State of Wisconsin
2005 – 2006 LEGISLATURE

LRB-0026/P2
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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 55.01 (3), 55.04 (title) and (1) to (3), 55.05 (2) (c), 55.05 (2) (d), 55.05 (5) (a), 55.06 (2) (intro.), 55.06 (9) (b), 55.06 (9) (c), 55.06 (9) (d), 55.06 (9) (e), 55.06 (10) (c), 55.06 (15), 880.07 (1m), 880.33 (2) (d), 880.33 (2) (e), 880.33 (4m), 880.33 (4r) and 880.34 (6); ***to renumber*** 940.285 (1) (a); ***to renumber and amend*** 46.90 (1) (d), 51.01 (3g), 55.01 (4), 55.03, 55.04 (4), 55.05 (4) (title) and (a), 55.05 (4) (b), 55.05 (4) (c), 55.05 (5) (title), 55.05 (5) (b) 1., 55.05 (5) (b) 2., 55.05 (5) (c) (intro.), 55.05 (5) (c) 1., 55.05 (5) (c) 2., 55.05 (5) (c) 3., 55.05 (5) (d), 55.06 (1) (intro.), 55.06 (1) (a), 55.06 (1) (b), 55.06 (1) (c), 55.06 (1) (d), 55.06 (2) (a), 55.06 (2) (b), 55.06 (2) (c), 55.06 (2) (d), 55.06 (3) (a), 55.06 (3) (b), 55.06 (3) (c), 55.06 (4), 55.06 (5), 55.06 (5m), 55.06 (6), 55.06 (7), 55.06 (8) (intro.), 55.06 (8) (a), 55.06 (8) (b), 55.06 (8) (c), 55.06 (9) (a), 55.06 (10) (a) 1., 55.06 (10) (a) 2., 55.06 (10) (b), 55.06 (11) (a), 55.06 (11) (am), 55.06 (11) (ar), 55.06 (11) (b), 55.06 (11) (c), 55.06 (11) (d), 55.06 (12), 55.06 (14), 55.06 (16), 55.06 (17), 55.06 (18), 55.07, 880.01 (5), 880.01 (7m), 880.24 (3) (a), 880.24 (3) (b), 940.285 (1) (b) and 940.295 (1) (hm); ***to amend*** 20.435 (2) (gk), 46.011 (2), 46.10 (2), 46.21 (2m) (c),

46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.27 (6r) (b) 2., 46.275 (4) (b) 1., 46.279 (2), 46.279 (4) (c), 46.279 (4) (d), 46.279 (4) (e), 46.279 (5), 46.283 (7) (b), 46.284 (7) (b), 46.286 (1) (intro.), 46.286 (3) (a) (intro.), 46.286 (3) (a) 3., 46.2895 (10), 46.90 (1) (c), 49.001 (5m), 49.001 (8), 49.45 (6m) (i) 2., 49.45 (25) (am) 2., 49.45 (30m) (b), 49.45 (30m) (c) 2., 50.03 (5m) (c), 50.06 (2) (c), 51.01 (2g) (b), 51.01 (3s), 51.01 (5) (a), 51.03 (3) (a) 6., 51.10 (4m) (a) (intro.), 51.10 (8), 51.15 (1) (a) 4., 51.15 (5), 51.20 (1) (a) 2. c., 51.20 (1) (a) 2. d., 51.20 (1) (a) 2. e., 51.20 (1) (am), 51.20 (1m), 51.20 (7) (d) 1. (intro.), 51.20 (7) (d) 1. b., 51.35 (4m) (intro.), 51.39, 51.40 (2) (intro.), 51.40 (2) (a) 1., 51.40 (2) (a) 2., 51.42 (1) (b), 51.42 (3) (ar) 4. d., 51.42 (3) (e), 51.421 (1), 51.421 (2), 51.421 (3) (c), 51.437 (4) (c), 51.437 (4r) (b), 51.67 (intro.), 51.67 (2), 55.001, 55.01 (2), 55.01 (4g), 55.01 (4t), 55.043 (1) (a) (intro.), 55.043 (1) (a) 1. and 3., 55.043 (1) (b) 1., 55.043 (1) (b) 2. a. and b., 55.043 (4) (a), 55.043 (4) (b), 55.045, 55.05 (title), 55.05 (2) (intro.), 55.05 (2) (a), 55.05 (2) (b), 55.05 (3), 165.85 (4) (b) 1d. b., 165.86 (2) (b), 301.01 (2) (intro.), 560.9811 (1), 560.9811 (2), 609.65 (1) (intro.), 757.69 (1) (h), 767.24 (7) (b), 808.075 (4) (c) 1., 808.075 (4) (c) 2., 808.075 (4) (c) 3., 809.30 (1) (b) 5., 809.30 (3), 813.123 (4) (a) (intro.), 813.123 (4) (a) 2., 813.123 (5) (a) (intro.), 813.123 (5) (a) 3. b., 813.123 (6) (c), 813.123 (7), 813.123 (11), 880.01 (2), 880.01 (4), 880.06 (1), 880.08 (1), 880.33 (1), 880.33 (2) (a) 1., 880.33 (2) (a) 2., 880.33 (3), 880.33 (6), 880.33 (7), 880.331 (1), 880.331 (5) (intro.), 880.38 (1), 880.38 (2), 880.38 (3), 940.285 (1) (e) (intro.), 940.295 (1) (t) (intro.) and 971.14 (6) (b); ***to repeal and recreate*** 55.02; and ***to create*** 49.43 (10v), 50.02 (2) (ad), 50.06 (2) (d), 55.01 (1d), 55.01 (1v), 55.01 (4) (c), 55.01 (6), (6m), (6p) and (6r), 55.01 (6t), 55.01 (6v), 55.01 (6x), 55.01 (6y), 55.055 (1) (c), 55.055 (1) (d), 55.055 (2), 55.075, 55.08, 55.09, 55.10, 55.11, 55.12, 55.13 (2) and (3), 55.135 (title), 55.14, 55.15, 55.16,

55.17, 55.18, 55.19, 851.72 (11), 880.01 (8m), 880.07 (2m), 880.33 (2) (f), 880.331 (4) (am) and (ar), 880.331 (4) (dm), (dr) and (ds), 880.38 (4) and 977.05 (4) (i) 8. of the statutes; **relating to:** protective placements and protective services, involuntary administration of psychotropic medication, and requiring the exercise of rule–making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

FE-S/L

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

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

Voluntary Admission of an Incompetent Person to an Inpatient Treatment Facility

Under current law, an evaluation that a person is mentally ill, developmentally disabled, alcoholic, or drug dependent and has the potential to benefit from inpatient care, treatment, or therapy is a criterion for voluntary admission to an inpatient treatment facility. An adult who desires admission to an inpatient treatment facility and whose admission is made through the DHFS or through a county department of community programs or developmental disabilities services may be admitted after applying, if the treatment director of the facility (or, if appropriate, the director of a center for the developmentally disabled) and the county department approve. An adult who desires admission to a state inpatient treatment facility may be admitted with the approval of the treatment facility director and the director of the appropriate county department. If the admission is approved in either of these ways, an adult may also be admitted to an inpatient treatment facility if he or she applies in writing or if the facility physician advises the person of certain rights, responsibilities, benefits, and risks of admission. If an admitted person does not sign a voluntary admission application within 7 days after admission, a hearing is held to determine whether the patient must remain as a voluntary patient.

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

This bill also authorizes the voluntary admission to an inpatient treatment facility of an adult who has been adjudicated incompetent if his or her guardian consents to the admission and if the procedures requiring an explanation by a physician of the rights, responsibilities, risks, and benefits of admission and requiring a hearing after 7 days are followed. Further, the bill authorizes voluntary admission of any adult under the procedures described above without also requiring admission through DHFS or a county department or approval of the county department or the treatment facility director.

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

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

If a petition is brought before a court, an individual who is found to meet one of several standards may be involuntarily committed for up to 6 months and may be subject to subsequent successive orders of commitment of up to one year each. For the involuntary commitment, a detained individual may automatically be appointed an attorney; receives notice of hearings and a copy of the petition and detention order; receives a written statement of his or her right to an attorney, and, if requested more than 48 hours prior to the final hearing, a jury trial; receives written notice of the standard under which he or she may be committed; and receives written notice of the right to a probable cause hearing within 72 hours after arrival at the detaining facility. An individual who is not detained receives written service of the documents and an oral explanation of his or her rights.

Involuntary commitment may not be made unless the court finds, after a hearing, that there is clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous. Procedures under the hearing must include the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross–examine witnesses, and the right to remain silent.

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

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

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

prohibits the involuntary transfer of protectively placed persons to a mental health treatment facility unless standards and procedures under the mental health laws concerning emergency detention or involuntary commitment are applied.

Definition and Terminology Changes

Current law, under s. 55.01 (3), defines "infirmities of aging" as "organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her care or custody". This bill replaces the definition of "infirmities of aging" with a definition of "degenerative brain disorder". This definition is considered to be a more accurate reference to the types of organic brain disorders such as Alzheimer's disease and Parkinson's disease, which are not necessarily caused by the aging process.

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

Under current law, certain persons with chronic mental illness may be eligible for protective placement or services under ch. 55. The term "chronic mental illness" is defined in s. 51.01 (3g) as a mental illness which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, which may lead to an inability to maintain stable adjustment and independent functioning without long–term treatment and support and which may be of lifelong duration. Under current law, "chronic mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include infirmities of aging or a primary diagnosis of mental retardation or of alcohol or drug dependence. The term is not defined in ch. 55, although it is used in that chapter.

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

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

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

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

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

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

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

DHFS and County Responsibilities in Ch. 55 System

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

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

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

primary role in providing protective services and protective placement in Wisconsin. The bill also repeals the specific listing of types of protective services and creates a new definition of "protective services".

Admissions Without Court Involvement

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

This bill does the following:

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

2. Creates a new provision that allows a guardian of a person under a guardianship that was imposed in another state to consent to admissions under current s. 55.05 (5) (b) (which is renumbered to s. 55.055 (1) in the bill) if the ward is currently a resident of Wisconsin, and if a petition for guardianship and protective placement is filed in Wisconsin within 60 days of the person's admission.

3. Creates a new provision that allows a Wisconsin resident guardian of a person who has been found incompetent in, and resides in, another state to consent to admissions under current s. 55.05 (5) (b) (which is renumbered to s. 55.055 (1) in the bill) if the guardian intends to move the ward to Wisconsin within 30 days of the consent to the admission. A petition for guardianship and protective placement must be filed in Wisconsin within 60 days of the person's admission to the Wisconsin facility.

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

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

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

2. Attempt to have the person released within 72 hours if the protest is not withdrawn and necessary elements of s. 55.06 (2) or (11) (renumbered, respectively, to s.

55.08 and s. 55.135 in the bill) are not present and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.06 (11) (renumbered to s. 55.135), relating to emergency protective placement, if all elements are present and emergency placement in that facility or another facility is necessary or file a petition for protective placement under s. 55.06 (2) (renumbered to s. 55.08). The court, with the permission of the facility, may order the person to remain in the facility pending the outcome of the protective placement proceedings.

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

The bill codifies the decision of the Wisconsin Supreme Court in *Agnes T. v. Milwaukee County*, 189 Wis. 2d 520, 525 N.W.2d 268 (1995). In that case, the court stated that a guardian may not consent to the continued residence of a person in a nursing home licensed for 16 or more beds without a protective placement order and that upon appointing a guardian for an incompetent person in a nursing home licensed for 16 or more beds, the court must hold a protective placement hearing. The court specified that, when making a placement determination for such a person, a court may consider whether moving the person would create a serious risk of harm to that person.

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

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

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

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

Fees and Costs of Petition Under Ch. 55

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

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

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

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

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

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

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

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

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

Time Limit for Protective Placement Hearing

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

Attendance at Hearing of Person Sought to be Protected

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

The bill deletes language stating that the person sought to be protectively placed is presumed to be able to attend the hearing. The bill provides that the person sought to be protected shall be present at the hearing unless, after a personal interview, the guardian ad litem certifies in writing to the court specific reasons why the person is unable to attend or certifies in writing that the person is unwilling to participate or is unable to participate in a meaningful way. The bill also provides that, if the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court must hold the hearing in a place where the person may attend, if requested by the person sought to be placed, guardian ad litem, adversary counsel. This provision is similar to provisions which currently exist in ch. 880, relating to appointment of a guardian for a person alleged to be incompetent. The bill specifies, however, that the court is *not* required to hold the hearing in the presence of the person sought to be placed if the guardian ad litem, after a personal interview with the person, certifies in writing to the court that the person is unwilling to participate or unable to participate in a meaningful way.

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

Procedural Rights in Ch. 55 Proceedings

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

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

1. The right to counsel.
2. The right to a jury trial.
3. The right of the person sought to be placed, his or her attorney and guardian ad litem to present and cross–examine witnesses.
4. The right to a copy of any medical, psychological, social, vocational, or educational evaluation of the person sought to be placed.

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

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

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

Right to an Independent Evaluation in Ch. 55 Proceedings

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

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

Duties of Guardian ad Litem in Ch. 55 Proceedings

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

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

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

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

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

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

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

Rights of "Interested Persons" in Ch. 55 Proceedings

Under current law, under s. 55.01 (4), an "interested person" is defined as "any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the person's welfare".

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

This bill codifies the Wisconsin Court of Appeals' decision in *Coston v. Joseph P.*, 586 N.W.2d 52 (Ct. App. 1998), by providing that an interested person may participate in the hearing on the guardianship and protective placement petition at the court's discretion. In that case, 2 interested persons, who were relatives of the subject of the petition, asserted that they had a right to participate in the hearing. The court disagreed, saying that the rights of interested persons to participate in guardianship and protective placement hearings are specific and limited. However, the court also stated that circuit courts are not foreclosed from allowing for the participation of interested persons, if the court decided to exercise its discretion to allow interested persons to participate to the extent it would deem appropriate.

Procedures for Protective Services Order

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

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

Procedures for Emergency Protective Services

Under current law, s. 55.05 (4) provides that emergency protective services may be provided for not more than 72 hours when there is reason to believe that if the services are not provided, the person entitled to the services or others will incur a substantial risk of serious physical harm. No procedures are specified in the statute for obtaining a court order for emergency protective services.

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

Emergency Protective Placements

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

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

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

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

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

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

Under current laws relating to guardianship, a petition for guardianship of a person who is alleged to be incompetent may further allege that the person is not competent to refuse psychotropic medication and that the psychotropic medication is, under several criteria, necessary. If the petition contains these allegations, and if, at hearing, the court finds that the person is not competent to refuse psychotropic medication and that the medication is necessary, the court must appoint a guardian to consent to or refuse the medication on behalf of the person and order development of a treatment plan, including psychotropic medication, for the person. If the person substantially fails to comply with the treatment plan and if certain conditions are met, the court may authorize the person's guardian to consent to the forcible administration of psychotropic medication to the person.

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

Involuntary Administration of Psychotropic Medication

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

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

enable administration of psychotropic medication; ~~or~~ and requiring a person to take psychotropic medication as a condition to receiving privileges or benefits.

Petition

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

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

2. The person is not competent to refuse psychotropic medication. "Not competent to refuse psychotropic medication" means that as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment or the individual is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to treatment to his or her medical or psychiatric condition in order to make an informed choice as to whether to accept or refuse psychotropic medication.

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

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

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

The bill requires a petition for involuntary administration of psychotropic medication to include a written statement signed by a physician who has personal knowledge of the person that provides general clinical information regarding the appropriate use of psychotropic medication for the person's condition and specific data indicates that the person's current symptoms necessitate the use of the psychotropic medication.

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

Guardian ad Litem Report

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

Appointment of Legal Counsel

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

Independent Evaluation

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

Court Order

The bill provides that the court may authorize a guardian to consent to involuntary administration of psychotropic medication to a ward and may order involuntary administration of psychotropic medication to the person as a protective service, with the guardian's consent, if the court or jury finds by clear and convincing evidence that the requirements for involuntary administration of psychotropic medication established in the bill have been met, psychotropic medication is necessary for treating the specific condition outlined in the physician's statement and all other requirements for ordering protective services under ch. 55 have been met.

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

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

Enforcement

The bill specifies that if a person who is subject to an order for involuntary administration of psychotropic medication refuses to take the medication and it is necessary for the person to be transported to an appropriate facility so that the person

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

Annual Review of Order Authorizing Involuntary Administration of Psychotropic Medication

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

County Department Review and Report

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

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

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

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

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

1. File a report of the review with the court that issued the order.
2. File with the court a petition for annual review of the order.
3. Provide the report to the individual and the individual's guardian.

The report must contain information on all of the following:

1. Whether the individual continues to meet the standards for protective services.
2. Whether the individual is competent to refuse psychotropic medication as set forth in s. 55.14 (1) (b). not
3. Whether the individual continues to refuse to take psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not in the best interests of the individual as set forth in s. 55.14 (3) (c).

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

5. Whether the individual continues to meet the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e.

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

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

Responsibilities of the Guardian Ad Litem

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

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

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

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

b. The right to appointment of legal counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

Court Review of Reports, Hearing, and Order

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

1. Performance of an independent evaluation of the physical, mental, and social condition of the individual that are relevant to the issue of the continued need for the order. If the court determines that an independent evaluation is necessary, the evaluation shall be performed at the expense of the individual unless the individual is

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

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

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

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

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

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

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

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

4. Holding of a full due process hearing.

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

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

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

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

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

1. Order the continuation of the order. The court shall make this order if it finds that the individual continues to meet the standards for involuntary administration of psychotropic medication. The court must include the information relied upon as a basis for the order and make findings based on the factors set forth in s. 55.14 (3) in support of the need for continuation of the order.

2. Terminate the order. The court shall make this order if it determines that the individual no longer meets the standards for involuntary administration of psychotropic medication. If the court terminates an order, it must review the needs of the individual with respect to protective services and order protective services if it determines the individual meets the standards for protective services that are not currently being provided.

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, if any, and the county department.

Other Provisions

The bill repeals the following statutory provisions in ch. 880, relating to a guardian's authority to consent to administration, including forcible administration, of psychotropic medication to a ward: (1) s. 880.01 (7m), which defines "not competent to refuse psychotropic medication" for purposes of ch. 880; (2) s. 880.07 (1m), which sets forth required contents of a petition alleging that a person for whom guardianship is sought is not competent to refuse psychotropic medication; and (3) s. 880.33 (4m) and (4r), which set forth procedures under which the guardian may consent to or refuse

psychotropic medication on behalf of the ward, including consent to forcible administration of psychotropic medication.

The bill specifies that any orders issued under those provisions remain in effect until modified or terminated by the court. The bill also specifies that orders authorizing involuntary administration of psychotropic medication originally issued under s. 880.33 (4r), which is repealed by the bill, are subject to annual review as described above.

These provisions are replaced by the procedures created by the bill.

The bill specifies that involuntary administration of psychotropic medication may be ordered as an emergency protective service.

The bill requires counties to provide to the department a copy of any order for involuntary administration of psychotropic medications to any protectively placed person in the county.

The bill requires the DHFS to annually submit to the legislature a report regarding orders for involuntary administration of psychotropic medication.

Involuntary Administration of Medication and Involuntary Medical Treatment Other Than Psychotropic Medication

The bill authorizes a guardian to consent, without further court involvement, to involuntary administration of medication, other than psychotropic medication, and involuntary medical treatment that is in the ward's best interest. In determining whether medication or medical treatment is in the ward's best interest, the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment. A guardian may not consent to involuntary administration of psychotropic medication unless the guardian has been authorized to do so under s. 55.14.

Transfers of Protectively Placed Persons

Under current law, a person who is protectively placed in a facility may be transferred between placement units or from a placement unit to a medical facility (other than a locked unit or a facility providing acute psychiatric treatment) by a guardian or placement facility without approval by a court. When a transfer is made by a placement facility, 24 hours' prior written notice of the transfer shall be provided to the guardian, when feasible. If it is not feasible to notify the guardian in advance, written notice must be provided immediately upon transfer, and notice must also be provided to the court and the board under s. 55.02, or the board's designated agency, within a reasonable period of time not to exceed 48 hours from the time of transfer.

Currently, if a guardian, ward or attorney, or other interested person objects to the transfer by petition, the court must order a hearing within 96 hours after filing of the petition, to determine whether the transfer is consistent with the requirements in s. 55.06 (9) (a) and is necessary for the best interests of the ward.

This bill creates definitions of "placement facility" and "placement unit". A "placement facility" is defined as a facility to which a court may order a person to be protectively placed under s. 55.12 for the primary purpose of residential care and custody. A "placement unit" is defined as a ward, wing, or other designated part of a placement facility.

This bill provides that transfers between placement units, between placement facilities, or from a placement facility to a medical facility (provided that the medical facility is not a psychiatric facility), may be made by a county department that placed the individual or the DHFS, in addition to a guardian or placement facility. However, if such a transfer is made, 10 days' prior written notice must be given by the transferring entity to the guardian, the county department, the department, and the placement facility.

Further, this bill requires that the county department, the department, or a placement facility making such a transfer must obtain the prior written consent of the guardian. If an emergency precludes providing the required prior written notice, or precludes obtaining the guardian's prior written consent, written notice must be provided immediately upon transfer.

Also, the bill requires an entity who seeks a transfer of a protective placement to obtain the prior written consent of the county department if the transfer is to a facility that is more costly to the county. This requirement does not apply in the case of an emergency transfer.

Under the bill, if an individual under protective placement, the individual's guardian or attorney, or other interested person files a petition specifying objections to a transfer, the court must order a hearing within 10 days after filing the petition.

For transfers, the purpose of the hearing is to determine whether the proposed placement meets the standards of s. 55.12; is in the least restrictive environment consistent with the person's needs and with the factors in s. 55.12 (3), (4), and (5) or, if the transfer is to an intermediate facility or nursing facility, is in the most integrated setting; and is in the best interests of the ward.

The bill also sets forth the options for a court order on a transfer petition.

Modification and Termination of Protective Placements

Current law, under s. 55.06 (10) (b), sets forth limited procedures for modification and termination of a protective placement. That statute allows the department, an agency, a guardian or ward, or any other interested person to petition the court for modification or termination of a protective placement at any time. The petition must be heard if a hearing has not been held within the previous 6 months but a hearing may be held at any time in the discretion of the court. The petition must be heard within 21 days of its receipt by the court.

This bill provides more detailed procedures for modification or termination of a protective placement or an order for protective services.

The bill requires the following: I no underline

Modification of Protective Placement

1. A petition for modification of an order for protective placement may be filed by an individual subject to a protective placement; the individual's guardian or guardian ad litem; the DHFS; the county department that placed the individual; a contractual agency; or any interested person.

2. The petition must be served on the individual; the individual's guardian; the individual's legal counsel and guardian ad litem, if any; and the county department.

3. The petition must contain specific allegations, depending on whether the individual is under a protective placement order or court–ordered protective services.

4. A hearing on the petition must be held within 21 days after the filing of the petition, if a hearing on a protective placement petition or transfer has not been held within the previous 6 months.

5. The hearing must comply with the requirements of s. 55.10 (4), which sets forth rights in a protective placement proceeding.

6. The order must contain specific findings regarding whether the person currently meets the standard for protective placement or court–ordered protective services.

7. If the person continues to meet the standard for protective placement or court–ordered protective services, the court must either continue the order or modify the order so that the placement or services are consistent with the person's needs if the person's needs have changed.

8. Orders for continuation or modification of protective services must be consistent with the factors in s. 55.12 (3), (4), and (5).

9. If the person does not meet the standard for protective placement or protective services, the order must require termination of the protective placement or court–ordered protective services.

10. Notice of the order must be provided to the individual; the individual's guardian, guardian ad litem, and legal counsel, if any; and the residential facility, if the person receives services in such a facility.

11. The transfer provisions may be used if the modification sought is a transfer of an individual between placement units, between placement facilities, or from a

placement unit to a medical facility, and if the petitioner is an entity authorized to initiate such a transfer under s. 55.15.

Termination of Protective Placement or Court–Ordered Protective Services

The provisions described above pertaining to who may petition, the contents of the petition, service of the petition, and requirement for conducting the hearing for modification of protective placement or court–ordered protective services apply to petitions for termination of placement or services.

The court may make one of the following orders after a hearing on a petition for termination of protective placement or services:

1. If the individual continues to meet the standards under s. 55.08 (1) and the placement is in the least restrictive environment consistent with the person's needs and with the factors under s. 55.12 (3), (4), and (5), order continuation of the person's protective placement in the same facility.

2. If the individual continues to meet the standards under s. 55.08 (1) but the placement is not in an environment consistent with the person's needs and with the factors under s. 55.12 (3), (4), and (5), the court shall transfer the person to a facility that is in the least restrictive environment consistent with the person's needs and with the factors in current s. 55.12 (3), (4), and (5). In addition to this option, the court may also order protective services.

3. If the individual no longer meets the standard in current s. 55.06 (2), the court shall terminate the protective placement. If the placement is terminated, the court must either order protective services or ensure the development of a proper living arrangement for the person if the individual is being transferred or discharged from his or her current residential facility.

If the person who is the subject of the petition is under an order for protective services, the court may order continuation of the protective services order if the person continues to meet the standard under s. 55.08 (2); order that the protective services be provided in a manner more consistent with the person's needs; or terminate the order for protective services if the person no longer meets the standard under s. 55.08 (2).

Annual Reviews of Protective Placements

This bill establishes the requirements and procedures for annual reviews of protective placements as required by *State ex rel. Watts v. Combined Community Services*, 122 Wis. 2d 65, 365 N.W.2d 104 (1985) and *County of Dunn v. Goldie H.*, 245 Wis. 2d 538, 629 N.W.2d 189 (2001).

County Department Review and Report

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

The county of residence of an individual whose placement is in a different county may enter into an agreement under which the county of placement performs all or a part of the county duties specified in the bill.

The county review must include a written evaluation of the physical, mental, and social condition of the individual and the service needs of the individual. The review must be made part of the individual's permanent record. The county department must inform the individual's guardian of the review and invite the individual and his or her guardian to submit comments concerning the individual's need for protective placement or protective services. In performing the review, the county department or contractual agency staff member performing the review must visit the individual and must contact

the individual's guardian. The review may not be conducted by a person who is an employee of the facility in which the individual resides.

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

1. File a report of the review with the court that ordered the protective placement.
2. File with the court a petition for annual review of the protective placement.
3. Provide the report to the individual and the individual's guardian.

The report must contain information on all of the following:

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

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

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

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

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

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

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

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Responsibilities of the Guardian Ad Litem

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

1. Review the report filed by the county, the annual report of the guardian, and any other relevant reports on the individual's condition and placement.

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

orally

a. The procedure for review of protective placement.

b. The right to appointment of legal counsel.

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

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

e. That a change in or termination of protective placement may be ordered by the court.

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

The right to a hearing and an explanation that the individual or the individual's guardian may request a full due process hearing

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

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

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

5. File a written report with the court within 30 days after appointment, ~~which~~ that includes a discussion of whether the individual appears to continue to meet the standards for protective placement and whether the protective placement is in the least restrictive

environment that is consistent with the individual's needs. The report must also state whether any of the following applies:

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

b. The individual or the individual's guardian requests modification or termination of the protective placement.

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

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

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

Court Review of Reports, Hearing, and Order

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

1. Performance of an independent evaluation of the physical, mental, and social condition of the individual, and the individual's service needs. If the court determines that an independent evaluation is necessary, the evaluation shall be performed at the expense of the individual unless the individual is indigent. If the individual is indigent, the evaluation is performed at the expense of the responsible county department. The court must order the performance of an independent evaluation if any of the following applies:

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

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

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

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

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

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

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

4. Holding of a full due process hearing.

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

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

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

c. The report of the guardian ad litem indicates that the current placement is not in the least restrictive environment consistent with the individual's needs.

d. The report of the guardian ad litem indicates that the individual objects to the current placement.

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

1. Order the continuation of the individual's protective placement in the facility in which he or she resides at the time of the hearing. The court shall make this order if it finds that the individual continues to meet the standards for protective placement, and the individual's protective placement is in the least restrictive environment that is consistent with his or her needs and with factors under current s. 55.06 (9) (a). The court must include the information relied upon as a basis for the order and make findings based on the factors set forth in s. 55.06 (2) in support of the need for continuation of protective placement.

2. Order transfer of protective placement to a less restrictive residential facility or order the county department of residency to develop or recommend a less restrictive protective placement. If the court makes such an order, it shall order the county department of residency to arrange for the individual's transfer to the new protective placement within 60 days after the court's order unless the court extends the period to permit development of a protective placement. The court shall make this order if it finds that the individual continues to meet the standards for protective placement and the protective placement of the individual is not in the least restrictive environment that is consistent with the individual's needs and with the factors under current s. 55.06 (9) (a). The court may order protective services along with transfer of placement.

3. Terminate the protective placement. The court shall make this order if it determines that the individual no longer meets the standards for protective placement. If the court terminates a protective placement, it must review the needs of the individual with respect to protective services and order protective services if it determines the individual meets the standards for protective services. If the court determines that the individual does not meet the standards for protective services, and the individual is being transferred or discharged from his or her current residential facility, the county department must assist the residential facility with discharge planning for the individual, including planning for a proper residential living arrangement and the necessary support services for the individual.

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.

no underline

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180 days after the bill's effective date

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 PREFATORY NOTE consists of a table of contents for reorganized ch. 55:

55.001	Declaration of policy.
55.01	Definitions.
55.02	Protective services and protective placement: duties.
55.03	Status of guardian.
55.043	County protective services agency.
55.045	Funding.
55.05	Voluntary protective services.
55.055	Admissions initially made without court involvement.
55.06	Protective services and protective placement; eligibility.
55.075	Protective services or protective placement; petition.
55.08	Protective services or protective placement: standards.
55.09	Notice of petition and hearing for protective services or protective placement.
55.10	Hearing on petition for protective services or protective placement.
55.11	Comprehensive evaluation; recommendations; statements.
55.12	Order for protective services or protective placement.
55.13	Emergency protective services.
55.135	Emergency and temporary 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 protective services.
55.17	Termination of an order for protective placement or protective services.
55.175	Discharge from protective placement.
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 the developmentally disabled.
55.22	Records.
55.23	Patients' rights.

SECTION 1. 20.435 (2) (gk) of the statutes is amended to read:

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

for the developmentally disabled; and for other services, products, and care shall be credited to this appropriation, except that any payment under s. 46.10 received for the care or treatment of patients admitted under s. 51.10, 51.15, or 51.20 for which the state is liable under s. 51.05 (3), ~~of patients admitted under s. 55.06 (9) (d) or (e) for which the state is liable under s. 55.05 (1),~~ of forensic patients committed under ch. 971 or 975, admitted under ch. 975, or transferred under s. 51.35 (3), or of patients transferred from a state prison under s. 51.37 (5), to the Mendota Mental Health Institute or the Winnebago Mental Health Institute shall be treated as general purpose revenue — earned, as defined under s. 20.001 (4); and except that moneys received under s. 51.06 (6) may be expended only as provided in s. 13.101 (17).

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

SECTION 2. 46.011 (2) of the statutes is amended to read:

46.011 **(2)** "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise detained in excess of 12 hours by any law enforcement agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11) (b) or ~~55.06 (11) (a)~~ 55.135 (1) or ch. 980. "Prisoner" does not include any person who is serving a sentence of detention under s. 973.03 (4) unless the person is in the county jail under s. 973.03 (4) (c).

NOTE: Changes a cross–reference to emergency protective placement, the provisions of which are renumbered under this bill.

SECTION 3. 46.10 (2) of the statutes is amended to read:

46.10 **(2)** Except as provided in subs. (2m) and (14) (b) and (c), any person, including but not limited to a person admitted, committed, protected, or placed under s. 975.01, 1977 stats., s. 975.02, 1977 stats., ~~and~~ s. 975.17, 1977 stats., s. 55.05 (5), 2003 stats., and 55.06, 2003 stats., and ss. 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37

(5), 51.45 (10), (11), (12) and (13), 55.05, ~~55.06~~ 55.055, 55.12, 55.13, 55.135, 971.14 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and supplies provided by any institution in this state including University of Wisconsin Hospitals and Clinics, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, any person receiving care and services from a county department established under s. 51.42 or 51.437 or from a facility established under s. 49.73, and any person receiving treatment and services from a public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4) (e) or 980.08 (5) and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18). If a spouse, widow or minor, or an incapacitated person may be lawfully dependent upon the property for their support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for those persons. The department shall make every reasonable effort to notify the liable persons as soon as possible after the beginning of the maintenance, but the notice or the receipt thereof is not a condition of liability.

NOTE: Changes cross–references to protective placement, which is renumbered in this bill.

SECTION 4. 46.21 (2m) (c) of the statutes is amended to read:

46.21 **(2m)** (c) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (c)~~ 55.22 (3), 146.82, 252.11 (7) and 253.07 (3) (c), any subunit of the county department of human services acting under this subsection may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of human services, with a resource center, care management organization or family care district, or with any person providing services to the client under a purchase of services contract with the county department of human services or with a resource center, care management organization or family care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of human services to coordinate the delivery of services to the client.

SECTION 5. 46.215 (1m) of the statutes is amended to read:

46.215 **(1m)** EXCHANGE OF INFORMATION. Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (c)~~ 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), any subunit of the county department of social services acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of social services, with a resource center, care management organization or family care district, or with any person providing services to the client under a purchase of services contract with the county department of social services or with a resource center, care management organization or family care

district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of social services to coordinate the delivery of services to the client.

SECTION 6. 46.22 (1) (dm) of the statutes is amended to read:

46.22 **(1)** (dm) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (c)~~ 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), any subunit of the county department of social services acting under this subsection may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of social services, with a resource center, care management organization or family care district, or with any person providing services to the client under a purchase of services contract with the county department of social services or with a resource center, care management organization or family care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of social services to coordinate the delivery of services to the client.

SECTION 7. 46.23 (3) (e) of the statutes is amended to read:

46.23 **(3)** (e) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (c)~~ 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), any subunit of a county department of human services acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of human services, with a resource center, care management organization or family care district, or with any person providing services to the client under a purchase of services contract with the county department of human

services or with a resource center, care management organization or family care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of human services to coordinate the delivery of services to the client.

NOTE: SECTIONS 4 to 7 change a cross–reference to provisions relating to confidentiality of treatment and service records for persons who are protected under chapter 55. These provisions are renumbered in this bill.

SECTION 8. 46.27 (6r) (b) 2. of the statutes is amended to read:

46.27 **(6r)** (b) 2. The person has ~~chronic~~ serious and persistent mental illness, as defined under s. 51.01 ~~(3g)~~ (14t), affecting mental health to the extent that long–term or repeated hospitalization is likely unless the person receives long–term community support services.

NOTE: Deletes a reference to the term "chronic mental illness", which is eliminated in this bill, and replaces it with the updated term "serious and persistent mental illness".

SECTION 9. 46.275 (4) (b) 1. of the statutes is amended to read:

46.275 **(4)** (b) 1. Consent for participation is given either by the person's parent, guardian or legal custodian, if the person is under age 18, or by the person or the person's guardian, if the person is age 18 or over, except that this subdivision does not limit the authority of the circuit court to enter, change, revise or extend a dispositional order under subch. VI of ch. 48 or subch. VI of ch. 938 or to order a protective placement or protective services under s. ~~55.06~~ 55.12.

NOTE: Amends language in medical assistance waiver program language to reflect the bill's clarification that protective services, as well as protective placement, may be court ordered.

SECTION 10. 46.279 (2) of the statutes is amended to read:

46.279 **(2)** PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as provided in sub. (5), no person may place an individual with a developmental disability in an intermediate facility and no intermediate facility may admit such an

individual unless, before the placement or admission and after having considered a plan developed under sub. (4), a court under s. ~~55.06 (9) (a) or (10) (a) 2.~~ ~~55.12~~ or 55.18 (1) (ar) finds that protective placement in the intermediate facility is the most integrated setting that is appropriate to the needs of the individual, taking into account information presented by all affected parties. An intermediate facility to which an individual who has a developmental disability applies for admission shall, within 5 days after receiving the application, notify the county department that is participating in the program under s. 46.278 of the county of residence of the individual who is seeking admission concerning the application.

INSERT 30-9

NOTE: Changes a cross–reference to the annual review of protective placements, the provisions of which are renumbered in this bill.

SECTION 11. 46.279 (4) (c) of the statutes is amended to read:

46.279 **(4)** (c) Within 120 days after a proposal is made under s. ~~55.06 (9) (a)~~ 55.12 (6) to ~~place~~ provide protective placement to the individual in an intermediate facility or a nursing facility.

NOTE: Changes a cross–reference to orders for protective placement, the provisions of which are renumbered in this bill.

SECTION 12. 46.279 (4) (d) of the statutes is amended to read:

46.279 **(4)** (d) Within 120 days after receiving written notice under s. ~~55.06 (10) (a) 2.~~ 55.18 (1) (ar) of the protective placement of the individual in a nursing facility or an intermediate facility.

NOTE: Changes a cross–reference to the annual review of protective placement, the provisions of which are renumbered in this bill.

SECTION 13. 46.279 (4) (e) of the statutes is amended to read:

46.279 **(4)** (e) Within 90 days after extension of a temporary protective placement order by the court under s. ~~55.06 (11) (c)~~ 55.135 (5).

NOTE: Changes a cross–reference to temporary protective placement, the provisions of which are renumbered in this bill.

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SECTION 14. 46.279 (5) of the statutes is amended to read:

46.279 **(5)** EXCEPTIONS. Subsections (2) and (3) do not apply to an emergency protective placement under s. ~~55.06 (11) (a)~~ 55.135 or to a temporary protective placement under s. ~~55.06 (11) (c) or (12)~~ 55.135 (5) or 55.055 (5).

NOTE: Changes cross–references to emergency and temporary protective placements, the provisions of which are renumbered under this bill.

SECTION 15. 46.283 (7) (b) of the statutes is amended to read:

46.283 **(7)** (b) Notwithstanding ss. 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (c)~~ 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), a resource center acting under this section may exchange confidential information about a client, as defined in s. 46.287 (1), without the informed consent of the client, under s. 46.21 (2m) (c), 46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.284 (7), 46.2895 (10), 51.42 (3) (e) or 51.437 (4r) (b) in the county of the resource center, if necessary to enable the resource center to perform its duties or to coordinate the delivery of services to the client.

SECTION 16. 46.284 (7) (b) of the statutes is amended to read:

46.284 **(7)** (b) Notwithstanding ss. 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (c)~~ 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), a care management organization acting under this section may exchange confidential information about a client, as defined in s. 46.287 (1), without the informed consent of the client, under s. 46.21 (2m) (c), 46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.283 (7), 46.2895 (10), 51.42 (3) (e) or 51.437 (4r) (b) in the county of the care management organization, if necessary to enable the care management organization to perform its duties or to coordinate the delivery of services to the client.

NOTE: SECTIONS 15 and 16 change cross–references to records in protective placement and services proceedings, the provisions of which are renumbered in this bill.

SECTION 17. 46.286 (1) (intro.) of the statutes is amended to read:

46.286 **(1)** ELIGIBILITY. (intro.) A person is eligible for, but not necessarily entitled to, the family care benefit if the person is at least 18 years of age; has a physical disability, as defined in s. 15.197 (4) (a) 2., a developmental disability, as defined in s. 51.01 (5) (a), or ~~infirmities of aging~~ degenerative brain disorder, as defined in s. 55.01 ~~(3)~~ (1v); and meets all of the following criteria:

SECTION 18. 46.286 (3) (a) (intro.) of the statutes is amended to read:

46.286 **(3)** (a) (intro.) Subject to pars. (c) and (d), a person is entitled to and may receive the family care benefit through enrollment in a care management organization if he or she is at least 18 years of age, has a physical disability, as defined in s. 15.197 (4) (a) 2., a developmental disability, as defined in s. 51.01 (5) (a), or ~~infirmities of aging~~ degenerative brain disorder, as defined in s. 55.01 ~~(3)~~ (1v), is financially eligible, fulfills any applicable cost–sharing requirements and meets any of the following criteria:

SECTION 19. 46.286 (3) (a) 3. of the statutes is amended to read:

46.286 **(3)** (a) 3. Is functionally eligible at the intermediate level and is determined by an agency under s. 46.90 (2) or ~~specified~~ by a county protective services agency, as defined in s. 55.01 (1t), to be in need of protective services ~~under s. 55.05~~ or protective placement under s. ~~55.06~~ ch. 55.

SECTION 20. 46.2895 (10) of the statutes is amended to read:

46.2895 **(10)** EXCHANGE OF INFORMATION. Notwithstanding sub. (9) and ss. 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (c)~~ 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), a family care district acting under this section

may exchange confidential information about a client, as defined in s. 46.287 (1), without the informed consent of the client, under s. 46.21 (2m) (c), 46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.283 (7), 46.284 (7), 51.42 (3) (e) or 51.437 (4r) (b) in the jurisdiction of the family care district, if necessary to enable the family care district to perform its duties or to coordinate the delivery of services to the client.

SECTION 21. 46.90 (1) (c) of the statutes is amended to read:

46.90 **(1)** (c) "Elder person" means a person who is age 60 or older or who is subject to ~~the infirmities of aging~~ degenerative brain disorder.

SECTION 22. 46.90 (1) (d) of the statutes is renumbered 46.90 (1) (bg) and amended to read:

46.90 **(1)** (bg) "~~Infirmities of aging~~ Degenerative brain disorder" has the meaning provided under s. 55.01 ~~(3)~~ (1v).

NOTE: SECTIONS 17, 18, 21 and 22 delete the term "infirmities of aging" and replace it with the more up–to–date term "degenerative brain disorder".

SECTION 23. 49.001 (5m) of the statutes is amended to read:

49.001 **(5m)** "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise detained in excess of 12 hours by any law enforcement agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11) (b) or ~~55.06 (11) (a),~~ 55.13, or 55.135 or ch. 980. "Prisoner" does not include any person who is serving a sentence of detention under s. 973.03 (4) unless the person is in the county jail under s. 973.03 (4) (c).

NOTE: Changes a cross–reference to emergency detention, the provisions of which are renumbered in this bill.

SECTION 24. 49.001 (8) of the statutes is amended to read:

49.001 **(8)** "Voluntary" means according to a ~~person's~~ individual's free choice, if competent, or, if incompetent, by choice of a guardian ~~if incompetent, unless the~~

individual is subject to a court–ordered placement under ch. 55, is placed by an agency having a court–ordered involuntary commitment of the individual under ch. 51, or is involuntarily committed to the department of corrections or to the department under ch. 971 or 980.

NOTE: Amends the definition of "voluntary" in ch. 49.

SECTION 25. 49.43 (10v) of the statutes is created to read:

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

SECTION 26. 49.45 (6m) (i) 2. of the statutes is amended to read:

49.45 **(6m)** (i) 2. Payment for personal or residential care is available for a person in a facility certified under 42 USC 1396 to 1396p only if the person entered a facility before the date specified in subd. 1. and has continuously resided in a facility since the date specified in subd. 1. If the person has a primary diagnosis of developmental disabilities or ~~chronic~~ serious and persistent mental illness, payment for personal or residential care is available only if the person entered a facility on or before November 1, 1983.

SECTION 27. 49.45 (25) (am) 2. of the statutes is amended to read:

49.45 **(25)** (am) 2. Has a ~~chronic~~ serious and persistent mental illness~~, as defined under s. 51.01 (3g)~~.

NOTE: SECTIONS 25 to 27 change the term "chronic mental illness" to "serious and persistent mental illness", which is the more up–to–date term.

SECTION 28. 49.45 (30m) (b) of the statutes is amended to read:

49.45 **(30m)** (b) No payment under this section may be made for services specified under par. (a) or (am) unless the individual who receives the services is ~~protectively placed~~ provided protective placement under s. 55.06 (9) (a), 2003 stats., or s. 55.12, is provided emergency protective services under s. 55.05 (4), 2003 stats.,

or s. 55.13, or is ~~placed under~~ provided an emergency protective placement under s. 55.06 (11) (a), 2003 stats., or s. 55.135 or a temporary protective placement under s. 55.06 (11) (c), 2003 stats., or s. 55.135 (5) or 55.055 (5).

NOTE: Changes cross–references to protective placement and emergency protective placement proceedings, the provisions of which are renumbered in the draft.

SECTION 29. 49.45 (30m) (c) 2. of the statutes is amended to read:

49.45 **(30m)** (c) 2. For an individual who was ~~protectively placed~~ provided protective placement under ch. 55 at any time, any annual review that is conducted under s. ~~55.06 (10) (a) 1.~~ 55.18 (1) (a) (intro.) after April 30, 2005, complies with the requirements of s. ~~55.06 (10) (a) 2~~ 55.18 (1) (ar).

NOTE: Changes cross–references to annual review of protective placement, the provisions of which are are renumbered in the draft.

SECTION 30. 50.02 (2) (ad) of the statutes is created to read:

50.02 **(2)** (ad) The department shall promulgate rules that require each facility licensed under this subchapter to provide information necessary for the department to assess the facility's compliance with s. 55.14.

NOTE: Requires the DHFS to promulgate rules that require community–based residential facilities, nursing homes, adult family homes, and residential care apartment complexes 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.

SECTION 31. 50.03 (5m) (c) of the statutes is amended to read:

50.03 **(5m)** (c) *Relocation.* The department shall offer removal and relocation assistance to residents removed under this section, including information on available alternative placements. Residents shall be involved in planning the removal and shall choose among the available alternative placements, except that where an emergency situation makes prior resident involvement impossible the department may make a temporary placement until a final placement can be arranged. Residents may choose their final alternative placement and shall be given

assistance in transferring to such place. No resident may be forced to remain in a temporary or permanent placement except pursuant ~~to the procedures provided~~ under s. 55.06, 2003 stats., or an order under s. 55.12 for protective placement. Where the department makes or participates in making the relocation decision, consideration shall be given to proximity to residents' relatives and friends.

SECTION 32. 50.06 (2) (c) of the statutes is amended to read:

50.06 **(2)** (c) A petition for guardianship for the individual under s. 880.07 and a petition under s. 55.075 for protective placement of the individual ~~under s. 55.06 (2)~~ are filed prior to the proposed admission.

NOTE: Changes a cross–reference to the petition for protective placement, the provisions of which are renumbered in the draft.

SECTION 33. 50.06 (2) (d) of the statutes is created to read:

50.06 **(2)** (d) The incapacitated individual does not verbally object to or otherwise actively protest the admission. If he or she makes such an objection or protest, he or she may be admitted to the facility, but the person in charge of the facility shall immediately notify the county department under s. 55.02 (2) for the county in which the individual is living or the agency with which the county department contracts. Representatives of the county department or agency shall visit the individual as soon as possible, but not later than 72 hours after notification, and do all of the following:

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

2. Attempt to have the incapacitated individual released within 72 hours if the protest is not withdrawn and the individual does not satisfy all of the criteria under

s. 55.08 (1) or 55.135 (1), and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.135 if the requirements of s. 55.135 (1) are met and emergency protective placement in that facility or another facility is necessary or file a petition for protective placement under s. 55.075. The court, with the permission of the facility, may order the incapacitated individual to remain in the facility pending the outcome of the protective placement proceedings.

NOTE: Creates a new provision in the statute relating to admissions of incapacitated persons to facilities such as nursing homes and community–based residential facilities. Currently, such admissions directly from a hospital to a facility may be made if certain specified persons consent to the admission, if the incapacitated person does not have a valid power of attorney for health care and has not been adjudicated incompetent under ch. 880, if certain conditions apply. This SECTION adds another condition, which requires that the incapacitated individual does not verbally object to or otherwise actively protest the admission. This SECTION also sets out what procedure must be followed if the person objects to or protests the admission.

SECTION 34. 51.01 (2g) (b) of the statutes is amended to read:

51.01 **(2g)** (b) "Brain injury" does not include alcoholism, Alzheimer's disease as specified under s. 46.87 (1) (a) or ~~the infirmities of aging~~ degenerative brain disorder, as ~~specified under s. 55.01 (3)~~ defined in s. 55.01 (1v).

SECTION 35. 51.01 (3g) of the statutes is renumbered 51.01 (14t) and amended to read:

51.01 **(14t)** "~~Chronic~~ Serious and persistent mental illness" means a mental illness ~~which~~ that is severe in degree and persistent in duration, ~~which~~ that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, ~~which~~ that may lead to an inability to maintain stable adjustment and independent functioning without long–term treatment and support, and ~~which~~ that may be of lifelong duration. "~~Chronic~~ Serious and persistent mental illness" includes schizophrenia as well as a

wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include ~~infirmities of aging~~ degenerative brain disorder, as defined in s. 55.01 (1v), or a primary diagnosis of ~~mental retardation~~ a developmental disability or of alcohol or drug dependence.

SECTION 36. 51.01 (3s) of the statutes is amended to read:

51.01 **(3s)** "Community support program" means a coordinated care and treatment system ~~which~~ that provides a network of services through an identified treatment program and staff to ensure ongoing therapeutic involvement and individualized treatment in the community for ~~persons~~ individuals with ~~chronic~~ serious and persistent mental illness.

SECTION 37. 51.01 (5) (a) of the statutes is amended to read:

51.01 **(5)** (a) "Developmental disability" means a disability attributable to brain injury, cerebral palsy, epilepsy, autism, Prader–Willi syndrome, mental retardation, or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mental retardation, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. "Developmental disability" does not include senility ~~which~~ that is primarily caused by the process of aging or ~~the infirmities of aging~~ degenerative brain disorder, as defined in s. 55.01 (1v).

NOTE: SECTIONS 34 to 37 revise the terms "chronic mental illness", "mental retardation", and "infirmities of aging" to "serious and persistent mental illness", "developmental disability", and "degenerative brain disorder".

SECTION 38. 51.03 (3) (a) 6. of the statutes is amended to read:

51.03 **(3)** (a) 6. The number of ~~persons~~ individuals for whom guardians are appointed under s. 55.14 or s. 880.33 (4m), 2003 stats.

SECTION 39. 51.10 (4m) (a) (intro.) of the statutes is amended to read: