

1 **SECTION 45.** 55.05 (title) of the statutes is amended to read:

2 **55.05** (title) ~~Protective services~~ **Voluntary protective services.**

3 **SECTION 46.** 55.05 (2) (b) of the statutes is amended to read:

4 55.05 (2) (b) Any interested person may request protective services on behalf
5 of a person in need of services. A guardian may request and consent to protective
6 services on behalf of the guardian's ward. An agent under an activated power of
7 attorney for health care may request and consent to protective services on behalf of
8 the principal.

9 **SECTION 47.** 55.05 (2) (d) of the statutes is repealed.

10 **SECTION 48.** 55.05 (3) of the statutes is amended to read:

11 55.05 (3) VOLUNTARY SERVICES PREFERRED. An individual shall receive protective
12 services voluntarily unless ordered by the court under s. 55.12, requested by a
13 guardian or agent under an activated power of attorney for health care or provided
14 on an emergency basis in accordance with ~~sub.~~ (4) s. 55.13.

15 **SECTION 49.** 55.05 (4) (title) and (a) of the statutes are renumbered 55.13 (title)
16 and (1) and amended to read:

17 **55.13** (title) **Emergency protective services.**

18 (1) Emergency protective services may be provided for not more than 72 hours
19 where there is reason to believe that if the emergency protective services are not
20 provided, the ~~person~~ individual entitled to the services or others will incur a
21 substantial risk of serious physical harm.

22 **SECTION 50.** 55.05 (4) (b) and (c) of the statutes are renumbered 55.13 (4) and
23 (5) and amended to read:

24 55.13 (4) ~~Where~~ If it is necessary to forcibly enter a premises to provide or
25 investigate the need for emergency protective services, the ~~representative of an~~

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the individual's

1 agency staff member of a county department or of a county protective services agency
 2 shall obtain a court order authorizing entry and shall make the entry accompanied
 3 by a sheriff, police officer or member of a fire department. When it appears probable
 4 that substantial physical harm, irreparable injury or death may occur to an
 5 individual, the police officer, fire fighter or sheriff may enter a premises without a
 6 court order if the time required to obtain such an order would result in greater risk
 7 of physical harm to the individual.

8 (5) ~~Where~~ If a forcible entry is made under ~~par. (b) sub. (4)~~, a report of the exact
 9 circumstances including the date, time, place, factual basis for the need of ~~such~~ the
 10 entry and the exact services rendered shall be made and forwarded to the court
 11 within 14 days of after entry by the person making ~~such~~ the entry.

12 SECTION 51. 55.05 (5) (title) and (a) of the statutes are renumbered 55.055
 13 (title) and (1).

14 SECTION 52. 55.05 (5) (b) 1. of the statutes is renumbered 55.055 (2) (a).

15 SECTION 53. 55.05 (5) (b) 2. of the statutes is renumbered 55.055 (2) (b) and
 16 amended to read:

17 55.055 (2) (b) This subsection Guardians of persons who has been found incompetent under
 18 s. 880.33 may consent to admission to a nursing home if an individual the person is admitted
 19 directly from a hospital inpatient unit for recuperative care or other facility individual not listed
 20 in sub. (2) for which protective placement is required for a period not to exceed 3
 21 months 60 days, unless the hospital admission was for psychiatric care. In order to
 22 be admitted under this paragraph, the person must be in need of recuperative care
 23 or be unable to provide for his or her own care or safety so as to create a serious risk
 24 of substantial harm to himself or herself or others. Prior to providing that consent, the
 25 guardian shall review the ward's right to the least restrictive residential

Handwritten annotations:
 - "The guardian" circled around "Guardians"
 - "has" circled around "has been"
 - "this subsection" circled around "This subsection"
 - "an individual" circled around "an individual"
 - "individual" circled around "individual"
 - "specified" circled around "not listed"
 - "60 days" circled around "60 days"
 - "In order to" circled around "In order to"
 - "himself" circled around "himself"
 - "PLAIN TEXT" boxed at the bottom

individual

1 environment and consent only to admission to a nursing home facility that
 2 implements those rights. Following the ~~3-month~~ 60-day period, the placement may
 3 be extended for an additional 60 days if a placement proceeding under s. 55.06 is
 4 required 55.07 has been commenced, or, if no placement proceeding under s. 55.07
 5 has been commenced, for an additional 30 days for the purpose of allowing the
 6 initiation of discharge planning for the person. Placement under this paragraph is
 7 not permitted for a person with a primary diagnosis of mental illness or
 8 developmental disability. PLAINTEXT

9 SECTION 54. 55.05 (5) (c) of the statutes is renumbered 55.055 (5) (intro.) and
 10 amended to read: individual (intro.) an individual

11 55.055 (5) (intro.) If a person admitted under par. (b) sub. (2) verbally objects
 12 to or otherwise actively protests such an admission, the person in charge of the home
 13 or facility shall immediately notify the agency county department designated under
 14 s. 55.02 (2) for the county in which the person is living. Representatives of that
 15 agency shall visit the person as soon as possible, but no later than 72 hours after
 16 notification, and do the following: county department

17 ~~SECTION 55. 55.05 (5) (c) 1. of the statutes is renumbered 55.055 (5) (a).~~

18 SECTION 56. 55.05 (5) (c) 2. of the statutes is renumbered 55.055 (5) (b) and
 19 amended to read: individual

20 55.055 (5) (b) Attempt to have the person released within 72 hours if the protest
 21 is not withdrawn and necessary elements of s. 55.06 (2) or (11) 55.08 (1) or 55.135 are (1)
 22 not present and provide assistance in identifying appropriate alternative living
 23 arrangements.

24 SECTION 57. 55.05 (5) (c) 3. of the statutes is renumbered 55.055 (5) (c) and
 25 amended to read:

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par. (a) or (b)

1 55.055 (5) (c) Comply with s. 55.06 (11) 55.135 if all elements are present and
 2 emergency placement in that facility or another facility is necessary or file a petition
 3 for protective placement under s. 55.07. The court, with the permission of the facility,
 4 may order the person to remain in the facility pending the outcome of the protective
 5 placement proceedings.

individual

6 SECTION 58. 55.05 (5) (d) of the statutes is renumbered 55.055 (6).

7 SECTION 59. 55.055 (2) (c) of the statutes is created to read:

this state

8 55.055 (2) (c) The guardians of a ward who has been found incompetent in a
 9 state other than Wisconsin may consent to admission of the ward under subds. 1. and
 10 2. if the ward is currently a resident of ^{this} the state of Wisconsin. A petition for
 11 guardianship and protective placement must be filed in this state within 60 days of
 12 the ward's admission under this subdivision.

after

shall

paragraph

13 SECTION 60. 55.055 (3) of the statutes is created to read:

14 55.055 (3) Whenever a petition for guardianship on the ground of incompetency
 15 is filed with respect to a ^{an individual} person who resides in a facility licensed for 16 or more beds,
 16 a petition for protective placement of the ^{individual} person shall also be filed. The person may
 17 continue to reside in the facility until the court issues a decision on the petition for
 18 guardianship and protective placement of the person. The person may continue to
 19 reside in the facility licensed for 16 or more beds if an order for placement of the
 20 person in the facility licensed for 16 or more beds is made under s. 55.12.

NOTE: Specifies that a guardian may not consent to the continued residence of a person in a facility licensed for 16 or more beds. Specifies that 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, a petition for protective placement of the person shall also be filed. Specifies that the person may continue to reside in the facility if the court orders placement of the person in a facility licensed for 16 or more beds and may continue to reside in the facility pending the court's decision on the placement petition.

(2)(d)

21 SECTION 61. 55.055 (4) of the statutes is created to read:

1 55.055 (4) ^(d) Guardians of wards who ² have been found incompetent in, and resides ^{The}
 2 in, a state other than Wisconsin, may consent to admissions ^a under sub. (2) if the ^{has}
 3 guardian intends to move the ward to ^{this} the state of Wisconsin within 30 days of the ^{an}
 4 consent to the admission. A petition for guardianship and protective placement ^{after} must
 5 be filed in this state within 60 days ^{after} of the ward's admission under this paragraph. ^{shall}

6 SECTION 62. 55.06 ⁽¹⁾ of the statutes is repealed and recreated to read: ^{subsection}

7 55.06 Protective services and placement; eligibility. To be eligible for
 8 protective placement or court-ordered protective services, ^{an individual} the person shall be a
 9 resident of the state, or shall be present in the state ^{and with} having a need for protective
 10 placement or ^{protective} services until such time as appropriate protective services can be
 11 established in the person's place of residence. The person shall ^{individual} have attained the age
 12 ^{be aged at least} of 18, but ^{except that a minor} a person who is alleged to be developmentally disabled may receive
 13 ^{protective} placement or services upon attaining the age of 14. No protective placement or
 14 protective services under this chapter may be ordered unless the person has been
 15 determined to be incompetent in accordance with ch. 880, ^{unless} except in the case of a
 16 minor who is alleged to be developmentally disabled, and there is a finding of a need
 17 for protective placement or protective services in accordance with s. 55.12, except as
 18 provided in ss. 55.055 (7) and 55.135. A procedure for adult protective placement or
 19 court-ordered protective services may be initiated 6 months ^{protective} prior to a person's
 20 birthday at which he or she first becomes eligible for placement or services.

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21 SECTION 63. 55.06 (10) (a) 2. of the statutes, as affected by 2003 Wisconsin Act
 22 33, is renumbered 55.065 (1g). ^{before an individual's}

23 SECTION 64. 55.06 (12) of the statutes is renumbered 55.055 (7).

24 SECTION 65. 55.06 (16) of the statutes is renumbered 55.21.

25 SECTION 66. 55.06 (17) of the statutes is renumbered 55.22.

1 **SECTION 67.** 55.06 (18) of the statutes is renumbered 55.20 and amended to
2 read:

3 **55.20 Appeals.** An appeal may be taken to the court of appeals from a final
4 judgment or final order under this section within the time period specified in s.
5 808.04 (3) and in accordance with s. 809.40 by the subject of the petition or the
6 individual's guardian, by any petitioner or by the representative of the public.

7 **SECTION 68.** 55.07 of the statutes is renumbered 55.23.

8 **SECTION 69.** 55.07 of the statutes is repealed and recreated to read:

9 **55.07 Protective services or placement; petition. (1) WHO MAY PETITION.**

10 (a) The department, the board designated under s. 55.02 (2) or an agency designated
11 by it, a guardian or any interested person may petition for appointment of a guardian
12 and for protective services or placement. The department shall provide for a schedule
13 of reimbursement for the cost of such proceedings based upon the ability to pay of the
14 proposed ward or person to be protected.

15 (b) No guardian or temporary guardian may make a permanent protective
16 placement of his or her ward unless ordered by a court under s. 55.12 but may admit
17 a ward to certain residential facilities under s. 55.055 or make an emergency
18 protective placement under s. 55.135.

19 **(2) CONTENTS OF PETITION.** (a) The petition shall state with particularity the
20 factual basis for the allegations specified in s. 55.08 (1) or (2).

21 (b) The petition shall be based on personal knowledge of the individual alleged
22 to need protective placement or services.

23 **(3) PETITION FOR GUARDIANSHIP REQUIRED.** A petition for guardianship if
24 required under s. 55.08 (1) (b) or (2) (a) must be heard prior to ordering protective
25 placement or services. If incompetency has been determined under s. 880.33 more

1 than one year preceding the filing of an application for protective placement or
2 services, the court shall review the finding of incompetency.

3 (4) FEES AND COSTS OF PETITION. (a) Except as provided in par. (b), the court shall
4 award, from the estate of the person sought to be placed or served, payment of the
5 petitioner's reasonable attorney fees and costs, unless the court finds, after
6 considering all of the following, that it would be inequitable to do so:

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

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

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

13 4. Whether the person sought to be placed or served had executed a durable
14 power of attorney under s. 243.07 or a power of attorney for health care under s.
15 155.05 or had provided advance consent to nursing home admission or engaged in
16 other advance planning to avoid protective placement or services.

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

18 (b) If a person seeking to be the guardian of a proposed ward requests the
19 assistance of a county department designated under s. 55.02 (2) or an agency
20 designated by it in petitioning for guardianship or for protective services or
21 placement, such assistance may be considered a service and may be charged for
22 based upon the ability of such person to pay for the service.

23 (5) VENUE. (a) The petition shall be filed in the county of residence of the person
24 to be protected or under extraordinary circumstances requiring medical and or the

1 prevention of harm to the person or others, in the county in which the person to be
2 protected is physically present.

3 (b) The court in which a petition is filed shall determine venue. The court shall
4 direct that proper notice be given to any potentially responsible or affected county.
5 After all potentially responsible or affected counties and parties have been given an
6 opportunity to be heard, if it is determined that venue lies in another county, the
7 court shall order the entire record certified to the proper court. A court in which a
8 subsequent petition is filed shall, upon being satisfied of an earlier filing in another
9 court, summarily dismiss such petition. If any county or party objects to the court's
10 finding of venue, the issue shall be referred to the department pursuant to s. 51.40
11 (2) (g). The court shall suspend ruling on the motion for change of venue until the
12 determination under s. 51.40 (2) (g) is final.

13 **SECTION 70.** 55.08 of the statutes is created to read:

14 **55.08 Protective services or placement: standards and allegations. (1)**

15 PROTECTIVE PLACEMENT. A court may protectively place an individual who meets the
16 standards set forth in this subsection. A petition for protective placement of an
17 individual shall allege that the individual satisfies all of the following criteria:

18 (a) Has a primary need for residential care and custody.

19 (b) Except in the case of a minor who is alleged to be developmentally disabled,
20 has either been determined to be incompetent by a circuit court or has had submitted
21 on the minor's behalf a petition for a guardianship.

22 (c) As a result of developmental disabilities, degenerative brain disorder,
23 serious and persistent mental illness or other like incapacities, is so totally incapable
24 of providing for his or her own care or custody as to create a substantial risk of serious

1 harm to him or herself or others. Serious harm may be occasioned by overt acts or
2 acts of omission.

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

4 (2) PROTECTIVE SERVICES. A court may order protective services for a person who
5 meets the standards in this subsection. A petition for protective services for an
6 individual shall allege that the individual satisfies both of the following criteria:

7 (a) Has been determined to be incompetent by a circuit court or is a minor who
8 is alleged to be developmentally disabled and on whose behalf a petition for a
9 guardianship has been submitted.

10 (b) As a result of developmental disabilities, degenerative brain disorder,
11 serious and persistent mental illness, or other like incapacities, will incur a
12 substantial risk of physical harm or deterioration or will present a substantial risk
13 of physical harm to others if protective services are not provided.

14 **SECTION 71.** 55.09 of the statutes is created to read:

15 **55.09 Notice of petition and hearing for protective services or**
16 **placement.** (1) PERSON SOUGHT TO BE PROTECTED. Notice of a petition for placement
17 or services shall be served upon the person sought to be protected, by personal
18 service, at least 10 days prior to the time set for a hearing. Upon service of the notice,
19 the person sought to be protected shall be informed of the complete contents of the
20 notice. The person serving the notice shall return a certificate to the circuit judge
21 verifying that the petition has been delivered and notice given. The notice shall
22 include the names of all petitioners.

23 (2) OTHER NOTICE REQUIRED. Notice shall also be served personally or by mail
24 upon the person's guardian ad litem, legal counsel, and guardian, if any; agent under
25 an activated power of attorney for health care, if any; presumptive adult heirs; other

1 persons who have physical custody of the person to be protected whose names and
2 addresses are known to the petitioner or can with reasonable diligence be
3 ascertained; the county department; any governmental or private body or group from
4 whom the person to be protected is known to be receiving aid; and to such other
5 persons or entities as the court may require. Notice shall also be served personally
6 or by mail upon the department at least 10 days prior to the time set for hearing if
7 the person sought to be protected may be placed in a center for the developmentally
8 disabled. Notice shall also be served personally or by mail, at least 10 days before
9 the time set for hearing, upon the county department that is participating in the
10 program under s. 46.278 of the county of residence of the person sought to be
11 protected, if the person has a developmental disability and may be placed in an
12 intermediate facility or a nursing facility, except that, for a person sought to be
13 protected to whom s. 46.279 (4m) applies, this notice shall instead be served on the
14 department.

15 (3) NOTICE OF PETITION FOR INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC
16 MEDICATION. Notice of a petition under s. 55.14 shall be served personally or by mail
17 upon the corporation counsel and county department.

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

19 **55.10 Hearing on petition for protective services or placement. (1)**
20 TIME LIMITS. A petition for protective services or placement shall be heard within 60
21 days after it is filed unless an extension of this time is requested by the petitioner,
22 the person sought to be protected or his or her guardian ad litem, or the county
23 department, in which case the court may extend the date for hearing by up to 45 days.
24 If an individual under s. 50.06 (3) alleges that an individual is making a health care
25 decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated

1 individual or if the incapacitated individual verbally objects to or otherwise actively
2 protests the admission, the petition shall be heard as soon as possible within the
3 60-day period.

4 (2) ATTENDANCE. The person sought to be protected shall be present at the
5 hearing on the petition unless, after a personal interview, the guardian ad litem
6 certifies in writing to the court specific reasons why the person is unable to attend
7 or certifies in writing that the person is unwilling to participate or unable to
8 participate in a meaningful way. If the person is unable to attend a hearing because
9 of physical inaccessibility or lack of transportation, the court shall hold the hearing
10 in a place where the person may attend if requested by the person sought to be
11 protected, guardian ad litem, adversary counsel, or other interested person. The
12 court is not required to hold the hearing in the presence of the person sought to be
13 protected if the guardian ad litem, after a personal interview with the person,
14 certifies in writing to the court that the person is unwilling to participate or unable
15 to participate in a meaningful way.

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

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

23 (a) *Counsel; costs.* The person sought to be protected has the right to counsel
24 whether or not present at the hearing on the petition. The court shall require
25 representation by full legal counsel whenever the petition alleges that the person is

1 not competent to refuse psychotropic medication under s. 55.14 or the person sought
2 to be protected requested such representation at least 72 hours before the hearing,
3 the guardian ad litem or any other person states that the person sought to be
4 protected is opposed to the petition, or the court determines that the interests of
5 justice require it. If the person sought to be protected, or any other person on his or
6 her behalf, requests but is unable to obtain legal counsel, the court shall appoint legal
7 counsel. Counsel shall be provided at public expense, as provided under s. 967.06
8 and ch. 977, if the person is indigent. If the person who is sought to be protected is
9 an adult who is indigent, and if counsel was not appointed under s. 977.08, the county
10 in which the hearing is held is liable for any fees due the person's legal counsel. If
11 the person sought to be protected is represented by counsel appointed under s. 977.08
12 in a proceeding for the appointment of a guardian under s. 880.33, the court shall
13 order the counsel appointed under s. 977.08 to represent the person sought to be
14 protected.

15 (b) *Guardian ad litem; costs.* The court shall in all cases require the
16 appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1).
17 The responsibilities and duties of a guardian ad litem specified in s. 880.331 (3) and
18 (4) apply to a guardian ad litem appointed in a proceeding for protective services or
19 placement . The guardian ad litem shall be present at all hearings under this chapter
20 if the person sought to be protected does not have full legal counsel. The court may,
21 however, excuse a personal appearance by a guardian ad litem based on information
22 contained in a written report by the guardian ad litem to the court. If the person
23 sought to be protected is an adult who is indigent, the county in which the hearing
24 is held shall be liable for any fees due the guardian ad litem. If the person sought
25 to be protected is a minor, the parents of the person sought to be protected or the

1 county in which the hearing is held shall be liable for any fees due the guardian ad
2 litem as provided in s. 48.235 (8).

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

9 (d) *Standard of proof.* Before placement or services may be ordered under s.
10 55.12, the court or jury must find by clear and convincing evidence that the
11 individual to be protected is in need of placement as provided in s. 55.08 (1) or
12 services as provided in s. 55.08 (2).

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

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

16 **55.11 Comprehensive evaluation; recommendations; statements.** (1)
17 Before ordering the protective placement of or services for any individual, the court
18 shall direct a comprehensive evaluation of the person in need of placement or
19 services, if such an evaluation has not already been made. The court may utilize
20 available multidisciplinary resources in the community in determining the need for
21 placement or services. The county department designated under s. 55.02 (2) or an
22 agency designated by it shall cooperate with the court in securing available
23 resources. The court or the cooperating agency obtaining the evaluation shall
24 request appropriate information which shall include at least the following:

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

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

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

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

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

23 (4) Where applicable by reason of the particular disability, the county
24 department or an agency designated by it having responsibility for the place of legal

1 residence of the individual as provided in s. 49.001 (6) shall make a recommendation
2 for placement or services.

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

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

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

15 **55.12 Order for protective services or placement.** (1) When ordering
16 placement or services, the court, on the basis of the evaluation and other relevant
17 evidence, shall order the county department or an agency designated by it to
18 protectively place the individual or to provide protective services to the individual.

19 (2) Subject to s. 46.279, placement may be made to such facilities as nursing
20 homes, public medical institutions, centers for the developmentally disabled under
21 the requirements of s. 51.06 (3), foster care services and other home placements, or
22 to other appropriate facilities but may not be made to units for the acutely mentally
23 ill. An individual who is subject to an order for protective placement or services may
24 be detained on an emergency basis under s. 51.15 or involuntarily committed under
25 s. 51.20 or may be voluntarily admitted to a treatment facility for inpatient care

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

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

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

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

22 (6) If the county department or designated agency proposes to place an
23 individual who has a developmental disability in an intermediate facility or a
24 nursing facility under an order under this paragraph, the county department, or, if
25 s. 46.279 (4m) applies to the individual, the department or the department's

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

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

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

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

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

15 55.13 (2) If the county department or other agency providing emergency
16 protective services to an individual under sub. (1) has reason to believe that the
17 individual meets the criteria for protective services under s. 55.08 (2), the county
18 department or agency may file a petition under s. 55.08 (2). If a petition is filed, a
19 preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays,
20 and legal holidays, to establish probable cause that the criteria under s. 55.08 (2) are
21 present. The county department or agency shall provide the individual with written
22 notice and orally inform the individual of the time and place of the preliminary
23 hearing. If the individual is not under guardianship, a petition for guardianship
24 shall accompany the petition under s. 55.08 (2), except in the case of a minor who is
25 alleged to be developmentally disabled.

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

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

5 **55.135 Emergency protective placement.** (1) If from personal observation
6 of, or a reliable report made to, a sheriff, police officer, fire fighter, guardian, if any,
7 or authorized representative of a county department under s. 55.02 (2) or an agency
8 designated by it it appears probable that an individual is so totally incapable of
9 providing for his or her own care or custody as to create a substantial risk of serious
10 physical harm to himself or herself or others as a result of developmental disabilities,
11 degenerative brain disorder, serious and persistent mental illness, or other like
12 incapacities if not immediately placed, the person making the observation may take
13 into custody and transport the individual to an appropriate medical or protective
14 placement facility. The person making placement shall prepare a statement at the
15 time of detention providing specific factual information concerning the person's
16 observations or reports made to the person and the basis for emergency placement.
17 The statement shall be filed with the director of the facility and shall also be filed
18 with any petition under s. 55.07. At the time of placement the individual shall be
19 informed by the director of the facility or the director's designee, both orally and in
20 writing, of his or her right to contact an attorney and a member of his or her
21 immediate family and the right to have an attorney provided at public expense, as
22 provided under s. 967.06 and ch. 977, if the individual is a child or is indigent. The
23 director or designee shall also provide the individual with a copy of the statement by
24 the person making emergency placement.

1 (2) Whoever signs a statement under sub. (1) knowing the information
2 contained 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
4 actions performed in good faith.

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

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

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

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

9 **55.14 Involuntary administration of psychotropic medication. (1)**

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

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

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

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

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

24 (b) The person is not competent to refuse psychotropic medication. "Not
25 competent to refuse psychotropic medication" means that as a result of

1 developmental disabilities, degenerative brain disorder, serious and persistent
2 mental illness, or other like incapacities, and after the advantages and
3 disadvantages of and alternatives to accepting the particular psychotropic
4 medication have been explained to the individual, the individual is incapable of
5 expressing an understanding of the advantages and disadvantages of accepting
6 treatment, and the alternatives to accepting treatment, or the individual is
7 substantially incapable of applying an understanding of the advantages,
8 disadvantages, and alternatives to treatment to his or her condition in order to make
9 an informed choice as to whether to accept or refuse psychotropic medication.

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

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

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

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

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

22 (7) If requested by the person who is the subject of a petition under this section
23 or anyone on his or her behalf, the person has the right at his or her own expense,
24 or if indigent at the expense of the county where the petition is filed, to secure an
25 independent medical or psychological examination relevant to the issue of whether

1 the allegations in the petition required under sub. (4) are true, and whether
2 involuntary administration of psychotropic medication is in the best interest of the
3 person, and to present a report of this independent evaluation or the evaluator's
4 personal testimony as evidence at the hearing.

5 (8) Upon the filing of a petition under this section, the court shall appoint
6 counsel as required under s. 55.10 (4) (a). A petition under this section shall be heard
7 within 30 days after it is filed.

8 (9) The court may issue an order authorizing a person's guardian to consent
9 to involuntary administration of psychotropic medication to the person and may
10 order involuntary administration of psychotropic medication to the person as a
11 protective service, with the guardian's consent, as provided below, if the court or jury
12 finds by clear and convincing evidence that the allegations in the petition required
13 under sub. (4) are true, all other requirements for involuntary administration of
14 psychotropic medication under this section have been met, psychotropic medication
15 is necessary for treating the condition outlined in the statement under sub. (5), and
16 all other requirements of this chapter for ordering protective services have been met.
17 An order under this section shall do all of the following:

18 (a) Direct the development of a treatment plan for the person specifying the
19 protective services, including psychotropic medication as ordered by the treating
20 physician, that the person should receive. If the person resides in a nursing home
21 or hospital, the nursing home or hospital shall develop the treatment plan. If the
22 person resides elsewhere, the county department or an agency designated by it shall
23 develop the treatment plan. The treatment plan shall include a plan for the
24 involuntary administration of psychotropic medication to the person. The treatment
25 plan is subject to the approval of the guardian. The court shall review the plan and

1 approve or disapprove the plan. The court shall order the county department or an
2 agency designated by it to ensure that psychotropic medication is administered in
3 accordance with the treatment plan.

4 (b) Order the person to comply with the treatment plan under par. (a). The
5 order shall provide that if the person fails to comply with provisions of the treatment
6 plan that require the person to take psychotropic medications, the medications may
7 be administered involuntarily with consent of the guardian. The order shall specify
8 the methods of involuntary administration of psychotropic medication to which the
9 guardian may consent. An order authorizing the forcible restraint of a person shall
10 specify that a person licensed under s. 441.06, 441.10, or 448.05 (2) or (5) shall be
11 present at all times that psychotropic medication is administered in this manner and
12 shall require the person or facility using forcible restraint to maintain records
13 stating the date of each administration, the medication administered, and the
14 method of forcible restraint utilized.

15 (10) If a person who is subject to an order under this section is not in compliance
16 with the order because he or she refuses to take psychotropic medication as ordered
17 under the treatment plan, and it is necessary for the person to be transported to an
18 appropriate facility so that the person may be forcibly restrained for administration
19 of psychotropic medications, the corporation counsel may file with the court a
20 statement of the facts which constitute the basis for the belief that the person is not
21 in compliance. The statement shall be sworn to be true and shall be based upon the
22 information and belief of the person filing the statement. The statement shall be
23 signed by the person's guardian and by the director or designee of the county
24 department or an agency designated by it to develop and administer the treatment
25 plan. Upon receipt of the statement of noncompliance, if the court finds by clear and

1 convincing evidence that the person has substantially failed to comply with the
2 administration of psychotropic medication as ordered under the treatment plan, the
3 court may issue an order authorizing the sheriff or any other law enforcement agency
4 in the county in which the person is found or in which it is believed that the person
5 may be present to take the person into custody and transport the person to an
6 appropriate facility for administration of psychotropic medication using forcible
7 restraint, with consent of the guardian.

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

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

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

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

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

17 **55.15 Transfer of an individual under a protective placement order.**

18 (1) TRANSFERS AUTHORIZED. An individual under a protective placement order may
19 be transferred between placement units, between placement facilities, or from a
20 placement unit to a medical facility provided that the medical facility is not a
21 psychiatric facility.

22 (2) WHO MAY TRANSFER. A guardian, a county department or agency designated
23 by it that placed the individual pursuant to the order of the court, the department,
24 or a placement facility may seek the transfer of an individual under a protective
25 placement order as provided in this section. Transfers may be made pursuant to this

1 section notwithstanding any court order that named a specific facility for the
2 protective placement of the individual.

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

7 (4) CONSENT OF COUNTY DEPARTMENT. Except in the case of an emergency
8 transfer, a person or entity in sub. (2) who seeks a transfer of an individual under a
9 protective placement shall obtain the written consent of the county department prior
10 to making the transfer if the transfer is to a facility that is more costly to the county.

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

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

24 (6) PETITION. An individual under protective placement, the individual's
25 guardian, the individual's attorney, if any, or other interested person may file a

1 petition with the court objecting to the proposed transfer. The petition shall specify
2 the reasons for the person's objection to the transfer.

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

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

8 (c) A guardian ad litem shall be appointed to represent the individual under
9 protective placement at the hearing. If the individual is an adult who is indigent, the
10 county in which the hearing is held shall be liable for guardian ad litem fees. If the
11 individual is a minor, the individual's parents or the county in which the hearing is
12 held shall be liable for guardian ad litem fees as provided in s. 48.235 (c).

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

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

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

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

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

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

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

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

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

15 (c) If the court finds that the individual no longer meets the standards under
16 s. 55.08 (1), the court shall terminate the protective placement, as provided in s.
17 55.17.

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

19 **55.16 Modification of an order for protective placement or services.**

20 (1) USE OF TRANSFER PROVISIONS. If a petitioner is an entity authorized under s. 55.15

21 (2) to transfer an individual under a protective placement and the modification
22 sought is a transfer of an individual between placement units, between placement
23 facilities, or from a placement unit to a medical facility, the petitioner may utilize the
24 procedure in s. 55.15 in lieu of the procedure under this subsection.

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

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

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

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

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

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

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

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

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

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

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

12 (a) If the court finds that individual continues to meet the standards under s.
13 55.08 (1) and the individual's protective placement is in the least restrictive
14 environment that is consistent with his or her needs and with the factors in s. 55.12
15 (3), (4), and (5), the court shall order continuation of the protective placement in the
16 facility in which the individual resides at the time of the hearing.

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

1 (3), (4), and (5), and arrange for the individual's transfer to that protective placement
2 within 60 days after the court's order. The court may extend this time period to
3 permit development of a protective placement. The court may order protective
4 services along with transfer of placement.

5 (c) If the court finds that individual no longer meets the standards under s.
6 55.08 (1), the court shall terminate the protective placement, as provided in s. 55.17
7 (3) (c).

8 **(5) ORDER FOR INDIVIDUAL RECEIVING COURT-ORDERED PROTECTIVE SERVICES.** (a)
9 The court, in making a determination with respect to the modification of an order for
10 protective services under this section, other than an order under s. 55.14, may make
11 one of the following findings and, if made, shall issue an order that includes the
12 information relied on as a basis for that order:

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

17 2. If the court finds that the individual continues to meet the standard under
18 s. 55.08 (2) and the protective services ordered for the individual are not provided in
19 the manner that is consistent with his or her needs or with the factors in s. 55.12 (3),
20 (4), and (5), the court shall order protective services that are more consistent with
21 his or her current needs. The services shall be provided in the least restrictive
22 manner consistent with the individual's needs and with the factors in s. 55.12 (3), (4),
23 and (5).

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

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

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

9 **55.17 Termination of an order for protective placement or services. (1)**

10 **PETITION.** An individual, the individual's guardian or guardian ad litem, the
11 department, the county department, a contractual agency, or any interested person,
12 may file a petition at any time for termination of order for a protective placement or
13 services. The petition shall be served on the individual; the individual's guardian;
14 the individual's attorney and guardian ad litem, if any; and the county department.
15 The petition shall allege that the protective placement or court-ordered protective
16 services order shall be terminated because the individual no longer meets the
17 standards under s. 55.08 (1) for protective placement or under s. 55.08 (2) for
18 court-ordered protective services.

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

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

24 (a) If the individual continues to meet the standards under s. 55.08 (1) and the
25 individual's protective placement is in the least restrictive environment that is

1 consistent with his or her needs and with the factors in s. 55.12 (3), (4), and (5), the
2 court shall order continuation of the individual's protective placement in the facility
3 in which he or she resides at the time of the hearing.

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

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

11 1. The court shall review the needs of the individual with respect to protective
12 services. If the court determines that the individual meets the standard for protective
13 services under s. 55.08 (2), the court may order protective services. The services shall
14 be provided in the least restrictive manner consistent with the individual's needs and
15 with the factors in s. 55.12 (3), (4), and (5).

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

22 3. Any individual whose protective placement is terminated under this
23 subdivision is permitted to reside in his or her current residential facility for up to
24 60 days after a determination under subd. 1. or 2. in order to arrange for an
25 alternative living arrangement. If the residential facility has fewer than 16 beds, the

1 individual may remain in the residential facility as long as the requirements of s.
2 55.055 are met. Admission by the individual, if an adult, to another residential
3 facility shall be under s. 55.055.

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

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

13 2. If the individual continues to meet the standard under s. 55.08 (2) and the
14 protective services ordered for the individual are not provided in the manner that is
15 consistent with his or her needs and with the factors under s. 55.12 (3), (4), and (5),
16 the court shall make an order for protective services as provided in s. 55.16 (5) (b).

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

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

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

24 **55.175 Discharge from protective placement.** Prior to any discharge from
25 a protective placement the county department which is responsible for placement

1 shall review the need for provision of continuing protective services or for
2 continuation of full or limited guardianship or provision for such guardianship if the
3 individual has no guardian. Recommendation shall be made to the court if the
4 recommendation includes a course of action for which court approval would be
5 required. Prior to discharge from any state institute or center for the
6 developmentally disabled, the department shall make such review under s. 51.35.

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

8 **55.18 Annual review of protective placement.** All of the following shall
9 be performed with respect to any individual who is protectively placed under s. 55.12:

10 **(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW.** (a) The county department
11 of the individual's county of residence shall, except as provided in pars. (b) and (bm),
12 annually review the status of each individual who has been protectively placed. The
13 review shall include a written evaluation of the physical, mental, and social
14 condition of the individual and the service needs of the individual. The review shall
15 be made a part of the permanent record of the individual. The county department
16 shall inform the guardian of the individual of the review at the time the review is
17 made and shall invite the individual and the guardian to submit comments or
18 information concerning the individual's need for protective placement or protective
19 services before completing a report of the review. Not later than the first day of the
20 11th month after the initial order is made for protective placement for an individual,
21 and, except as provided in par. (b), annually thereafter, the county department shall:

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

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

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

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

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

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

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

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

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

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

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

11 6. The comments of the individual and the individual's guardian during the
12 performance of the review, as summarized by the county department, and the
13 response of the county department to the comments.

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

16 **(1m)** The county of residence of an individual whose placement is in a different
17 county may enter into an agreement under which the county of the individual's
18 placement performs all or part of the duties of the county of residence under this
19 subsection.

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

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

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

3 1. The procedure for review of protective placement.

4 2. The right to appointment of legal counsel.

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

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

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

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

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

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

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

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

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

24 2. The individual or the individual's guardian requests modification or
25 termination of the protective placement.

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

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

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

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

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

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

17 3. Appointment of legal counsel.

18 4. Holding of a full due process hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 1. If the court finds that the individual continues to meet the standards under
25 s. 55.08 (1) and the protective placement of the individual is in the least restrictive

1 environment that is consistent with his or her needs and with the factors in s. 55.12
2 (3), (4), and (5), the court shall order the continuation of the protective placement in
3 the facility in which he or she resides at the time of the hearing. The court shall
4 include the information relied upon as a basis for the order and shall make findings
5 based on the factors in s. 55.08 (1) in support of the need for continuation of the
6 protective placement.

7 2. If the court finds that the individual continues to meet the standards under
8 s. 55.08 (1) and the protective placement of the individual is not in the least
9 restrictive environment that is consistent with his or her needs and with the factors
10 in s. 55.12 (3), (4), and (5), the court shall order transfer of the individual to a
11 protective placement that is in the least restrictive environment consistent with the
12 individual's needs and with the factors in s. 55.12 (3), (4), and (5). In lieu of ordering
13 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
15 the least restrictive environment consistent with the individual's needs and with the
16 factors in s. 55.12 (3), (4), and (5) and arrange for the individual's transfer to that
17 protective placement within 60 days after the court's order. The court may extend
18 this period to permit development of a protective placement. The court may order
19 protective services along with transfer of placement. The court shall include the
20 information relied upon as a basis for the order and shall make findings based on the
21 factors in s. 55.08 (1) in support of the need for continued protective placement.

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

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

3 1. The individual.

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

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

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

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

16 (5) The register in probate of each county shall, by December 31 of each year,
17 file with the chief judge of the judicial administrative district a statement indicating
18 whether each report and petition required to be filed by the county under sub. (1) that
19 year has been filed. If the statement indicates that a required report or petition has
20 not been filed, the statement shall include an explanation of the reasons the report
21 or petition has not been filed.

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

23 **55.19 Annual review of order authorizing involuntary administration**
24 **of psychotropic medication.** All of the following shall be performed with respect
25 to any individual who is subject to an order under s. 55.14 or an order initially issued

1 under s. 880.33 (4r), 2001 stats., authorizing involuntary administration of
2 psychotropic medication:

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

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

22 (b) If, in an annual review of an individual's status under par. (a), the individual
23 or the individual's guardian or guardian ad litem requests termination of the order
24 and a full due process hearing is provided, or a full due process hearing is provided
25 pursuant to a petition for modification or termination of the order, the county is not

1 required to initiate a subsequent review under this section until the first day of the
2 11th month after the date that the court issues a final order after the full due process
3 hearing.

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

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

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

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

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

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

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

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

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

8 **(1m)** The county of residence of an individual who is subject to an order under
9 s. 55.14 and is protectively placed and whose placement is in a different county may
10 enter into an agreement under which the county of the individual's placement
11 performs all or part of the duties of the county of residence under this subsection.

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

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

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

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

22 2. The right to appointment of legal counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **(3) COURT REVIEW OF REPORTS; HEARING; ORDER.** (a) The court that issued the
25 order under s. 55.14 shall review the report of the guardian ad litem under sub. (2)

1 (f), and the annual review report filed under sub. (1) (a) 1. The court shall determine
2 whether any of the following is necessary:

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

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

9 3. Appointment of legal counsel.

10 4. Holding of a full due process hearing.

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

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

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

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

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

1 (c) The court shall order legal counsel for an individual and, if the individual
2 appears to be indigent, refer him or her to the authority for indigency determinations
3 under s. 977.07 (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
8 hearing. A summary hearing may be held in court or may be held by other means
9 such as by telephone or videoconference. The court shall hold a full due process
10 hearing if any of the following 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
17 order under s. 55.14, the court shall order the continuation of the order. The court
18 shall include the information relied upon as a basis for the order and shall make
19 findings based on the factors in s. 55.14 in support of the need for continuation of the
20 order.

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

1 the information relied upon as a basis for its order and shall make findings based on
2 the factors in s. 55.14 (4) in support of the need for authorizing the guardian to
3 consent to involuntary administration of psychotropic medication.

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

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

- 12 1. The individual.
- 13 2. The individual's guardian, guardian ad litem, and legal counsel, if any.
- 14 3. The facility in which the individual resided, if any, when the petition for
15 annual review was filed.
- 16 4. The county department under sub. (1) (a).4.

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

18 **55.21 (title) Centers for developmentally disabled.**

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

20 **55.22 (title) Records.**

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

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

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

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97-24

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

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

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

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

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

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

21 880.06 (2) CHANGE OF RESIDENCE OF WARD BY GUARDIAN. A guardian for good
22 cause shown may change a ward’s county of residence by filing with the court a
23 written statement pursuant to s. 51.40 (2) (f).

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

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

3 880.07 **(2m)** Whenever a petition for guardianship on the ground of
4 incompetency is filed with respect to a person who resides in a facility licensed for
5 16 or more beds, a petition 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.

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

7 880.08 **(1)** INCOMPETENTS. A petitioner shall have notice served of a petition for
8 appointment or change of a guardian upon the proposed incompetent and existing
9 guardian, if any, by personal service at least 10 days before the time set for hearing.
10 If such proposed incompetent is in custody or confinement, a petitioner shall have
11 notice served by registered or certified mail on the proposed incompetent's custodian,
12 who shall immediately serve it on the proposed incompetent. The custodian shall
13 inform the proposed incompetent of the complete contents of the notice and certify
14 thereon that the custodian served and informed the proposed incompetent and
15 returned the certificate and notice to the circuit judge. The notice shall include the
16 names of all persons who are petitioning for guardianship. A copy of the petition
17 shall be attached to the notice. The proposed incompetent shall be present at the
18 hearing unless, after a personal interview, the guardian ad litem certifies in writing
19 to the court specific reasons why the person is unable to attend or certifies in writing
20 that the person is unwilling to participate or unable to participate in a meaningful
21 way. If the person is unable to attend a hearing because of physical inaccessibility
22 or lack of transportation, the court shall hold the hearing in a place where the person
23 may attend if requested by the proposed ward, guardian ad litem, adversary counsel

1 or other interested person. The court is not required to hold the hearing in the
2 presence of the person sought to be placed if the guardian ad litem, after a personal
3 interview with the person, certifies in writing to the court that the person is
4 unwilling to participate or unable to participate in a meaningful way. Such notice
5 shall also be given personally or by mail at least 10 days before the hearing to the
6 proposed incompetent's counsel, if any, guardian ad litem, presumptive adult heirs
7 or other persons who have legal or physical custody of the proposed incompetent
8 whose names and addresses are known to the petitioner or can with reasonable
9 diligence be ascertained, to any governmental or private agency, charity or
10 foundation from which the proposed incompetent is receiving aid and to such other
11 persons or entities as the court may require. The court shall then proceed under s.
12 880.33.

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.

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

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

19 **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. .

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

1 880.24 (3) (a) 4. ~~If the court finds that~~ Whether the ward had executed a
2 durable power of attorney under s. 243.07 or a power of attorney for health care under
3 s. 155.05 or had engaged in other advance planning to avoid guardianship, ~~the court~~
4 ~~may not make the award specified in par. (a).~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 880.331 (4) (dm) Inform the court and the petitioner, or petitioner's counsel
19 where the petitioner is represented, if the proposed ward requests representation by
20 counsel.

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

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

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

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

2 880.38 (2) A guardian of the person shall endeavor to secure necessary care,
3 services or appropriate protective placement on behalf of the ward. Subject to any
4 limitation imposed by the court under s. 880.33 (8) (b), a guardian may consent,
5 without further court involvement, to involuntary administration of medication,
6 other than psychotropic medication, and involuntary medical treatment that is in
7 the ward's best interest. A guardian may consent to involuntary administration of
8 psychotropic medication only pursuant to a court order under s. 55.14. In
9 determining whether medication or medical treatment is in the ward's best interest,
10 the guardian shall consider the invasiveness of the medication or treatment and the
11 likely benefits and side effects of the medication or treatment.

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

13 880.38 (4) (a) In this subsection, “protest” means make more than one
14 discernible negative response, other than mere silence, to the offer of,
15 recommendation for, or other proffering of voluntary receipt of psychotropic
16 medication. “Protest” does not mean a discernible negative response to a proposed
17 method of administration of the psychotropic medication.

18 (b) A guardian may, without court approval, give an informed consent to the
19 voluntary receipt by a ward of medication, including any appropriate psychotropic
20 medication, if the guardian has first made a good-faith attempt to discuss with the
21 guardian's ward the ward's voluntary receipt of the medication, and if the ward does
22 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.

INSERT
103-22

23

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

