

The bill provides that any individual whose protective placement is terminated pursuant to an annual review may reside in his or her current residential facility for up to 60 days after the termination in order to arrange for alternative living. If the residential facility has fewer than 16 beds, the individual may remain in the residential facility as long as the requirements of current s. 55.05 (5) are met. The bill specifies that admission of the individual, if an adult, to another residential facility, must be under s. 55.05 (5).

The bill requires the court to provide a copy of its order to the individual, the individual's guardian, guardian ad litem and legal counsel, the residential facility in which the individual is protectively placed, and the county department.

Establishment of County Policy

This bill requires each county protective services agency to ensure that no later than December 31, 2004, the county establishes a written policy that specifies procedures to be followed in the county which are designed to ensure that reviews of all protectively placed persons residing in the county are conducted annually. The county protective services agency must maintain a copy of the written policy and must make the policy available for public inspection.

Statement Required

The bill also requires the register in probate to file with the chief judge of the judicial administrative district a statement indicating whether the county has filed a petition and a report for each annual review required to be undertaken for protectively placed persons in the county that year. The statement must include an explanation of the reasons that any required report or petition has not been filed.

Appointment of Legal Counsel in Protective Placement Proceedings

Under current law, s. 55.06 (6), relating to procedures in protective placement proceedings, provides that s. 880.33 (2) applies to all hearings under ch. 55 except for transfers of protective placements. Section 880.33 (2) (a) 1. provides that the proposed ward has the right to counsel in incompetency proceedings. Section 880.33 (2) (a) 2. further provides that if the person requests, but is unable to obtain legal counsel, the court shall appoint legal counsel. The statutes also provide that if the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06, the court shall order the counsel appointed under s. 977.08 to represent the person.

Although ch. 55 does not explicitly provide for counsel appointed under s. 977.08 in case of an indigent subject, the language in s. 880.33 (2) (a)

2. implies that counsel should be appointed. Further, s. 55.06 (11), relating to emergency protective placements, clearly provides for counsel appointed under s. 977.08 in the case of an indigent subject. Finally, it is the practice in this state to appoint counsel under s. 977.08 in the case of an indigent subject of a ch. 55 petition.

This bill amends the public defender statute that sets forth to whom the state public defender must provide legal services by clearly setting forth the requirement that the state public defender provide legal services in cases involving persons who are subject to petitions for protective placement under ch. 55. This codifies current practice.

The remainder of this note consists of a table of contents for reorganized ch. 55:

55.001	Declaration of policy.
55.01	Definitions.
55.02	Protective services and placement: duties.
55.03	Status of guardian.
55.043	County protective services agency.
55.045	Funding.
55.05	Voluntary protective services.
55.055	Admissions without court involvement.
55.06	Protective services and placement; eligibility.
55.07	Protective services or placement; petition.
55.08	Protective services or placement: standards and allegations.
55.09	Notice of petition and hearing for protective services or placement.
55.10	Hearing on petition for protective services or placement.
55.11	Comprehensive evaluation; recommendations; statements.
55.12	Order for protective services or placement.
55.13	Emergency protective services.
55.135	Emergency protective placement.
55.14	Involuntary administration of psychotropic medication.
55.15	Transfer of an individual under a protective placement order.
55.16	Modification of an order for protective placement or services.
55.17	Termination of an order for protective placement or services.

55.18	Annual review of protective placement.
55.19	Annual review of order authorizing involuntary administration of psychotropic medication.
55.20	Appeals.
55.21	Centers for developmentally disabled.
55.22	Records.

1 **SECTION 1.** 20.435 (2) (gk) of the statutes, as affected by 2003 Wisconsin Act 33, is
2 amended to read:

3 20.435 (2) (gk) *Institutional operations and charges.* The amounts in the schedule for
4 care, other than under s. 51.06 (1r), provided by the centers for the developmentally disabled
5 to reimburse the cost of providing the services and to remit any credit balances to county
6 departments that occur on and after July 1, 1978, in accordance with s. 51.437 (4rm) (c); for
7 care, other than under s. 46.043, provided by the mental health institutes, to reimburse the cost
8 of providing the services and to remit any credit balances to county departments that occur on
9 and after January 1, 1979, in accordance with s. 51.42 (3) (as) 2.; for maintenance of
10 state-owned housing at centers for the developmentally disabled and mental health institutes;
11 for repair or replacement of property damaged at the mental health institutes or at centers for
12 the developmentally disabled; and for reimbursing the total cost of using, producing and
13 providing services, products and care. All moneys received as payments from medical
14 assistance on and after August 1, 1978; as payments from all other sources including other
15 payments under s. 46.10 and payments under s. 51.437 (4rm) (c) received on and after
16 July 1, 1978; as medical assistance payments, other payments under s. 46.10 and payments
17 under s. 51.42 (3) (as) 2. received on and after January 1, 1979; as payments for the rental of
18 state-owned housing and other institutional facilities at centers for the developmentally
19 disabled and mental health institutes; for the sale of electricity, steam or chilled water; as
20 payments in restitution of property damaged at the mental health institutes or at centers for the

1 developmentally disabled; for the sale of surplus property, including vehicles, at the mental
2 health institutes or at centers for the developmentally disabled; and for other services, products
3 and care shall be credited to this appropriation, except that any payment under s. 46.10
4 received for the care or treatment of patients admitted under s. 51.10, 51.15 or 51.20 for which
5 the state is liable under s. 51.05 (3), ~~of patients admitted under s. 55.06 (9) (d) or (e) for which~~
6 ~~the state is liable under s. 55.05 (1)~~, of forensic patients committed under chapter 971 or 975,
7 admitted under chapter 975 or transferred under s. 51.35 (3) or of patients transferred from a
8 state prison under s. 51.37 (5), to Mendota mental health institute or Winnebago mental health
9 institute shall be treated as general purpose revenue— earned, as defined under s. 20.001 (4).

NOTE: Deletes cross—references to s. 55.06 (9) (d) and (e), which are repealed by the bill.

10 **SECTION 2.** 49.001 (8) of the statutes is amended to read:

11 49.001 (8) “Voluntary” means according to a person’s free choice, if competent, or by
12 choice of a guardian if incompetent, when the person is not subject to a court—ordered
13 placement under ch. 55, is not placed by an agency having a court—ordered involuntary
14 commitment of the person under ch. 51, and is not involuntarily committed to the department
15 of corrections or to the department under ch. 971 or 980.

16 **SECTION 3.** 50.01 (2) (ad) of the statutes is created to read:

17 50.01 (2) (ad) The department shall promulgate rules that require each facility licensed
18 under this subchapter to provide information necessary for the department to assess the
19 facility’s compliance with s. 55.14.

NOTE: Requires the DHFS to promulgate rules that require community—based residential facilities, nursing homes, and adult family homes to provide DHFS information necessary for DHFS to determine if those facilities are in compliance with the provisions relating to involuntary administration of psychotropic medication created by the bill.

1 **SECTION 4.** 50.06 (2) (d) (intro.) of the statutes is created to read:

2 50.06 (2) (d) (intro.) The person admitted under this subsection does not verbally object
3 to or otherwise actively protest such an admission. If such an objection or protest is made, the
4 person in charge of the facility shall immediately notify the agency designated under s. 55.02
5 (2) for the county in which the person is living. Representatives of that agency shall visit the
6 person as soon as possible, but no later than 72 hours after notification, and do the following:

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

9 2. Attempt to have the person released within 72 hours if the protest is not withdrawn
10 and necessary elements of s. 55.08 (1) or 55.135 are not present and provide assistance in
11 identifying appropriate alternative living arrangements.

12 3. Comply with s. 55.135 if all elements are present and emergency placement in that
13 facility or another facility is necessary or file a petition for protective placement under s. 55.07.
14 The court, with the permission of the facility, may order the person to remain in the facility
15 pending the outcome of the protective placement proceedings.

16 **SECTION 5.** 51.01 (3g) of the statutes is amended to read:

17 51.01 (3g) "Chronic Serious and persistent mental illness" means a mental illness which
18 is severe in degree and persistent in duration, which causes a substantially diminished level
19 of functioning in the primary aspects of daily living and an inability to cope with the ordinary
20 demands of life, which may lead to an inability to maintain stable adjustment and independent
21 functioning without long-term treatment and support and which may be of lifelong duration.
22 "Chronic Serious and persistent mental illness" includes schizophrenia as well as a wide
23 spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does

1 not include ~~infirmities of aging~~ degenerative brain disorder or a primary diagnosis of ~~mental~~
2 ~~retardation~~ a developmental disability or of alcohol or drug dependence.

3 **SECTION 6.** 51.10 (4m) (a) (intro.) of the statutes is amended to read:

4 51.10 (4m) (a) (intro.) ~~An~~ In addition to the admissions under subs. (1) and (2), an adult
5 who meets the criteria for voluntary admission under sub. (4) ~~and whose admission is~~
6 ~~approved under sub. (1) or (2)~~ may also be admitted to an inpatient treatment facility if:

NOTE: Deletes the requirement that the voluntary admission of an adult to an inpatient treatment facility and who does not indicate a desire to leave the facility be approved by the treatment director of the treatment facility or the director of a center for the developmentally disabled and the county department.

7 **SECTION 7.** 51.10 (8) of the statutes is amended to read:

8 51.10 (8) An adult for whom a guardian of the person has been appointed under ch. 880
9 because of the subject's incompetency may be voluntarily admitted to an inpatient treatment
10 facility under this section ~~only~~ if the guardian and the ward consent to ~~such~~ the admission or
11 if the guardian consents and the procedures under sub. (4m) are followed.

NOTE: Provides that the guardian of an incompetent adult may provide consent to the voluntary admission of the ward to an inpatient treatment facility, in cases where the ward does not indicate a desire to leave the facility, if the procedures for voluntary admission in ch. 51 are followed.

12 **SECTION 8.** 55.001 of the statutes, as affected by 2003 Wisconsin Act 33, is amended
13 to read:

14 **55.001 Declaration of policy.** The legislature recognizes that many citizens of the
15 state, because of ~~the infirmities of aging, chronic~~ serious and persistent mental illness, ~~mental~~
16 ~~retardation, other~~ degenerative brain disorders, developmental disabilities or other like
17 incapacities ~~incurred at any age~~, are in need of protective services or protective placement.
18 Except as provided in s. 49.45 (30m) (a), these protective services or protective placement

1 should, to the maximum degree of feasibility under programs, services and resources that the
2 county board of supervisors is reasonably able to provide within the limits of available state
3 and federal funds and of county funds required to be appropriated to match state funds, allow
4 the individual the same rights as other citizens, and at the same time protect the individual from
5 exploitation, abuse and degrading treatment. This chapter is designed to establish those
6 protective services and protective placements and assure their availability to all persons
7 individuals when in need of them, and to place the least possible restriction on personal liberty
8 and exercise of constitutional rights consistent with due process and protection from abuse,
9 exploitation and neglect.

NOTE: Insert references to both protective services and protective placements. Also, revises terminology to delete the terms “infirmities of aging” and “mental retardation”; to insert a new term, “degenerative brain disorder” to replace “infirmities of aging”; and to replace the word “chronic” with the term “serious and persistent”.

10 **SECTION 9.** 55.01 (1d) of the statutes is created to read:

11 55.01 (1d) “Activated power of attorney for health care” means a power of attorney for
12 health care that has taken effect in the manner specified in s. 155.05 (2).

13 **SECTION 10.** 55.01 (1v) of the statutes is created to read:

14 55.01 (1v) “Degenerative brain disorder” means the loss or dysfunction of brain cells
15 to the extent that the individual is substantially impaired in his or her ability to adequately
16 provide for his or her own care or custody.

17 **SECTION 11.** 55.01 (3) of the statutes is repealed.

NOTE: SECTION 1 creates a new definition of “degenerative brain disorder”, which is created to replace the repealed definition “infirmities of aging”.

18 **SECTION 12.** 55.01 (4) of the statutes is amended to read:

1 55.01 (4) "Interested person" means any adult relative or friend of a person to be
2 protected under this ~~subchapter~~ chapter; a health care agent under s. 155.01 (4); or any official
3 or representative of a public or private agency, corporation or association concerned with the
4 person's welfare.

5 **SECTION 13.** 55.01 (5m) of the statutes is created to read:

6 55.01 (5m) "Treatment facility" has the meaning given in s. 51.01 (19).

NOTE: Provides that in ch. 55, "treatment facility" has the same
definition as in ch. 51: "any publicly or privately operated facility or
unit thereof providing treatment of alcoholic, drug dependent, mentally
ill or developmentally disabled persons, including but not limited to
inpatient and outpatient treatment programs, community support
programs and rehabilitation programs".

7 **SECTION 14.** 55.01 (6) and (6m) of the statutes are created to read:

8 55.01 (6) "Placement facility" means a facility to which a court may order a person to
9 be protectively placed under s. 55.12 for the primary purpose of residential care and custody.

10 (6m) "Placement unit" means a ward, wing, or other designated part of a placement
11 facility.

12 **SECTION 15.** 55.01 (6p) and (6r) of the statutes are created to read:

13 55.01 (6p) "Protective placement" means a process by which an individual who has
14 been determined incompetent under ch. 880 is ordered by a court to be provided care and
15 custody.

NOTE: Creates a definition of protective placement. This definition is
derived from the first sentence of s. 55.06 (1).

16 (6r) "Protective services" includes any of the following:

- 17 1. Outreach.
- 18 2. Identification of persons in need of services.
- 19 3. Counseling and referral for services.

1 4. Coordination of services for individuals.

2 5. Tracking and follow-up.

3 6. Provision of social services.

4 7. Case management.

5 8. Legal counseling or referral.

6 9. Guardianship referral.

7 10. Diagnostic evaluation.

8 11. Any services which, when provided to an individual with developmental
9 disabilities, degenerative brain disorder, serious and persistent mental illness, or other like
10 incapacity, keep the individual safe from abuse, neglect, or misappropriation of property, or
11 prevent the individual from experiencing deterioration or from inflicting harm on him or
12 herself or on another person.

NOTE: Creates a definition of protective services. This definition incorporates the noninclusive list of possible services from current s. 55.04 (1) (a), and specifies that "protective services" includes any services that are intended to keep specified individuals safe from abuse, neglect, or misappropriation of property, or prevent the individual from inflicting harm on him or herself or another person.

13 **SECTION 16.** 55.01 (6v) of the statutes is created to read:

14 55.01 (6v) "Serious and persistent mental illness" has the meaning given in s. 51.01
15 (3g).

16 **SECTION 17.** 55.02 of the statutes is repealed and recreated to read:

17 **55.02 Protective services and placement: duties. (1) DEPARTMENT DUTIES.** (a) The
18 department shall do all of the following:

19 1. Cooperate with county departments to develop and operate a coordinated, statewide
20 system for protective services and protective placement.

1 2. Monitor and supervise the implementation and operation of the protective services
2 and protective placement system.

3 3. Provide technical assistance to county departments providing protective services and
4 protective placement.

5 4. Evaluate the protective services and protective placement system.

6 (b) The department may do any of the following:

7 1. Provide protective services and protective placement directly or contract for the
8 provision of protective services or protective placement.

9 2. Promulgate rules governing protective services, protective placement, or both.

10 (2) COUNTY DEPARTMENT DUTIES. (a) The chairperson of the county board of supervisors
11 in a county with a single-county department under s. 46.215, 46.22, 46.232, 51.42, or 51.437
12 or the chairpersons of the county boards of supervisors of counties with a multicounty
13 department under s. 46.22, 46.23, 51.42, or 51.437 shall designate a county department or
14 county departments providing services in the county or counties to have the responsibility for
15 planning for the provision of protective services and protective placement and providing
16 direct protective services or protective placement, or entering into contracts under s. 46.036
17 with a responsible agency for the provision of protective services or protective placement.

18 (b) In addition to the duties specified in par. (a), the county department shall:

19 1. Monitor and evaluate protective services and protective placements.

20 2. Prepare and submit reports required by the department, or by a court if protective
21 services or protective placement are ordered by a court.

22 3. Develop reporting requirements for guardians of the person who are required to
23 submit reports to the county department under s. 880.38 (3).

1 4. Designate at least one appropriate medical facility, hospital, or other protective
2 placement facility as an intake facility for the purpose of emergency placements under s.
3 55.135.

4 (3) CORPORATION COUNSEL. The corporation counsel may assist in conducting
5 proceedings under this chapter, and shall assist in conducting proceedings under this chapter
6 if requested by the court.

 NOTE: Creates a new requirement that each county department must
 designate an appropriate intake facility for emergency protective
 placements.

7 SECTION 18. 55.03 of the statutes is renumbered 55.03 (1) and (2) and amended to read:

8 **55.03 Status of guardian. (1) AGENCY AS GUARDIAN.** No agency acting as a guardian
9 appointed under ch. 880 ~~shall~~ may be a provider of protective services or placement for its
10 ward under this chapter.

11 **(2) TRANSFER OF GUARDIANSHIP AND LEGAL CUSTODY.** Nothing in this chapter ~~shall~~ may
12 be construed to prohibit the transfer of guardianship and legal custody under s. 48.427 or s.
13 48.43.

14 SECTION 19. 55.04 (1) to (3) of the statutes are repealed.

15 SECTION 20. 55.04 (4) of the statutes is renumbered 55.03 (3) and amended to read:

16 55.03 (3) GUARDIAN AUTHORITY AND RESPONSIBILITY APPLICABLE TO PARENT OF MINOR.
17 Where any responsibility or authority is created under this chapter upon or in relation to a
18 guardian, such responsibility or authority is deemed to apply to a parent or person in the place
19 of a parent in the case of a minor who is or who is alleged to be developmentally disabled.

 NOTE: The program responsibilities formerly specified in s. 55.04 have
 been incorporated into newly created definitions of protective services
 and protective placement in s. 55.01 (6r) and (6m), respectively, and into
 the amended version of s. 55.02.

The bill incorporates the provisions of current ss. 55.02 and 55.04 into ss. 55.02 and 55.03. Also, the bill revises the duties of the DHFS and the county departments to more accurately reflect the actual role of each in the protective services and protective placement system.

1 **SECTION 21.** 55.043 (1) (a) of the statutes is amended to read:

2 55.043 (1) (a) If a county protective services agency has probable cause to believe that
3 there is misappropriation of property or neglect or abuse of a vulnerable adult, the county
4 protective services agency may conduct an investigation in ~~Milwaukee County~~ to determine
5 if the vulnerable adult in question is in need of protective services. The county protective
6 services agency shall conduct the investigation in accordance with standards established by
7 the department for conducting the investigations. The investigation shall include at least one
8 of the following:

9 **SECTION 22.** 55.043 (1) (a) 1. and 3. of the statutes are amended to read:

10 55.043 (1) (a) 1. Observation of or an interview with the vulnerable adult, in private to
11 the extent practicable, and with or without consent of his or her guardian or agent under an
12 activated power of attorney for health care, if any.

13 3. An interview with the guardian or agent under an activated power of attorney for
14 health care, if any, and with the caretaker, if any, of the vulnerable adult.

15 **SECTION 23.** 55.043 (1) (b) 1. and 2. a. and b. of the statutes are amended to read:

16 55.043 (1) (b) 1. The vulnerable adult or his or her guardian or agent under an activated
17 power of attorney for health care, if any, consents to the examination.

18 2. a. The vulnerable adult has no guardian or agent under an activated power of attorney
19 for health care.

1 b. The vulnerable adult's guardian or agent under an activated power of attorney for
2 health care refuses to consent to the examination, but the examination is authorized by order
3 of a court.

4 **SECTION 24.** 55.05 (title) of the statutes is amended to read:

5 **55.05 (title) ~~Protective services~~ Voluntary protective services.**

6 **SECTION 25.** 55.05 (2) (b) of the statutes is amended to read:

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

11 **SECTION 26.** 55.05 (2) (d) of the statutes is repealed.

12 **SECTION 27.** 55.05 (3) of the statutes is amended to read:

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

17 **SECTION 28.** 55.05 (4) (title) and (a) of the statutes are renumbered 55.13 (title) and (1)
18 and amended to read:

19 55.13 **Emergency protective services.** (1) Emergency protective services may be
20 provided for not more than 72 hours where there is reason to believe that if the emergency
21 protective services are not provided, the ~~person~~ individual entitled to the services or others will
22 incur a substantial risk of serious physical harm.

23 **SECTION 29.** 55.05 (4) (b) and (c) of the statutes are renumbered 55.13 (4) and (5) and
24 amended to read:

1 55.13 (4) ~~Where~~ If it is necessary to forcibly enter a premises to provide or investigate
2 the need for emergency protective services, the ~~representative of an agency~~ staff member of
3 a county department or of a county protective services agency shall obtain a court order
4 authorizing entry and shall make the entry accompanied by a sheriff, police officer or member
5 of a fire department. When it appears probable that substantial physical harm, irreparable
6 injury or death may occur to an individual, the police officer, fire fighter or sheriff may enter
7 a premises without a court order if the time required to obtain such an order would result in
8 greater risk of physical harm to the individual.

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

13 **SECTION 30.** 55.05 (5) (title) and (a) of the statutes are renumbered 55.055 (title) and
14 (1).

15 **SECTION 31.** 55.05 (5) (b) 1. of the statutes is renumbered 55.055 (2) (a).

16 **SECTION 32.** 55.05 (5) (b) 2. of the statutes is renumbered 55.055 (2) (b) and amended
17 to read:

18 55.055 (2) (b) Guardians of persons who have been found incompetent under s. 880.33
19 may consent to admission to a nursing home ~~if the person is admitted directly from a hospital~~
20 ~~inpatient unit for recuperative care~~ or other facility not listed in par. (a) for which protective
21 placement is required for a period not to exceed ~~3 months~~ 60 days, ~~unless the hospital~~
22 ~~admission was for psychiatric care.~~ In order to be admitted under this paragraph, the person
23 must be in need of recuperative care or be unable to provide for his or her own care or safety
24 so as to create a serious risk of substantial harm to him or herself or others. Prior to providing

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

9 **SECTION 33.** 55.05 (5) (c) of the statutes is renumbered 55.055 (5) (intro.) and amended
10 to read:

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

16 **SECTION 34.** 55.05 (5) (c) 1. of the statutes is renumbered 55.055 (5) (a).

17 **SECTION 35.** 55.05 (5) (c) 2. of the statutes is renumbered 55.055 (5) (b) and amended
18 to read:

19 55.055 (5) (b) Attempt to have the person released within 72 hours if the protest is not
20 withdrawn and necessary elements of s. ~~55.06 (2) or (11)~~ 55.08 (1) or 55.135 are not present
21 and provide assistance in identifying appropriate alternative living arrangements.

22 **SECTION 36.** 55.05 (5) (c) 3. of the statutes is renumbered 55.055 (5) (c) and amended
23 to read:

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 for
3 protective placement under s. 55.07. The court, with the permission of the facility, may order
4 the person to remain in the facility pending the outcome of the protective placement
5 proceedings.

6 **SECTION 37.** 55.05 (5) (d) of the statutes is renumbered 55.055 (6).

7 **SECTION 38.** 55.055 (2) (c) of the statutes is created to read:

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

13 **SECTION 39.** 55.055 (3) of the statutes is created to read:

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

1 **SECTION 40.** 55.055 (4) of the statutes is created to read:

2 55.055 (4) Wisconsin resident guardians of wards who have been found incompetent
3 in, and reside in, a state other than Wisconsin may consent to admissions under sub. (2) if the
4 guardian intends to move the ward to the state of Wisconsin within 30 days of the consent to
5 the admission. A petition for guardianship and protective placement must be filed in this state
6 within 60 days of the ward's admission under this paragraph.

7 **SECTION 41.** 55.06 of the statutes is repealed and recreated to read:

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

21 **SECTION 42.** 55.06 (10) (a) 2. of the statutes, as affected by 2003 Wisconsin Act 33, is
22 renumbered 55.065 (1g).

1 **SECTION 43.** 55.06 (12) of the statutes is renumbered 55.055 (7).

2 **SECTION 44.** 55.06 (16) of the statutes is renumbered 55.21.

3 **SECTION 45.** 55.06 (17) of the statutes is renumbered 55.22.

4 **SECTION 46.** 55.06 (18) of the statutes is renumbered 55.20 and amended to read:

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

9 **SECTION 47.** 55.07 of the statutes is renumbered 55.23.

10 **SECTION 48.** 55.07 of the statutes is repealed and recreated to read:

11 **55.07 Protective services or placement; petition. (1) WHO MAY PETITION.** (a) The
12 department, the board designated under s. 55.02 (2) or an agency designated by it, a guardian
13 or any interested person may petition for appointment of a guardian and for protective services
14 or placement. The department shall provide for a schedule of reimbursement for the cost of
15 such proceedings based upon the ability to pay of the proposed ward or person to be protected.

16 (b) No guardian or temporary guardian may make a permanent protective placement
17 of his or her ward unless ordered by a court under s. 55.12 but may admit a ward to certain
18 residential facilities under s. 55.055 or make an emergency protective placement under s.
19 55.135.

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

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

1 **(3) PETITION FOR GUARDIANSHIP REQUIRED.** A petition for guardianship if required under
2 s. 55.08 (1) (b) or (2) (a) must be heard prior to ordering protective placement or services. If
3 incompetency has been determined under s. 880.33 more than one year preceding the filing
4 of an application for protective placement or services, the court shall review the finding of
5 incompetency.

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

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

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

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

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

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

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

1 (5) VENUE. (a) The petition shall be filed in the county of residence of the person to
2 be protected or under extraordinary circumstances requiring medical and or the prevention of
3 harm to the person or others, in the county in which the person to be protected is physically
4 present.

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

14 **SECTION 49.** 55.08 of the statutes is created to read:

15 **55.08 Protective services or placement: standards and allegations. (1) PROTECTIVE**
16 **PLACEMENT.** A court may protectively place an individual who meets the standards set forth
17 in this subsection. A petition for protective placement of an individual shall allege that the
18 individual satisfies all of the following criteria:

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

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

23 (c) As a result of developmental disabilities, degenerative brain disorder, serious and
24 persistent mental illness or other like incapacities, is so totally incapable of providing for his

1 or her own care or custody as to create a substantial risk of serious harm to him or herself or
2 others. Serious harm may be occasioned by overt acts or 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 meets
5 the standards in this subsection. A petition for protective services for an individual shall allege
6 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 is alleged
8 to be developmentally disabled and on whose behalf a petition for a guardianship has been
9 submitted.

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

14 **SECTION 50.** 55.09 of the statutes is created to read:

15 **55.09 Notice of petition and hearing for protective services or placement. (1)**

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

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

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

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

16 SECTION 51. 55.10 of the statutes is created to read:

17 **55.10 Hearing on petition for protective services or placement. (1) TIME LIMITS.**
18 A petition for protective services or placement shall be heard within 60 days after it is filed
19 unless an extension of this time is requested by the petitioner, the person sought to be protected
20 or his or her guardian ad litem, or the county department, in which case the court may extend
21 the date for hearing by up to 45 days. If an individual under s. 50.06 (3) alleges that an
22 individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests
23 of the incapacitated individual or if the incapacitated individual verbally objects to or

1 otherwise actively protests the admission, the petition shall be heard as soon as possible within
2 the 60-day period.

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

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

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

19 (a) *Counsel; costs.* The person sought to be protected has the right to counsel whether
20 or not present at the hearing on the petition. The court shall require representation by full legal
21 counsel whenever the petition alleges that the person is not competent to refuse psychotropic
22 medication under s. 55.14 or the person sought to be protected requested such representation
23 at least 72 hours before the hearing, the guardian ad litem or any other person states that the
24 person sought to be protected is opposed to the petition, or the court determines that the

1 interests of justice require it. If the person sought to be protected, or any other person on his
2 or her behalf, requests but is unable to obtain legal counsel, the court shall appoint legal
3 counsel. Counsel shall be provided at public expense, as provided under s. 967.06 and ch. 977,
4 if the person is indigent. If the person who is sought to be protected is an adult who is indigent,
5 and if counsel was not appointed under s. 977.08, the county in which the hearing is held is
6 liable for any fees due the person's legal counsel. If the person sought to be protected is
7 represented by counsel appointed under s. 977.08 in a proceeding for the appointment of a
8 guardian under s. 880.33, the court shall order the counsel appointed under s. 977.08 to
9 represent the person sought to be protected.

10 (b) *Guardian ad litem; costs.* The court shall in all cases require the appointment of an
11 attorney as guardian ad litem in accordance with s. 757.48 (1). The responsibilities and duties
12 of a guardian ad litem specified in s. 880.331 (3) and (4) apply to a guardian ad litem appointed
13 in a proceeding for protective services or placement . The guardian ad litem shall be present
14 at all hearings under this chapter if the person sought to be protected does not have full legal
15 counsel. The court may, however, excuse a personal appearance by a guardian ad litem based
16 on information contained in a written report by the guardian ad litem to the court. If the person
17 sought to be protected is an adult who is indigent, the county in which the hearing is held shall
18 be liable for any fees due the guardian ad litem. If the person sought to be protected is a minor,
19 the parents of the person sought to be protected or the county in which the hearing is held shall
20 be liable for any fees due the guardian ad litem as provided in s. 48.235 (8).

21 (c) *Trial by jury; right to cross examine witnesses.* The person sought to be protected
22 has the right to a trial by a jury if demanded by the person sought to be protected, attorney, or
23 guardian ad litem. The number of jurors shall be determined under s. 756.06 (2) (b). The
24 person sought to be protected, and the person's attorney and guardian ad litem shall have the

1 right to present and cross-examine witnesses, including any person making an evaluation or
2 review under s. 55.11.

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

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

8 **SECTION 52.** 55.11 of the statutes is created to read:

9 **55.11 Comprehensive evaluation; recommendations; statements.** (1) Before
10 ordering the protective placement of or services for any individual, the court shall direct a
11 comprehensive evaluation of the person in need of placement or services, if such an evaluation
12 has not already been made. The court may utilize available multidisciplinary resources in the
13 community in determining the need for placement or services. The county department
14 designated under s. 55.02 (2) or an agency designated by it shall cooperate with the court in
15 securing available resources. The court or the cooperating agency obtaining the evaluation
16 shall request appropriate information which shall include at least the following:

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

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

22 (c) A medical, psychological, social, vocational and educational evaluation and review,
23 where necessary, and any recommendations for or against maintenance of partial legal rights

1 as provided in s. 880.33. Such evaluation and review shall include recommendations for
2 placement or services consistent with the least restrictive environment required.

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

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

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

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

20 (6) If the individual has a developmental disability and the court is considering
21 placement of the individual in an intermediate facility or a nursing facility, the court shall
22 request a statement or testimony from the county department of the individual's county of
23 residence that is participating in the program under s. 46.278 as to whether the individual's
24 needs could be met in a noninstitutional setting, except that, if s. 46.279 (4m) applies to the

1 individual, the court shall request the statement or testimony from the department, rather than
2 the county department.

3 **SECTION 53.** 55.12 of the statutes is created to read:

4 **55.12 Order for protective services or placement.** (1) When ordering placement or
5 services, the court, on the basis of the evaluation and other relevant evidence, shall order the
6 county department or an agency designated by it to protectively place the individual or to
7 provide protective services to the individual.

8 (2) Subject to s. 46.279, placement may be made to such facilities as nursing homes,
9 public medical institutions, centers for the developmentally disabled under the requirements
10 of s. 51.06 (3), foster care services and other home placements, or to other appropriate
11 facilities but may not be made to units for the acutely mentally ill. An individual who is subject
12 to an order for protective placement or services may be detained on an emergency basis under
13 s. 51.15 or involuntarily committed under s. 51.20 or may be voluntarily admitted to a
14 treatment facility for inpatient care under s. 51.10 (8). No individual who is subject to an order
15 for protective placement or services may be involuntarily transferred to, detained in, or
16 committed to a psychiatric facility for care except under s. 51.15 or 51.20. Placement in a
17 locked unit shall require a specific finding of the court as to the need for such action.

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

22 (4) Factors to be considered in providing protective placement or services shall include
23 the needs of the person to be protected for health, social, or rehabilitative services; the level
24 of supervision needed; the reasonableness of the placement or services given the cost and the

1 actual benefits in the level of functioning to be realized by the individual; the limits of
2 available state and federal funds and of county funds required to be appropriated to match state
3 funds; and the reasonableness of the placement or services given the number or projected
4 number of individuals who will need protective placement or services and given the limited
5 funds available.

6 (5) Except as provided in s. 49.45 (30m), the county may not be required to provide
7 funding, in addition to its funds that are required to be appropriated to match state funds, in
8 order to protectively place or serve an individual. Placement under this section does not
9 replace commitment of a person in need of acute psychiatric treatment under s. 51.20 or 51.45
10 (13).

11 (6) If the county department or designated agency proposes to place an individual who
12 has a developmental disability in an intermediate facility or a nursing facility under an order
13 under this paragraph, the county department, or, if s. 46.279 (4m) applies to the individual,
14 the department or the department's contractor shall develop a plan under s. 46.279 (4) and
15 furnish the plan to the county department or designated agency and to the individual's
16 guardian. The county department or designated agency shall place the individual in a
17 noninstitutional community setting in accord with the plan unless the court finds that
18 placement in the intermediate facility or nursing facility is the most integrated setting, as
19 defined in s. 46.279 (1) (bm), that is appropriate to the needs of the individual taking into
20 account information presented by all affected parties.

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

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

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

3 **SECTION 54.** 55.13 (2) and (3) of the statutes are created to read:

4 55.13 (2) If the county department or other agency providing emergency protective
5 services to an individual under sub. (1) has reason to believe that the individual meets the
6 criteria for protective services under s. 55.08 (2), the county department or agency may file
7 a petition under s. 55.08 (2). If a petition is filed, a preliminary hearing shall be held within
8 72 hours, excluding Saturdays, Sundays, and legal holidays, to establish probable cause that
9 the criteria under s. 55.08 (2) are present. The county department or agency shall provide the
10 individual with written notice and orally inform the individual of the time and place of the
11 preliminary hearing. If the individual is not under guardianship, a petition for guardianship
12 shall accompany the petition under s. 55.08 (2), except in the case of a minor who is alleged
13 to be developmentally disabled.

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

17 **SECTION 55.** 55.135 of the statutes is created to read:

18 **55.135 Emergency protective placement.** (1) If from personal observation of, or a
19 reliable report made to, a sheriff, police officer, fire fighter, guardian, if any, or authorized
20 representative of a county department under s. 55.02 (2) or an agency designated by it it
21 appears probable that an individual is so totally incapable of providing for his or her own care
22 or custody as to create a substantial risk of serious physical harm to himself or herself or others
23 as a result of developmental disabilities, degenerative brain disorder, serious and persistent
24 mental illness, or other like incapacities if not immediately placed, the person making the

1 observation may take into custody and transport the individual to an appropriate medical or
2 protective placement facility. The person making placement shall prepare a statement at the
3 time of detention providing specific factual information concerning the person's observations
4 or reports made to the person and the basis for emergency placement. The statement shall be
5 filed with the director of the facility and shall also be filed with any petition under s. 55.07.
6 At the time of placement the individual shall be informed by the director of the facility or the
7 director's designee, both orally and in writing, of his or her right to contact an attorney and
8 a member of his or her immediate family and the right to have an attorney provided at public
9 expense, as provided under s. 967.06 and ch. 977, if the individual is a child or is indigent.
10 The director or designee shall also provide the individual with a copy of the statement by the
11 person making emergency placement.

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

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

16 (4) Upon detention, a petition shall be filed under s. 55.07 by the person making such
17 emergency placement and a preliminary hearing shall be held within 72 hours, excluding
18 Saturdays, Sundays and legal holidays, to establish probable cause to believe the grounds for
19 protective placement under s. 55.08 (1). The sheriff or other person making placement under
20 sub. (1) shall provide the individual with written notice and orally inform him or her of the
21 time and place of the preliminary hearing. If the detainee is not under guardianship, a petition
22 for guardianship shall accompany the placement petition, except in the case of a minor who
23 is alleged to be developmentally disabled. In the event that protective placement is not

1 appropriate, the court may elect to treat a petition for placement as a petition for commitment
2 under s. 51.20 or 51.45 (13).

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

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

19 **SECTION 56.** 55.14 of the statutes is created to read:

20 **55.14 Involuntary administration of psychotropic medication.** (1) Involuntary
21 administration of psychotropic medication, with consent of a guardian, may be ordered as a
22 protective service pursuant to the requirements of this section.

23 (2) In this section, "involuntary administration of psychotropic medication" means any
24 of the following: placing psychotropic medication in a person's food or drink with knowledge

1 that the person protests receipt of the psychotropic medication; forcibly restraining a person
2 to enable administration of psychotropic medication; or requiring a person to take
3 psychotropic medication as a condition of receiving privileges or benefits.

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

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

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

9 (b) The person is not competent to refuse psychotropic medication. "Not competent
10 to refuse psychotropic medication" means that as a result of developmental disabilities,
11 degenerative brain disorder, serious and persistent mental illness, or other like incapacities,
12 and after the advantages and disadvantages of and alternatives to accepting the particular
13 psychotropic medication have been explained to the individual, the individual is incapable of
14 expressing an understanding of the advantages and disadvantages of accepting treatment, and
15 the alternatives to accepting treatment, or the individual is substantially incapable of applying
16 an understanding of the advantages, disadvantages, and alternatives to treatment to his or her
17 condition in order to make an informed choice as to whether to accept or refuse psychotropic
18 medication.

19 (c) The person has refused to take the psychotropic medication voluntarily or
20 attempting to administer psychotropic medications to the person voluntarily is not feasible or
21 is not in the best interests of the person. If the petition alleges that the person has refused to
22 take psychotropic medication voluntarily, the petition shall identify the reasons the person
23 refuses to take psychotropic medication voluntarily and shall contain evidence showing that
24 a reasonable number of documented attempts to administer psychotropic medication

1 voluntarily using appropriate interventions that could reasonably be expected to increase the
2 person's willingness to take psychotropic medication voluntarily have been made and have
3 been unsuccessful. If the petition alleges that attempting to administer psychotropic
4 medications to the person voluntarily is not feasible or is not in the best interests of the person,
5 the petition must identify specific reasons supporting that allegation.

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

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

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

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

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

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

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