

INSERT 90-16

****NOTE: I have deleted the proposed creation of s. 880.331 (4) (as). Please see the
****NOTE under s. 55.10 (4) (b), renumbered from s. 55.06 (6), stats.

INSERT 70A

INSERT 90-24

1 **SECTION 147.** 880.331 (5) (intro.) of the statutes is amended to read:

2 880.331 (5) DUTIES IN REVIEWS. (intro.) In any review under s. 55.18 of a
3 protective placement ~~under s. 55.06 or order~~ or of a protective service order made
4 under s. ~~55.05~~ 55.12, the guardian ad litem shall do all of the following:

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1993 a. 16; 1995 a. 27; 1997 a. 237.

INSERT 90-25

5 **SECTION 148.** 880.38 (1) of the statutes is amended to read:

6 880.38 (1) A guardian of the person of an incompetent, upon order of the court,
7 may have custody of the ~~person~~ ward, may receive all notices on behalf of the person
8 ward, and may act in all proceedings as an advocate of the ~~person~~ ward, but may not
9 have the power to bind the ward or the ward's property, or to represent the ward in
10 any legal proceedings pertaining to the property, unless the guardian of the person
11 is also the guardian of the property. A guardian of the person of an incompetent or
12 a temporary guardian of the person of an incompetent may not make a permanent
13 protective placement of the ward unless ordered by a court under s. ~~55.06~~ 55.12 but
14 may admit a ward to certain residential facilities under s. ~~55.05 (5)~~ 55.055 or make
15 an emergency protective placement under s. ~~55.06 (11)~~ 55.135. The guardian of the
16 person ~~has the power to apply~~ may petition for protective placement under s. ~~55.06~~
17 55.075 (1)(a) and for commitment under s. 51.20 or 51.45 (13).

History: 1973 c. 284; 1975 c. 393, 421; 1975 c. 430 s. 80; 1981 c. 379; 1983 a. 36; 1985 a. 176.

****NOTE: Should reference to s. 55.13 also be made under this subsection?

INSERT 91-11

18 **SECTION 149.** 880.38 (3) of the statutes is amended to read:

1 880.38 (3) A guardian of the person of an incompetent appointed under s.
 2 880.33 shall make an annual report on the condition of the ward to the court that
 3 ordered the guardianship and to the county department designated under s. 55.02
 4 (2). That county department shall develop reporting requirements for the guardian
 5 of the person. The report shall include, but not be limited to, the location of the ward,
 6 the health condition of the ward, any recommendations regarding the ward, and a
 7 statement of whether or not the ward is living in the least restrictive environment
 8 consistent with the needs of the ward. The guardian may fulfill the requirement
 9 under this subsection by submitting the report required under s. 55.06 (10) 55.18 (3)

10 (a) (intro.)

History: 1973 c. 284; 1975 c. 393, 421; 1975 c. 430 s. 80; 1981 c. 379; 1983 a. 36; 1985 a. 176.

****NOTE: Please review my amendment to this subsection. The last sentence
appears to be incorrect under current law, since the report referred to under s. 55.18 (3)
(a) (intro.) is the same as the report specified under this subsection.

STET
 to be filed
 especially the last sentence

INSERT 91-22

11 SECTION 150. 940.285 (1) (a) of the statutes is renumbered 940.285 (1) (am).

12 SECTION 151. 940.285 (1) (b) of the statutes is renumbered 940.285 (1) (ag) and
 13 amended to read:

14 940.285 (1) (ag) "~~Infirmities of aging~~ "Degenerative brain disorder" has the
 15 meaning specified in s. 55.01 (3) given in s. 55.01 (1v).

History: 1985 a. 306; 1993 a. 445; 1997 a. 180; 2001 a. 109.

16 SECTION 152. 940.285 (1) (e) (intro.) of the statutes is amended to read:

17 940.285 (1) (e) (intro.) "Vulnerable adult" means any person 18 years of age or
 18 older who either is a developmentally disabled person or has ~~infirmities of aging~~
 19 degenerative brain disorder, mental illness or other like incapacities and who is:

History: 1985 a. 306; 1993 a. 445; 1997 a. 180; 2001 a. 109.

20 SECTION 153. 940.295 (1) (hm) of the statutes is renumbered 940.295 (1) (eg)

21 and amended to read:

cg

✓ (eg)

1 940.295 (1) (eg) "~~Infirmities of aging~~ Degenerative brain disorder" has the
2 meaning given in s. 55.01 (3) (1v).

History: 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109.

3 **SECTION 154.** 940.295 (1) (t) (intro.) of the statutes is amended to read:

4 940.295 (1) (t) (intro.) "Vulnerable person" means any person who either is a
5 developmentally disabled person or has ~~infirmities of aging~~ degenerative brain
6 disorder, mental illness or other like incapacities and who is:

History: 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109.

7 **SECTION 155.** 971.14 (6) (b) of the statutes is amended to read:

8 971.14 (6) (b) When the court discharges a defendant from commitment under
9 par. (a), it may order that the defendant be taken immediately into custody by a law
10 enforcement official and promptly delivered to a facility specified in s. 51.15 (2), an
11 approved public treatment facility under s. 51.45 (2) (c) or an appropriate medical or
12 protective placement facility. Thereafter, detention of the defendant shall be
13 governed by s. 51.15, 51.45 (11), or ~~55.06 (11)~~ 55.135, as appropriate. The district
14 attorney or corporation counsel may prepare a statement meeting the requirements
15 of s. 51.15 (4) or (5), 51.45 (13) (a), or ~~55.06 (11)~~ 55.135 based on the allegations of the
16 criminal complaint and the evidence in the case. This statement shall be given to the
17 director of the facility to which the defendant is delivered and filed with the branch
18 of circuit court assigned to exercise criminal jurisdiction in the county in which the
19 criminal charges are pending, where it shall suffice, without corroboration by other
20 petitioners, as a petition for commitment under s. 51.20, or 51.45 (13), or ~~55.06 (2)~~
21 a petition for protective placement under s. 55.075. This section does not restrict the
22 power of the branch of circuit court in which the petition is filed to transfer the matter
23 to the branch of circuit court assigned to exercise jurisdiction under ch. 51 in the

165.85 (4)(b) 1d. b. and
165.86 (2)(b), 301.01(2)(intro.),
757.69(1)(h), 880.38(1),
and 971.14(6)(b)

1 county. Days spent in commitment or protective placement pursuant to a petition
2 under this paragraph shall not be deemed days spent in custody under s. 973.155.

History: 1981 c. 367; 1985 a. 29, 176; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 85, 403; 1989 a. 31, 107; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 32; 1995 a. 27 s. 9126 (19); 1995 a. 268; 1997 a. 252; 2001 a. 16; 2003 a. 122.

***NOTE: Have I amended this paragraph as you wish? If I have, it appears that a statement concerning emergency protective placement under this paragraph is permitted to suffice as a petition for protective placement, in which case an exception to the requirements under s. 55.075 should be made for this paragraph. ✓

INSERT 92-2

***NOTE: Should this provision also include reference to petitions for protective services?

INSERT 92-14

***NOTE: Note that I added reference to s. 880.33 (4m), stats., to subs. (1) and (2).

INSERT
73A

SECTION 156. Initial applicability.

3 (1) EMERGENCY PROTECTIVE SERVICES OR EMERGENCY AND TEMPORARY PROTECTIVE
4 PLACEMENT. The treatment of sections 46.011 (2), 49.001 (5m), 49.45 (30m) (b), 51.15
5 (5), 51.40 (2) (a) 2., 51.42 (1) (b) and (3) (ar) 4. d., 51.437 (4) (c), 55.043 (4) (b), 55.05
6 (3), (4) (title), (a), (b), and (c), and (5) (c) 3., 55.06 (11) (a), (am), (ar), (b), and (d), and
7 (12) and 55.135 of the statutes first applies to emergency protective services or
8 emergency and temporary protective placements made on the effective date of this
9 subsection.
10

51.39,

2. and

46.279 (4)(e), (5),
46.10 (2)

55.01 (4g), (4t), and (4.)
55.02 (2)(b)
(6x)

50.06 (2) (d),
(e)

Provided
and

55.13 (2) and (3)

11 (2) PETITIONS FOR PROTECTIVE PLACEMENT OR PROTECTIVE SERVICES. The treatment
12 of sections 46.10 (2), ~~46.21 (2m), 46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.275 (4)~~
13 (b) 1., 46.279 (2), (4) (c), (d), and (e), and ~~(5), 46.283 (7) (b), 46.284 (7) (b), 46.286 (3)~~
14 (a) 3., ~~46.2895 (10),~~ 49.45 (30m) (b) and ~~(c) 2.,~~ 50.03 (5m) (c), 50.06 (2) (c) and (d), 51.15
15 (1) (a) 4., 51.20 (1) (a) 2. c., d., and e. and (am) and (1m), 51.39, 51.40 (2) (a) 1., ~~51.42~~
16 (3) (e), 51.437 (4) (b), 55.001, 55.01 (1d), ~~(1), (2), (3),~~ (4), (4g), (4t), (6), (6m), (6p), (6r),
17 (6v), and (6x), 55.02, 55.03, 55.04 (title) and (1), (2), (3), and (4), 55.043 (1) (a) (intro.),
18 1. and 3., (b) 1. and 2. a. and b. and (4) (a), 55.045, ~~55.05 (title), (2) (intro.), (a), (b),~~
19 (c) and (d), (3), and (5) (c) 3., 55.06 (title), (1) (intro.), (a), (b), (c), and (d), (2) (intro.),

55.05

(b) 2. and

55.055 (3)

and (b)

and

and (g) 1.

the renumbering and amendment of section 55.01 (4) of the statutes

and

1 (a), (b), (c), and (d), (3) (a), (b), and (c), (4), (5), (5m), (6), (7), (8) (intro.), (a), (b), (c),
 2 (9) (a), ~~(b), (c), (d), and (e)~~, ~~(10) (a) 1. and 2., (b) and (c)~~, (11) (b) and (c), ~~(14)~~, (15), (16),
 3 ~~(17)~~, and (18), ~~55.07~~, 55.075, 55.08, 55.09, 55.10, 55.11, 55.12, 55.13 (2) and (3), ~~55.14~~,
 4 ~~55.15, 55.16, 55.17, 55.18, 55.19, 55.22~~ (title), 165.85 (4) (b) 1d. b., 165.86 (2) (b),
 5 ~~301.01 (2)~~ (intro.), 609.65 (1) (intro.), ~~757.69 (1) (h)~~, ~~767.24 (7) (b)~~, ~~808.075 (4) (c) 1.~~,
 6 ~~2. and 3.~~, 809.30 (1) (b) 5. and (3), 813.123 (4) (a) (intro.) and 2., (5) (a) (intro.) and
 7 3. b., (6) (c), (7), and (11), ~~851.72 (11)~~, ~~880.33 (2) (a) 2., (3), and (7)~~, 880.331 (1), (4) (am), (ar), (dm), (dr), and (ds),
 8 and (5) (intro.), ~~880.38 (1)~~, 971.14 (6) (b), and 977.05 (4) (i) 8. of the statutes) and the creation of
 9 section 55.01 (4) (c) of the statutes first apply to petitions for protective placement
 10 or protective services brought on the effective date of this subsection.

11 (3) DETERMINATION OF RESIDENCE. The treatment of section 49.001 (8) of the
 12 statutes first applies to determinations of residence made under chapter 49 of the
 13 statutes on the effective date of this subsection.

14 ~~#~~ (4) DIAGNOSES OF SERIOUS AND PERSISTENT MENTAL ILLNESS. The treatment of
 15 sections 46.27 (6r) (b) 2., 46.972 (3) (a) and (b), 49.45 (6m) (i) 2. and (25) (am) 2. and
 16 5., 51.01 (3g) and (3s), 51.20 (7) (d) 1. (intro.) and b., 51.35 (4m) (intro.), 51.40 (2)
 17 (intro.), 51.421 (1), (2), and (3) (c), 51.67 (intro.) and (2), and 880.01 (7m) of the
 18 statutes first applies to diagnoses of serious and persistent mental illness made on
 19 the effective date of this subsection.

20 ~~#~~ (5) DIAGNOSES OF DEGENERATIVE BRAIN DISORDER. The treatment of sections
 21 46.286 (1) (intro.) and (3) (a) (intro.), 46.90 (1) (c) and (d), 51.01 (2g) (b) and (5) (a),
 22 880.01 (2), (4), (5), and (7m), 940.285 (1) ~~a.~~ b., and (e) (intro.), and 940.295 (1) (hm)
 23 and (t) (intro.) of the statutes first applies to diagnoses of degenerative brain disorder
 24 made on the effective date of this subsection.

55.001, 55.01 (iv), (2), ~~(3)~~
 and (6r), 55.06 (2) (c) and
 (11) (a), 55.08 (2) (b),

55.06 (2) (c)
 and (11)
 (a),
 55.08
 (2) (b)

49.43 (10v)

55.001, 55.01 (6v)

(3g)

close up

(6r) and

46.10(2), 51.10(4m)(a)(intro.),
51.10(8), 51.39,
LRB-4212/P3ins
DAK...:ch

INSERT 75A

3. and

55.06 (1)
(d) and (12)

1 (6) ADMISSIONS. The treatment of sections 55.05 (title), (a), (b) 1. and 2., (c)
2 (intro.), 1, and 2, and (d) 55.055 (2) (c) and (d) and (3) of the statutes first applies to
3 admissions made on the effective date of this subsection. (KEEP AS TYPED) and 880.38(1)

INSERT 75AA

4 (7) PETITIONS FOR GUARDIANSHIP. The treatment of sections 880.06 (1) and (2),
5 880.07 (1m) and (2m), 880.08 (1), 880.24 (3) (a) and (b), 880.33 (1), (2) (a) 1. and 2.,
6 (d), (e), (f), (3) (4m), (4r), (6) and (7), 880.34 (6), and 880.38 (1), (2) (3), and (4) of the
7 statutes first applies to petitions under section 880.07 of the statutes made on the
8 effective date of this subsection. and 880.33(4) (am), (ar), (dm), (dr), and (ds)

INSERT 75B

9 SECTION 157. Effective dates. This act takes effect on the day after
10 publication, except as follows:

11 (1) The treatment of sections 46.279 (2), (4) (e), (d), and (e) and (5), 49.45 (30m)
12 (b) and (c) 2., 55.001, 55.01 (4g) and (4t), 55.045, and 55.06 (5), and 55.06 (8) (intro.),
13 (9) (a), (b), and (c), (10) (a) 1. and 2. and (c) of the statutes takes effect on January 1,
14 2005.

and (11)(c)

, as affected by
this act,

^ **INSERT 10A**

x 1 **SECTION 1.** 49.43 (10v) of the statutes is created to read:

2 49.43 (10v) "Serious and persistent mental illness" has the meaning given in
3 s. 51.01 (14t). ✓

4 *****

INSERT 30A

5 *****NOTE: I have changed the definition of "developmentally disabled person" because, under this draft, it is used only once in ch. 55 (in s. 55.01 (1g), stats., which is not directly affected by this draft), whereas the terms "developmentally disabled" by itself and "individual alleged to be developmentally disabled" are used numerous times. Okay? ✓

INSERT 30B

INSERT 32-14A

6 *****NOTE: I have changed this definition for the following reasons: (a) Many uses of the term "protective placement" in this draft refer to a placement, rather than to the process by which the placement is ordered; (b) the former wording (referring to an individual who is "determined incompetent under ch. 880") is redundant of s. 55.06. More importantly, it is inconsistent with s. 55.06, because s. 55.06 refers to a minor who is alleged to be developmentally disabled for whom there has been no adjudication of incompetency under ch. 880; (c) the former wording is inconsistent with emergency protective placements, which are made without court orders and may be made for persons who may not have been adjudicated incompetent under ch. 880. Please review. This definition would likely require adjustments; for instance, the draft refers in numerous places to "protective placement and [or] court-ordered protective services;" this phrase would have to be changed to "court-ordered protective placement and [or] protective services". ✓

INSERT 31A

^ **INSERT 33-9**

7 **SECTION 2.** 55.01 (6t) of the statutes is created to read:

8 55.01 (6t) "Residence" means the voluntary concurrence of an individual's
9 physical presence with his or her intent to remain in a place of fixed habitation.
10 Physical presence is prima facie evidence of intent to remain.

^ **INSERT 33-12**

x 11 **SECTION 3.** 55.01 (6y) of the statutes is created to read: ✓

1 55.01 (6y) "Voluntary" means according to an individual's free choice, if
X 2 competent, or by choice of a guardian, if adjudicated incompetent. ✓

INSERT 34-14

3 *****
X *****NOTE: I have simplified par. (a) and returned in part to current law because the
wording concerning single-county departments and multicounty departments may
create confusion; if, for instance, a county has some single-county departments and some
multicounty departments, it is unclear how the designation would be made. Also, it is
unclear what happens if a county board designates a particular multi-county
department to have responsibility in its county, but the other county boards do not
designate that department to have responsibility in their counties. Please give this a
hard look and see if it does what you want. ✓

INSERT 32A

4 *****
X *****NOTE: I have repealed s. 55.05 (2) (c) because it is redundant to s. 55.05 (2)
(intro.) ✓

INSERT 32AA

5 **SECTION 4.** 55.05 (5) (title) of the statutes is renumbered 55.055 (title) and
6 amended to read:

7 **55.055 (title)** ADMISSIONS INITIALLY MADE WITHOUT COURT INVOLVEMENT. (B) (10CS)

History: 1973 c. 284; 1975 c. 393; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 135 s. 83 (3); 1985 a. 176; 1987 a. 161 ss. 7, 13m; 1987 a. 366; 1989 a. 200; 1991 a. 316; 1993 a. 187, 316, 445.

8 *****
X *****NOTE: I have changed this title because some of the provisions do have court
involvement; I think the point of the grouping of these provisions has to do with the fact
that when the admissions were initially made there was no court involvement; correct? ✓

INSERT 36A

9 *****
X *****NOTE: As written in s. 55.075 (4) (a), this par. (b) is an exception to the
requirement under par. (a) that the court must, unless it is inequitable, award payment
of the petitioner's costs from the assets of the person sought to be provided protective
placement or protective services. Therefore, it seems that the court can't have these
petitioner's costs paid from the person's assets. Is that the result that you want? ✓

INSERT 37A

X *****NOTE: This provision was proposed to be renumbered s. 55.075 (1) (b), but it does
not seem to fit there (s. 55.075 (1) is entitled "Who may petition," whereas this provision
is a limitation on the power of a guardian and a clarification of the guardian's authority.
I have renumbered it, instead, into s. 55.03 (Status of guardian). ✓

INSERT 37B

SECTION 5. 55.06 (2) (a) of the statutes is renumbered 55.08 (1) (a) and amended

to read:

55.08 (1) (a) ~~Has~~ The individual has a primary need for residential care and

custody;

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

SECTION 6. 55.06 (2) (b) of the statutes is renumbered 55.08 (1) (b) and amended

to read:

55.08 (1) (b) Except in the case of a minor who is alleged to be developmentally

disabled, the individual has either been determined to be incompetent by a circuit

court or has had submitted on the minor's behalf a petition for a guardianship;

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

INSERT 44A

****NOTE: Please check this provision very carefully; I have tried to make it consistent with the language of s. 55.16 (5) (a) 1. Is it a problem if both s. 55.12 (3) and (4), as referenced, refer to available resources or funds? I suppose it is possible that the professional making the evaluation and review under this paragraph would not know the extent of the county's resources or available funds.

INSERT 45A

****NOTE: Note my addition of "least restrictive manner"; this language conforms to ss. 55.16 (5) (a) 1. and 2. and 55.17 (3) (c) 1. and (4) (a) 1. and other provisions.

INSERT 45B

****NOTE: Note that I have changed the first sentence to be active, rather than passive, and to give county departments the responsibility to consider these factors.

INSERT 48A

****NOTE: Note that in both ss. 55.18 (1) (a) (intro.) and 55.19 (1) (a) (intro.) I required that the review include a visit to the individual. Okay?

INSERT 54A

(a) The individual who is the subject of the proceedings and the subject's individual's guardian at all times.

INSERT 54B

(c) Other persons only with the informed written consent of the subject individual as provided in s. 51.30 (2) or under an order of the court that maintains the records.

(2) If the subject individual is an adult who has been adjudged incompetent under ch. 880 or is a minor, consent for release of information from and access to the court records may be given only as provided in s. 51.30 (5).

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

INSERT 54C

INSERT 44-10

****NOTE: Although this paragraph and the amendment to s. 880.06 (1), stats., suggest that venue is in the county of residence (see the ****NOTE under s. 55.06 (3) (c), as renumbered and amended) or, in some cases, physical presence, neither provision actually explicitly states that. I have explicitly required the court to determine that venue lies in the county in which the petition is filed unless the court determines another county is appropriate. I also have changed this paragraph to make it nearly identical to language in s. 880.06 (1), stats. Please review. Also, I don't understand the language about "the motion for change of venue." Does its use mean that that is the way a county or party "objects" to the court's finding? Please see my numerous other questions in the Drafter's Note.

INSERT 44-25

****NOTE: I have removed language in s. 55.08 (1) (intro.) and (2) (intro.) that specifies what the petition must allege, because that more properly is in s. 55.075 (2) (a), which specifies what the petition must contain.

INSERT 56A

1 (2) ATTENDANCE. The individual sought to be protected shall be present at the
 2 hearing on the petition unless, after a personal interview, the guardian ad litem
 3 certifies in writing to the court that the individual is unwilling to participate or
 4 unable to participate in a meaningful way or certifies other specific reasons why the
 5 individual is unable to attend. If, however, the individual is unable to attend a
 6 hearing ^{only} because of physical inaccessibility or lack of transportation, the court shall,
 7 if requested by the individual, the individual's guardian ad litem, adversary counsel,
 8 or other interested person, hold the hearing in a place where the individual may
 9 attend.

is able to ✓

***NOTE: This revised provision eliminates some redundancies and mirrors language, under this draft, in s. 880.08 (1). ✓

X

10

INSERT 56AA

INSERT 47-19

***NOTE: Please see the ***NOTE under s. 55.19 (3) (d) (intro.). ✓

X

INSERT 50-24

***NOTE: As originally proposed, this subsection referred to responsibility of the county department or agency for the place of legal residence of the individual.; I think what is meant is a reference to a county department or agency that has responsibility where the individual legally resides; is that correct? Is "legally" necessary? ✓

X

11

INSERT 56B

INSERT 61-7

***NOTE: Please review my changes to the first sentence of sub. (9), especially the change of "may" to "shall" and the change from "belief that the person is not in compliance" to "noncompliance of the individual." The latter change is because the condition that must be fulfilled before the corporation counsel can act is expressed as a matter of facts rather than of beliefs (i.e., "if an individual is not in compliance" rather than "if the corporation counsel believes that an individual is not in compliance"). ✓

X

12

INSERT 56BB

INSERT 62-10

1 (3) CONSENT OF GUARDIAN REQUIRED. No individual may be transferred under
2 this section without the written consent of the individual's guardian, except in the
3 case of an emergency transfer under sub. (5) (b). ✓

4 (4) CONSENT OF COUNTY DEPARTMENT. No individual may be transferred under
5 this section to a facility that is more costly to the county without the written consent
6 of the county department, except in the case of an emergency transfer under sub. (5) ✓
7 (b).

INSERT 62-17

8 *****NOTE: I removed the right of the guardian to petition the court for a hearing on
the transfer; under sub. (3), the guardian has to approve a nonemergency transfer before
it can be made. ✓

INSERT 63-2

8 *****NOTE: Note that I added emergency transfer, so that a person, by petition, may
also object to that. Please see also subs. (5) (b) and (8) (intro.). Okay? ✓

8 *****

INSERT 56BBB

INSERT 63-21

9 *****NOTE: Please review my change to sub. (8) (a); without these modifications, I
don't understand the difference between par. (a) and par. (b). ✓

9 *****

INSERT 56C

9 *****NOTE: Note also that I changed the cross-reference from s. 55.08 (1) to sub. (8);
isn't the court supposed to support or deny the transfer based on the standard for transfer
rather than based on the standards for protective placement, since the transfer is from
one protective placement to another? ✓

INSERT 66-11

9 *****NOTE: I have revised this provision, s. 55.16 (5) (a) (intro.) and (b), and 55.17
(3) (intro.) and (4) (a) (intro.) and (b) because the proposed language appeared to permit
the court to make no finding and because these introductory provisions introduce a series
of orders, rather than findings. ✓

INSERT 66-16

9 *****NOTE: The petitions to which the orders under s. 55.16 (4) (a) and (b) respond
are not required to allege that the requirements of s. 55.12 (3), (4), and (5) have not been
met. Should they be? If so, see also s. 55.16 (5) (a) 1. and 2., which also have this problem. ✓

INSERT 71-23

****NOTE: Note that I moved to s. 55.18 (1) (a) 1. the material proposed for (1) (c) that describes the information that the report must include; I did the same with s. 55.19 (1) (a) 1. and the material proposed for (1) (c). *s. 55.19*

INSERT 74-2

****NOTE: Please see the ****NOTE under s. 55.19 (2) (b) (intro.)

INSERT 74-10

****NOTE: Please see the ****NOTE under s. 55.19 (2) (b) 6.

INSERT 74-11

****NOTE: Please see the ****NOTE under s. 55.19 (2) (c).

INSERT 75-6

****NOTE: Please see the ****NOTE under s. 55.19 (2) (g).

INSERT 76-5

1 (br) The court shall order that the county department obtain any other
2 necessary information with respect to the individual.

****NOTE: Please see the ****NOTE under s. 55.19 (3) (br).

INSERT 76-15

****NOTE: Please see the ****NOTE under s. 55.19 (3) (d).

3 *****

INSERT 57A

INSERT 82-4

****NOTE: Section 55.10 (4) states a series of rights that are to apply to all hearings under ch. 55 except transfers under s. 55.15. The series of rights under s. 55.19 (2) (b) includes the right to a "full due process hearing." I have taken this to mean a hearing under the requirements of s. 55.10 (4). Correct? If so, should the G.A.L. inform the individual and guardian about what the requirements under s. 55.10 (4) provide for the individual? See also my ****NOTE under s. 55.19 (3) (d) (intro.).

INSERT 82-5

****NOTE: Note that I required that the information also be provided to the guardian. Okay?

4 *****

INSERT 57B

INSERT 82-23

****NOTE: Note my change to this paragraph; it seems illogical that the G.A.L. would not also have to certify that he or she complied with pars. (a) and (e).

INSERT 84-10

****NOTE: *County of Dunn v. Goldie H.*, 245 Wis2d 538, 629 NW2d 189 (2001) held that, in determining whether to continue a protective placement, a circuit court must hold

either a full due process hearing or a summary hearing, as described in the opinion, and must make factual findings to support the need for continuation of the protective placement. The court described a summary hearing as a brief hearing on the record; held in court or held by other means, such as a telephone or video conference; not an evidentiary hearing; and not requiring the presence of the person whose protective placement is in question. The court did not describe a "full due process" hearing, and that term is not used elsewhere in the statutes. I have incorporated the requirements for a summary hearing in par. (d) and have, in lieu of using the term "full due process hearing," referred to the requirements under s. 55.10 (4). Please review.

INSERT 65A

INSERT 88-12A

SECTION 7. 880.08 (1) of the statutes is amended to read:

880.08 (1) ~~INCOMPETENTS~~ PROPOSED WARD OR WARD. A petitioner shall have notice served of a petition for appointment or change of a guardian upon ~~the a~~ proposed ~~incompetent~~ ward or ward and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If ~~such~~ the proposed ~~incompetent~~ ward or ward is in custody or confinement, a petitioner shall have notice served by registered or certified mail on the proposed ~~incompetent's~~ ward's or ward's custodian, who shall immediately serve it on the proposed ~~incompetent~~ ward or ward. The custodian shall inform the proposed ~~incompetent~~ ward or ward of the complete contents of the notice and, certify ~~thereon~~ on it that the custodian served and informed the proposed ~~incompetent~~ (individual), and ~~returned~~ return the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice. ~~The court shall cause the proposed incompetent, if able to attend, to be produced~~ ward or ward shall be present at the hearing. ~~The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court the~~ that the proposed ward or ward is unwilling to participate or unable to participate in a meaningful way or certifies other specific

ward or ward

is able to

only

[Handwritten signature]

1 reasons why the ~~person~~ proposed ward or ward is unable to attend. If, however, the

2 ~~person~~ proposed ward or ward is unable to attend a hearing because of physical

3 inaccessibility or lack of transportation, the court shall ~~hold the hearing in a place~~

4 ~~where the person may attend,~~ if requested by the proposed ward or ward, guardian

5 ad litem, adversary counsel or other interested person. ~~Such,~~ hold the hearing in a

6 place where the proposed ward or ward may attend. The notice shall also be given

7 personally or by mail at least 10 days before the hearing to the proposed

8 incompetent's ward's or ward's counsel, if any, guardian ad litem, presumptive adult

9 heirs or other persons who have legal or physical custody of the proposed

10 ~~incompetent~~ ward or ward whose names and addresses are known to the petitioner

11 or can with reasonable diligence be ascertained, to any governmental or private

12 agency, charity or foundation from which the proposed ~~incompetent~~ ward or ward is

13 receiving aid and to such other persons or entities as the court may require. The

14 court shall then proceed under s. 880.33.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.08; 1973 c. 284; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); 1975 c. 218, 393, 421; 1977 c. 449 s. 497; 1981 c. 379; 1989 a. 141; 1993 a. 486; 1999 a. 85.

****NOTE: Certain language in this provision was not included in the changes made to s. 880.08 (1) in the proposal; I have restored it. Note that I have included "or ward" because the notice is of a petition for appointment or change of an appointed guardian. ✓

X

15

INSERT 70A

****NOTE: Please note that I added the right of the guardian to receive an evaluation specified in s. 55.11 (2) that right is specified in s. 55.11 (3). Please also note that I added the right of the guardian to secure and present a report on an independent evaluation under s. 880.33 (2) (b), stats.--that provision doesn't really speak to the right of the guardian to receive a copy of the evaluation, as had been specified in the material proposed. ✓

X

16

INSERT 73A

17 *auto number* → # (B) TRANSITION; ORDERS FOR PROTECTIVE PLACEMENT AND PROTECTIVE SERVICES. ✓

18 Notwithstanding the treatment of section 55.06 (9) of the statutes by this act, all

55.05 and

[Handwritten scribble]
 (A) Sec. #. Nonstatutory provisions. (B)

2003 stats

section

55.05(2)(d) or (11)(c)

orders issued under section 55.06 (9) (a), 2003 stats., in effect on the effective date of this subsection, remain in effect until modified or terminated by a court order under section 55.16, 55.17, 55.175, 55.18, or 55.19 of the statutes, as created by this act.

or sections 55.175 of the statutes, as affected by this act

or 55.20

INSERT 75A

(5) REQUEST FOR VOLUNTARY PROTECTIVE SERVICES. The treatment of sections 55.05 (title) and (2) (intro.), (a), (b), and (c) and (3) of the statutes first applies to a request made on the effective date of this subsection.

INSERT 75AA

55.09(3), 55.10(4)(a), 55.16(2)(c) 2., 55.19(1)(a) i.e. 1. and 2., and (3)(e) 1. and 2.,

(7) INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION. The treatment of sections 50.02 (2) (ad), 51.03 (3) (a) 6., 55.05 (2) (d), 55.14, 609.65 (1) (intro.), 880.01 (7m) and (8m), 880.07 (1m), 880.33 (1), (2) (a) 1. and 2., (d), (e), and (f), (4m), and (4r), 880.34 (6), and 880.38 (2) of the statutes first applies to a petition for the involuntary administration of psychotropic medication brought on the effective date of this subsection.

(8) ANNUAL REVIEW OF ORDER FOR PROTECTIVE PLACEMENTS. The treatment of sections 49.45 (30m) (c) 2., 55.02 (2) (b) 3., 55.075 (3), 55.06 (10) (a) 1., 55.18, 808.075 (4) (c) 1., 851.72 (11), 880.331 (1) and (5) (intro.), and 880.38 (3) of the statutes first applies to a review conducted on the effective date of this subsection.

(9) ANNUAL REVIEW OF ORDERS FOR INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION. The treatment of sections 55.06 (10) (a) 1., 55.19, and 851.72 (11) of the statutes first applies to a review conducted on the effective date of this subsection.

1 (10) ~~TRANSFER OF PROTECTIVE PLACEMENT~~. The treatment of sections 20.435 (2)
 2 (gk), 51.39, 55.06 (9) (b), (c), (d), and (e), 55.15, and 808.075 (4) (c) 2. of the statutes
 3 first applies to a transfer of ~~protective placements~~ made on the effective date of this
 4 subsection.

5 (11) MODIFICATION OF ORDERS FOR PROTECTIVE PLACEMENT OR PROTECTIVE SERVICES.
 6 The treatment of sections 55.16 and 808.075 (4) (c) 1. of the statutes first applies to
 7 a petition for modification of an order for protective placement or protective services
 8 brought on the effective date of this subsection.

9 (12) TERMINATION OF PROTECTIVE PLACEMENTS OR PROTECTIVE SERVICES. The
 10 treatment of sections 55.06 (10) (b) and (c) and (14), 55.17, 808.075 (4) (c) 1., and
 11 880.331 (1) of the statutes first applies to a petition for termination of an order for
 12 protective placement or protective services brought on the effective date of this
 13 subsection.

14 *****

INSERT 75B

15 (14) GUARDIANSHIP; CHANGE OF RESIDENCE. The treatment of sections 880.06 (2)
 16 of the statutes first applies to a written statement filed on the effective date of this
 17 subsection.

18 (15) GUARDIANSHIP; CHANGE OF GUARDIAN. The treatment of sections 880.08 (1)
 19 of the statutes first applies to a petition filed on the effective date of this subsection.

20 (16) GUARDIANSHIP; VOLUNTARY ADMINISTRATION OF MEDICATION. The treatment
 21 of sections 880.38 ~~(2)~~ and (4) of the statutes first applies to the voluntary
 22 administration of medication made on the effective date of this subsection.

23 (17) RECORDS. The treatment of sections 46.21 (2m) (c), 46.215 (1m), 46.22 (1)
 24 (dm), 46.23 (3) (e), 46.283 (7) (b), 46.284 (7) (b), 46.2895 (10), 51.42 (3) (e), 51.437 (4r)

1 (b), 55.06 (17), 55.22 (title), 767.24 (7) (b), and 880.33 (6) of the statutes first applies
2 to a record made on the effective date of this subsection.

3 *****

INSERT D-NOTE

4 8. Several different problems exist with respect to s. 55.075 (5):

5 a. There is no definition of "county of residence;" therefore, the exception to that
6 term in s. 55.075 (5) (a) (renumbered and amended from s. 55.06 (3) (c), stats.) is
7 unclear. Sections 49.001 (6) and (8), stats., define "residence" and "voluntary,"
8 respectively, and these definitions are used as the underpinning for the definitions
9 of "residence," "legal residency," and "county of residence" in s. 51.01 (14), stats., and
10 for provisions concerning determination of residence and determination of county of
11 responsibility under s. 51.40 (2), stats. Ch. 55, stats., and this draft have no
12 corresponding definitions.

13 b. In the draft, s. 55.075 (5) (b) appears to require a court to refer an issue of
14 venue to DHFS for determination under s. 51.40 (2) (g), stats. But DHFS does not
15 determine venue under that statute; it determines the county of responsibility, based
16 on the county of residence, as specified in s. 51.40 (2) (intro.), stats.

17 c. The draft in s. 55.075 (5) (b) states that a court in which a subsequent petition
18 is filed shall, upon being satisfied of an earlier filing in another court, summarily
19 dismiss the petition; which petition is the court dismissing, the first or the
20 subsequent one? Also, what standard is the court using to make the determination
21 of venue?

22 d. Section 51.40 (2) (intro.), stats., provides for the determination of
23 responsibility for funding for the provision of services under chs. 46, 51, and 55 *only*
24 for individuals aged 18 or older with developmental disability or chronic mental

1 illness in state facilities or nursing homes. Does this cover all individuals for whom
2 a petition of protective placement might be brought under s. 55.075 (1) (a) and filed
3 under s. 55.075 (5) (a) for whom a dispute may arise about "county of responsibility"?

4 To address these problems, I have done the following:

5 a. Changed the title of s. 55.075 (5), because s. 55.075 (5) (a) is not just about
6 venue, as such.

7 b. Defined, for ch. 55, "residence" in s. 55.01 (6t) to have the meaning under s.
8 49.001 (6), stats., and "voluntary" in s. 55.01 (6y) to have the meaning under s. 49.001
9 (8), stats.; these definitions are very slightly changed from those in ch. 49. The
10 meaning of "county of residence" should "flow" from these definitions.

11 c. Clarified, in s. 55.075 (5) (b), that a court in which a subsequent petition is
12 filed shall, upon being satisfied of an earlier filing in another court, summarily
13 dismiss the *subsequent* petition.

14 d. Clarified, in s. 55.075 (5) (b), that if an objection to the court's finding of venue
15 is made, the court shall refer the issue for a determination of county of responsibility
16 under s. 51.40 (2) (g), stats., and that determination of county of responsibility shall
17 be accepted by the court and the objecting county or party as a determination of
18 venue.

19 e. In order to avoid a determination of venue from "ping-ponging" back and
20 forth between counties, clarified in s. 55.075 (5) (b), that the court in which the
21 petition is *first* filed shall determine venue.

22 f. Amended s. 51.40 (2) (g) 1., stats., to permit consideration by DHFS of an
23 issue of county of responsibility referred to it by a court under s. 55.075 (5) (b). This,
24 of course, does not resolve the problem with s. 51.40 (2) (intro.) that I noted above.

1 Please review all of this. There is a remaining problem; the definition of ✓
 2 "residence" states that physical presence is prima facie evidence of intent to remain;
 3 this seems to be make the amendment to s. 55.075 (5) (a) unnecessary. In places in
 4 the draft in which the undefined term "protectively place" is used, I have substituted
 5 "provide protective placement," a construction that is parallel to the frequently-used
 6 term "provide protective services."

7 9. Please note that bill section numbers, as referred to in the Legislative
 8 Council notes, may now be inaccurate. ✓

9 10. Because "protectively place" is not defined and "protective placement" is,
 10 I have changed the term "protectively place" to "provide protective placement"
 11 throughout. This term also parallels the term "provide protective services," which
 12 is currently frequently used. ✓

13 11. There is no provision that addresses annual review of protective services
 14 orders, other than orders for psychotropic medication; is this your intent? ✓

12. Please note that in several provisions in the
 draft ~~at~~ which reference requirements under s. 55.12
 (3), (4) and (5), I have removed language ~~requiring~~
 that requires a protective placement or protective
 services to be consistent with the individual's
 needs; that is because ~~both s. 55.12 (3) and (4)~~ the
 language is redundant to s. 55.12 (3) and (4), which
 require that the individual's needs be considered. ✓

13. "Treatment facility" is defined under s. 55.01 (6x).
 I cannot find where it is used in the draft. ✓