all of the following:

10 1. The individual.

11 2. The individual's guardian, guardian ad litem, and legal counsel, if any, and to the
12 person's agent under an activated power of attorney for health care, if any.

13 3. The facility in which the individual resided when the petition for annual review was
14 filed.

15 4. The county department under sub. (1) (a).

16 (4) ESTABLISHMENT OF COUNTY POLICY. The county protective services agency shall
17 ensure that no later than December 31, 2004, the county establishes a written policy that
18 specifies procedures to be followed in the county which are designed to ensure that annual
19 reviews of all protectively placed persons residing in the county are conducted as required by
20 this section. The county protective services agency shall maintain a copy of the written policy
21 and shall make the policy available for public inspection.

22 (5) The register in probate of each county shall, by December 31 of each year, file with
23 the chief judge of the judicial administrative district a statement indicating whether each
24 report and petition required to be filed by the county under sub. (1) that year has been filed.

1 If the statement indicates that a required report or petition has not been filed, the statement
2 shall include an explanation of the reasons the report or petition has not been filed.

3 **SECTION 83.** 55.19 of the statutes is created to read:

4 **55.19 Annual review of order authorizing involuntary administration of**
5 **psychotropic medication.** All of the following shall be performed with respect to any
6 individual who is subject to an order under s. 55.14 or an order initially issued under s. 880.33
7 (4r), 2001 stats., authorizing involuntary administration of psychotropic medication:

8 **(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW.** (a) The county department of the
9 individual's county of residence shall, except as provided in par. (b) and (bm), review, in
10 compliance with the requirements of this section, the status of each individual who is the
11 subject of the order under s. 55.06 (9) (am). The review shall include a written evaluation of
12 the physical, mental, and social condition of the individual that are relevant to the issue of the
13 continued need for the order. The review shall be made a part of the permanent record of the
14 individual. The county department shall inform the guardian of the individual of the review
15 at the time the review is made and shall invite the individual and the guardian to submit
16 comments or information concerning the individual's need for involuntary administration of
17 psychotropic medication or other protective services before completing a report of the review.
18 Not later than the first day of the 11th month after the initial order is made for an individual,
19 and, except as provided in par. (b), at least annually thereafter, the county department shall do
20 all of the following:

- 21 1. File a report of the review with the court that issued the order.
- 22 2. File with the court under subd. 1. a petition for annual review by the court of the order.
- 23 3. Provide the report under subd. 1. to the individual and the guardian of the individual.

1 (b) If, in an annual review of an individual's status under par. (a), the individual or the
2 individual's guardian or guardian ad litem requests termination of the order and a full due
3 process hearing is provided, or a full due process hearing is provided pursuant to a petition for
4 modification or termination of the order, the county is not required to initiate a subsequent
5 review under this section until the first day of the 11th month after the date that the court issues
6 a final order after the full due process hearing.

7 (bm) If the individual is subject to a protective placement order, the review under this
8 section shall be conducted simultaneously with the review of the individual's protective
9 placement under s. 55.18.

10 (c) The county department or contractual agency staff member performing the review
11 under par. (a) shall visit the individual and shall contact the individual's guardian, as provided
12 under par. (a) (intro.). The review may not be conducted by a person who is an employee of
13 a facility in which the individual resides or from which the individual receives services. The
14 report of the review shall include information on all of the following:

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

16 2. Whether the individual is competent to refuse psychotropic medication, as set forth
17 in s. 55.14 (4) (b).

18 3. Whether the individual continues to refuse to take psychotropic medication
19 voluntarily or attempting to administer psychotropic medication to the individual voluntarily
20 is not in the best interests of the individual, as set forth in s. 55.14 (4) (c).

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

1 5. Whether the individual continues to meet the dangerousness criteria set forth in s.
2 55.14 (4) (e).

3 6. The comments of the individual and the individual's guardian during the performance
4 of the review, as summarized by the county department, and the response of the county
5 department to the comments.

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

9 **(1m)** The county of residence of an individual who is subject to an order under s. 55.14
10 and is protectively placed and whose placement is in a different county may enter into an
11 agreement under which the county of the individual's placement performs all or part of the
12 duties of the county of residence under this subsection.

13 **(2) GUARDIAN AD LITEM APPOINTMENT AND REPORT.** After a county department has filed
14 a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad litem who is
15 an attorney appointed in accordance with s. 757.48 (1). The guardian ad litem shall do all of
16 the following:

17 (a) Review the report filed under sub. (1) (a) 1., and any other relevant reports on the
18 individual's condition and continued need for the order under s. 55.14.

19 (b) Meet with the individual and contact the individual's guardian and explain to the
20 individual and guardian all of the following:

21 1. The procedure for review of an order for involuntary administration of psychotropic
22 medication.

23 2. The right to appointment of legal counsel.

24 3. The right to performance of an evaluation under sub. (3) (a) 1.

1 4. The contents of the report under sub. (1) (a) 1.

2 5. That a termination of the order for involuntary administration of psychotropic
3 medication may be ordered by the court.

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

6 (c) Provide the information under par. (b) to the individual in writing.

7 (d) Review the individual's condition and rights with the individual's guardian.

8 (e) Ascertain whether the individual wishes to exercise any of his or her rights under
9 par. (b) 2., 3. or 6.

10 (f) File a written report with the court within 30 days after appointment, using
11 information obtained under this paragraph and any other evaluations or records of the
12 individual. The report shall discuss whether the individual appears to continue to meet the
13 standards for an order under s. 55.14. The report shall also state whether any of the following
14 apply:

15 1. An evaluation under sub. (3) (a) 1. is requested by the guardian ad litem, the
16 individual, or the individual's guardian.

17 2. The individual or the individual's guardian requests termination of the order under
18 s. 55.14.

19 3. The individual or his or her guardian requests or the guardian ad litem recommends
20 that legal counsel be appointed for the individual.

21 4. The individual or his or her guardian or guardian ad litem requests a full due process
22 hearing under this section for the individual.

23 (g) Certify to the court that he or she has complied with the requirements of pars. (b),
24 (c), and (d).

1 **(3) COURT REVIEW OF REPORTS; HEARING; ORDER.** (a) The court that issued the order under
2 s. 55.14 shall review the report of the guardian ad litem under sub. (2) (f), and the annual
3 review report filed under sub. (1) (a) 1. The court shall determine whether any of the following
4 is necessary:

5 1. Performance of an evaluation of the physical, mental, and social condition of the
6 individual that are relevant to the issue of the continued need for the order under s. 55.14 by
7 an individual who is not an employee of the county department and that, if the individual is
8 indigent, is performed at the expense of the responsible county department under sub. (1) (a).

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

10 3. Appointment of legal counsel.

11 4. Holding of a full due process hearing.

12 (b) The court shall order performance of an evaluation of the physical, mental, and
13 social condition of the individual that are relevant to the issue of the continued need for the
14 order under s. 55.14 that is independent of the review performed under sub. (1) (a) if any of
15 the following apply:

16 1. The review report required under sub. (1) (a) 1. is not timely filed, or the court
17 determines that the report fails to meet the requirements of sub. (1) (c).

18 2. Following review of the guardian ad litem's report under sub. (2) (f), the court
19 determines that an independent evaluation for the individual is necessary.

20 3. The individual or the individual's guardian or guardian ad litem so requests.

21 (bm) If an evaluation is ordered under par. (b), it shall be performed at the expense of
22 the individual unless the individual is indigent. If the individual is indigent, the evaluation
23 shall be performed at the expense of the county of residence under sub. (1) (a).

1 (c) The court shall order legal counsel for an individual and, if the individual appears
2 to be indigent, refer him or her to the authority for indigency determinations under s. 977.07
3 (1) if any of the following apply:

4 1. Following review of the guardian ad litem's report under sub. (2) (f), the court
5 determines that legal counsel for the individual is necessary.

6 2. The individual or the individual's guardian or guardian ad litem so requests.

7 (d) The court shall order either a summary hearing or a full due process hearing. A
8 summary hearing may be held in court or may be held by other means such as by telephone
9 or videoconference. The court shall hold a full due process hearing if any of the following
10 apply:

11 1. The individual or the individual's guardian or guardian ad litem so requests.

12 2. The report under sub. (2) (f) indicates that the individual no longer meets the
13 standards for an order under s. 55.14.

14 3. The report under sub. (2) (f) indicates that the individual objects to the order.

15 (e) Following the hearing under par. (d), the court shall do one of the following:

16 1. If the court finds that the individual continues to meet the standards for an order under
17 s. 55.14, the court shall order the continuation of the order. The court shall include the
18 information relied upon as a basis for the order and shall make findings based on the factors
19 in s. 55.14 in support of the need for continuation of the order.

20 2. If the court finds that the individual continues to meet the standards for an order under
21 s. 55.14 but that modification of the order or the treatment plan would be in the best interests
22 of the individual, the court shall modify the order, order modifications to the individual's
23 treatment plan, or both. Any modifications to the treatment plan are subject to the approval
24 of the guardian. The court shall include the information relied upon as a basis for its order and

1 shall make findings based on the factors in s. 55.14 (4) in support of the need for authorizing
2 the guardian to consent to involuntary administration of psychotropic medication.

3 3. If the court finds that the individual no longer meets the standards for an order under
4 s. 55.14, terminate the order. If the order is terminated, the court shall review the needs of the
5 individual with respect to other protective services. If the court determines that the individual
6 meets the standard for other protective services under s. 55.08 (2) which are not currently
7 being provided to the individual, the court may order those protective services for the
8 individual.

9 (f) The court shall provide a copy of the order made under par. (e) to all of the following:

10 1. The individual.

11 2. The individual's guardian, guardian ad litem, and legal counsel, if any.

12 3. The facility in which the individual resided, if any, when the petition for annual
13 review was filed.

14 4. The county department under sub. (1) (a).4.

15 **SECTION 84.** 55.21 (title) of the statutes is created to read:

16 **55.21 Centers for developmentally disabled.**

17 **SECTION 85.** 55.22 (title) of the statutes is created to read:

18 **55.22 Records.**

19 **SECTION 86.** 851.72 (11) of the statutes is created to read:

20 851.72 (11) Annually submit to the chief judge of the judicial administrative district the
21 statement required under s. 55.065 (5) regarding the completion of annual reviews of
22 protective placement orders under s. 55.065 (1).

23 **SECTION 87.** 880.01 (7m) of the statutes is repealed.

24 **SECTION 88.** 880.01 (8m) of the statutes is created to read:

1 880.01 (8m) "Psychotropic medication" means a prescription drug, as defined in s.
2 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

 NOTE: Creates a definition of "psychotropic medication" in ch. 880,
 relating to guardianship.

3 **SECTION 89.** 880.06 (1) of the statutes is amended to read:

4 880.06 (1) ORIGINAL PROCEEDING. The court wherein a petition is first filed shall
5 determine venue. If The court shall direct that proper notice be given to any potentially
6 responsible or affected county. After all potentially responsible or affected counties and
7 parties have been given an opportunity to be heard, if it is determined that venue lies in another
8 county, the court shall order the entire record certified to the proper court. A court wherein
9 a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court,
10 summarily dismiss such petition. If any potentially responsible or affected county or party
11 objects to the court's finding that the ward is a resident of another county, the issue shall be
12 referred to the department pursuant to s. 51.40 (2) (g). The court shall then suspend ruling on
13 the motion for change of venue until the determination under s. 51.40 (2) (g) is final. Proper
14 notice is given to a potentially responsible or affected county if written notice of the
15 proceeding is sent by certified mail to the county's clerk and corporation counsel.

16 **SECTION 90.** 880.06 (2) of the statutes is repealed and recreated to read:

17 880.06 (2) CHANGE OF RESIDENCE OF WARD BY GUARDIAN. A guardian for good cause
18 shown may change a ward's county of residence by filing with the court a written statement
19 pursuant to s. 51.40 (2) (f).

20 **SECTION 91.** 880.07 (1m) of the statutes is repealed.

21 **SECTION 92.** 880.07 (2m) of the statutes is created to read:

1 880.07 (2m) Whenever a petition for guardianship on the ground of incompetency is
2 filed with respect to a person who resides in a facility licensed for 16 or more beds, a petition
3 for protective placement of the person shall also 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.

4 **SECTION 93.** 880.08 (1) of the statutes is amended to read:

5 880.08 (1) INCOMPETENTS. A petitioner shall have notice served of a petition for
6 appointment or change of a guardian upon the proposed incompetent and existing guardian,
7 if any, by personal service at least 10 days before the time set for hearing. If such proposed
8 incompetent is in custody or confinement, a petitioner shall have notice served by registered
9 or certified mail on the proposed incompetent's custodian, who shall immediately serve it on
10 the proposed incompetent. The custodian shall inform the proposed incompetent of the
11 complete contents of the notice and certify thereon that the custodian served and informed the
12 proposed incompetent and returned the certificate and notice to the circuit judge. The notice
13 shall include the names of all persons who are petitioning for guardianship. A copy of the
14 petition shall be attached to the notice. The proposed incompetent shall be present at the
15 hearing unless, after a personal interview, the guardian ad litem certifies in writing to the court
16 specific reasons why the person is unable to attend or certifies in writing that the person is
17 unwilling to participate or unable to participate in a meaningful way. If the person is unable
18 to attend a hearing because of physical inaccessibility or lack of transportation, the court shall
19 hold the hearing in a place where the person may attend if requested by the proposed ward,
20 guardian ad litem, adversary counsel or other interested person. The court is not required to
21 hold the hearing in the presence of the person sought to be placed if the guardian ad litem, after
22 a personal interview with the person, certifies in writing to the court that the person is

1 unwilling to participate or unable to participate in a meaningful way. Such notice shall also
2 be given personally or by mail at least 10 days before the hearing to the proposed
3 incompetent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who
4 have legal or physical custody of the proposed incompetent whose names and addresses are
5 known to the petitioner or can with reasonable diligence be ascertained, to any governmental
6 or private agency, charity or foundation from which the proposed incompetent is receiving aid
7 and to such other persons or entities as the court may require. The court shall then proceed
8 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 SEC. 2 of the bill.

9 **SECTION 94.** 880.24 (3) (a) (intro.) of the statutes is amended to read:

10 880.24 (3) (a) (intro.) Except as provided in par. (b), when a guardian is appointed, the
11 court shall award from the ward's estate payment of the petitioner's reasonable attorney fees
12 and costs, ~~including those fees and costs, if any, related to protective placement of the ward,~~
13 unless the court finds, after considering all of the following, that it would be inequitable to do
14 so:

15 **SECTION 95.** 880.24 (3) (a) 4. of the statutes is renumbered 880.24 (3) (a) 5.

NOTE: Renumbers an existing statutory provision to facilitate the creation of s. 880.24 (3) (a) 4. in SEC. 96.

16 **SECTION 96.** 880.24 (3) (b) of the statutes is renumbered 880.24 (3) (a) 4. and amended
17 to read:

18 880.24 (3) (a) 4. ~~If the court finds that~~ Whether the ward had executed a durable power
19 of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had

1 engaged in other advance planning to avoid guardianship, ~~the court may not make the award~~
2 ~~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.

3 SECTION 97. 880.33 (2) (f) of the statutes is created to read:

4 880.33 (2) (f) An interested person may participate in the hearing on the petition at the
5 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).

6 SECTION 98. 880.33 (4m) of the statutes is repealed.

7 SECTION 99. 880.33 (4r) of the statutes is repealed.

8 SECTION 100. 880.331 (4) (a), (b), (d) and (e) of the statutes are amended to read:

9 880.331 (4) (a) Interview the proposed ward ~~or, subject of a petition for protective~~
10 ~~placement or court-ordered protective services, or~~ alleged incompetent and explain the
11 applicable hearing procedure, the right to counsel and, ~~in an incompetency case,~~ the right to
12 request or continue a limited guardianship.

13 (b) Advise the proposed ward ~~or, alleged incompetent, or subject of a petition for~~
14 ~~protective placement or court-ordered protective services,~~ both orally and in writing, of that
15 person's rights to a jury trial, to an appeal, to counsel and to an independent medical or
16 psychological examination on the issue of competency ~~or on the issue of the need for an order~~
17 ~~for protective placement or services,~~ at county expense if the person is indigent.

18 (d) If applicable, inform the court that the ~~individual who is the~~ proposed ward ~~or,~~
19 ~~alleged incompetent, or subject of a protective placement or court-ordered protective services~~

1 petition objects to a finding of incompetency, the present or proposed placement or services
2 or the recommendation of the guardian ad litem as to the ~~proposed ward's or alleged~~
3 ~~incompetent's~~ individual's best interests or that the ~~proposed ward's or alleged incompetent's~~
4 individual's position on these matters is ambiguous.

5 (e) Present evidence concerning the best interests of the proposed ward or ~~alleged~~
6 incompetent, or subject of a protective placement or court-ordered protective services
7 petition, if necessary.

8 **SECTION 101.** 880.331 (4) (am), (ar), and (as) of the statutes are created to read:

9 880.331 (4) (am) Interview the proposed guardian and any other person seeking
10 appointment as guardian.

11 (ar) Make a recommendation to the court regarding the fitness of the proposed guardian.

12 (as) Interview the guardian of an individual who is the subject of a petition for protective
13 placement or court-ordered protective services, if one has already been appointed.

14 **SECTION 102.** 880.331 (4) (dm), (dr) and (ds) of the statutes are created to read:

15 880.331 (4) (dm) Inform the court and the petitioner, or petitioner's counsel where the
16 petitioner is represented, if the proposed ward requests representation by counsel.

17 (dr) Attend all court proceedings related to the guardianship.

18 (ds) Notify the guardian of the right to be present at and participate in the hearing, to
19 present and cross-examine witnesses, and to receive a copy of the evaluations under ss. 55.06
20 (8) and 880.33 (2) (b).

21 **SECTION 103.** 880.34 (6) of the statutes is repealed.

22 **SECTION 104.** 880.38 (2) of the statutes is amended to read:

23 880.38 (2) A guardian of the person shall endeavor to secure necessary care, services
24 or appropriate protective placement on behalf of the ward. Subject to any limitation imposed

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

8 **SECTION 105.** 880.38 (4) of the statutes is created to read:

9 880.38 (4) (a) In this subsection, "protest" means make more than one discernible
10 negative response, other than mere silence, to the offer of, recommendation for, or other
11 proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a
12 discernible negative response to a proposed method of administration of the psychotropic
13 medication.

14 (b) A guardian may, without court approval, give an informed consent to the voluntary
15 receipt by a ward of medication, including any appropriate psychotropic medication, if the
16 guardian has first made a good-faith attempt to discuss with the guardian's ward the ward's
17 voluntary receipt of the medication, and if the ward does 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.

18 **SECTION 106.** 977.05 (4) (i) 8. of the statutes is created to read:

19 977.05 (4) (i) 8. Cases involving persons who are subject to petitions for protective
20 placement under ch. 55.

21 **SECTION 107. Nonstatutory provisions. (1) REVIEW OF ORDER.** For an individual who
22 is subject to an order initially issued under section 880.33 (4r), 2001 statutes, that is in effect

1 on the effective date of this subsection, the county department of the individual's county of
2 residence shall, no later than 9 months after the effective date of this subsection, review the
3 individual's status under the requirements of section 55.19 of the statutes, as created by this
4 act.

5 (2) TRANSITION. Notwithstanding the repeal of section 880.33 (4r) of the statutes by this
6 act, all orders issued under section 880.33 (4r), 2001 statutes, in effect on the effective date
7 of this subsection, remain in effect until modified or terminated by a court order under section
8 55.16, 55.17, or 55.19 of the statutes, as created by this act.

9 (END)