

NOTE: Deletes provision from current law relating to notice of petition and hearing for protective placement. These provisions are placed in a new statutory section, s. 55.09, Notice of petition and hearing for protective services or placement, which is found in SECTION 158 of this bill.

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PLAIN TEXT

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1           **SECTION 127.** 55.06 (5m) of the statutes is renumbered 55.10 (1) and amended  
2 to read:

3           55.10 (1) TIME LIMITS. A petition for protective placement of a person who has  
4 been admitted to a nursing home or a community-based residential facility under  
5 s. 50.06 or protective services shall be heard within 60 days after it is filed unless an  
6 extension of this time is requested by the petitioner, the individual sought to be  
7 protected or the individual's guardian ad litem, or the county department, in which  
8 case the court may extend the date for hearing by up to 45 days. If an individual  
9 under s. 50.06 (3) alleges that ~~an~~ another individual is making a health care decision  
10 under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual  
11 or if the incapacitated individual verbally objects to or otherwise actively protests the  
12 admission, the petition shall be heard as soon as possible within the 60-day period.

NOTE: Allows certain parties to request an extension of up to 45 days of the 60-day time period within which a petition for protective placement or services must be heard.

13           **SECTION 128.** 55.06 (6) of the statutes is renumbered 55.10 (4) (b) and amended  
14 to read:

15           55.10 (4) (b) Guardian ad litem; costs. ~~Section 880.33 (2) applies to all hearings~~  
16 ~~under this chapter except for transfers of placement under sub. (9) (b), (c) and (e).~~  
17 ~~A person to be protected shall have a~~ The court shall in all cases require the  
18 appointment of an attorney as guardian ad litem who is an attorney appointed in  
19 accordance with s. 757.48 (1) present at all hearings under this chapter if the person  
20 does not have full legal counsel . The responsibilities and duties of a guardian ad  
21 litem on behalf of a proposed ward or individual who is alleged incompetent specified

1 in s. 880.331 (4) apply to a guardian ad litem appointed in a proceeding for protective  
2 services or protective placement on behalf of an individual sought to be protected.  
3 If a guardian has been appointed for an individual who is the subject of a petition for  
4 court-ordered protective placement or protective services, the guardian ad litem  
5 shall interview the guardian. The guardian ad litem shall be present at all hearings  
6 under this chapter if the individual sought to be protected does not have full legal  
7 counsel. The court may, however, excuse a personal appearance by a guardian ad  
8 litem based on information contained in a written report by the guardian ad litem  
9 to the court. If the ~~person~~ individual sought to be protected is an adult who is  
10 indigent, the county of legal settlement shall be liable for any fees due the guardian  
11 ad litem fees. If the ~~person~~ individual sought to be protected is a child, ~~the person's~~  
12 minor, the minor's parents or the county of legal settlement in which the hearing is  
13 held shall be liable for any fees due the guardian ad litem fees as provided in s. 48.235  
14 (8). ~~The subject individual, attorney or guardian ad litem shall have the right to~~  
15 ~~present and cross-examine witnesses, including any person making an evaluation~~  
16 ~~or review under sub. (8) (e).~~

NOTE: Clarifies that the responsibilities and duties of a guardian ad litem on behalf  
of an individual who is the subject of a protective placement or services proceeding are  
the same as those in a proceeding under ch. 880, relating to guardianship.

17 **SECTION 129.** 55.06 (7) of the statutes is renumbered 55.10 (4) (d) and amended  
18 to read:

19 55.10 (4) (d) Standard of proof. ~~Except for emergency placement or temporary~~  
20 ~~placement under subs. (11) and (12), before~~ Before protective placement or protective  
21 services may be ordered under ~~this chapter~~ s. 55.12, the court or jury must find by  
22 clear and convincing evidence that the individual to be ~~placed~~ protected is in need  
23 of protective placement as provided in sub. (2) because he or she meets all of the

1 standards under s. 55.08 (1) or is in need of protective services because he or she  
2 meets all of the standards under s. 55.08 (2).

NOTE: Clarifies the standard of proof at protective placement or services hearing; provides that the person must meet the standards for protective placement or protective services before an order may be entered.

3 **SECTION 130.** 55.06 (8) (intro.) of the statutes is renumbered 55.11 (1) (intro.)  
4 and amended to read:

5 55.11 (1) (intro.) Before ordering the protective placement of or protective  
6 services for any individual, the court shall direct require a comprehensive evaluation  
7 of the ~~person in need of placement~~ individual sought to be protected, if such an  
8 evaluation has not already been made. The court may utilize available  
9 multidisciplinary resources in the community in determining the need for protective  
10 placement or protective services. ~~The board designated under s. 55.02 or an agency~~  
11 ~~designated by it~~ county department or an agency with which it contracts under s.  
12 55.02 (2) shall cooperate with the court in securing available resources. ~~Where~~  
13 ~~applicable by reason of the particular disability, the appropriate board designated~~  
14 ~~under s. 55.02 or an agency designated by it having responsibility for the place of~~  
15 ~~legal residence of the individual as provided in s. 49.001 (6) shall make a~~  
16 ~~recommendation for placement. If the court is considering placement of the~~  
17 ~~individual in a center for the developmentally disabled, the court shall request a~~  
18 ~~statement or testimony from the department regarding whether the placement is~~  
19 ~~appropriate for the person's needs and whether it is consistent with the purpose of~~  
20 ~~the center under s. 51.06 (1). If the individual has a developmental disability and~~  
21 ~~the court is considering placement of the individual in an intermediate facility or a~~  
22 ~~nursing facility, the court shall request a statement or testimony from the county~~  
23 ~~department of the individual's county of residence that is participating in the~~

1 ~~program under s. 46.278 as to whether the individual's needs could be met in a~~  
2 ~~noninstitutional setting, except that, if s. 46.279 (4m) applies to the individual, the~~  
3 ~~court shall request the statement or testimony from the department, rather than the~~  
4 ~~county department. A copy of the comprehensive evaluation shall be provided to the~~  
5 ~~guardian, the guardian ad litem, and to the individual or attorney at least 96 hours~~  
6 ~~in advance of the hearing to determine placement. The court or the cooperating~~  
7 ~~agency obtaining the evaluation shall request appropriate information which shall~~  
8 ~~include at least the following:~~

9 **SECTION 131.** 55.06 (8) (a) of the statutes is renumbered 55.11 (1) (a) and  
10 amended to read:

11 55.11 (1) (a) The address of the place where the ~~person~~ individual is residing  
12 and the person or agency who is providing services at present, if any.

13 **SECTION 132.** 55.06 (8) (b) of the statutes is renumbered 55.11 (1) (b) and  
14 amended to read:

15 55.11 (1) (b) A resume of any professional treatment and services provided to  
16 the ~~person~~ individual by the department or agency, ~~if any~~, in connection with the  
17 problem creating the need for protective placement or protective services.

18 **SECTION 133.** 55.06 (8) (c) of the statutes is renumbered 55.11 (1) (c) and  
19 amended to read:

20 55.11 (1) (c) A medical, psychological, social, vocational, and educational  
21 evaluation and review, where if necessary, and any recommendations for or against  
22 maintenance of partial legal rights as provided in s. 880.33. ~~Such~~ The evaluation and  
23 review shall include recommendations for the individual's placement that are  
24 consistent with the least restrictive environment required requirements of s. 55.12  
25 (3), (4), and (5).

NOTE: SECTION 130 to 133 renumber and reorganize provisions regarding a comprehensive evaluation of an individual who is the subject of a protective placement or services petition.

1           **SECTION 134.** 55.06 (9) (a) of the statutes is renumbered 55.12 (1) and amended  
2 to read:

3           55.12 (1) ~~The court may order protective services under s. 55.05 (2) (d) as an~~  
4 ~~alternative to placement.~~ When ordering protective placement under the standards  
5 specified in s. 55.08 (1) or protective services under the standards specified in s. 55.08  
6 (2), the court, on the basis of the evaluation and other relevant evidence, shall order  
7 the ~~appropriate board specified under s. 55.02 or an agency designated by it to~~  
8 ~~protectively place~~ county department or agency with which it contracts under s.  
9 55.02 (2) to provide protective placement or protective services to the individual.  
10 Placement by the ~~appropriate board or designated agency is~~

11           (3) Protective placement or protective services provided by a county  
12 department or an agency with which it contracts under s. 55.02 (2) are subject to s.  
13 46.279 and shall be made provided in the least restrictive environment and in the  
14 least restrictive manner consistent with the needs of the person individual to be  
15 placed protected and with the placement resources of the ~~appropriate board specified~~  
16 ~~under s. 55.02~~ county department.

17           (4) Factors to be considered that a county department shall consider in making  
18 providing protective placement or protective services shall include the needs of the  
19 ~~person~~ individual to be protected for health, social, or rehabilitative services; the  
20 level of supervision needed; the reasonableness of the placement or services given the  
21 cost and the actual benefits in the level of functioning to be realized by the individual;  
22 the limits of available state and federal funds and of county funds required to be  
23 appropriated to match state funds; and the reasonableness of the protective

1 placement or protective services given the number or projected number of  
2 individuals who will need protective placement or protective services and given the  
3 limited funds available.

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

10 **(2)** Subject to s. 46.279, protective placement may be made to ~~such facilities as~~  
11 nursing homes, public medical institutions, centers for the developmentally disabled  
12 under the requirements of s. 51.06 (3), foster care services ~~and~~ or other home  
13 placements, or to other appropriate facilities, but may not be made to units for the  
14 acutely mentally ill. An individual who is subject to an order for protective  
15 placement or protective services may be detained on an emergency basis under s.  
16 51.15 or involuntarily committed under s. 51.20 or may be voluntarily admitted to  
17 a treatment facility for inpatient care under s. 51.10 (8). No individual who is subject  
18 to an order for protective placement or services may be involuntarily transferred to,  
19 detained in, or committed to a treatment facility for care except under s. 51.15 or  
20 51.20. Protective placement in a locked unit shall require a specific finding of the  
21 court as to the need for the action.

22 **(6)** If the appropriate ~~board or designated~~ county department or agency with  
23 which it contracts under s. 55.02 (2) proposes to ~~place~~ provide protective placement  
24 to an individual who has a developmental disability in an intermediate facility or a  
25 nursing facility under an order under this paragraph section, the county department

1 ~~or agency, or, if s. 46.279 (4m) applies to the individual, the department or the~~  
2 ~~department's contractor shall develop a plan under s. 46.279 (4) and furnish the plan~~  
3 ~~to the board county department or agency and to the individual's guardian. The~~  
4 ~~board county department or agency with which it contracts under s. 55.02 (2) shall~~  
5 ~~place provide protective placement to the individual in a noninstitutional~~  
6 ~~community setting in accord with the plan unless the court finds that protective~~  
7 ~~placement in the intermediate facility or nursing facility is the most integrated~~  
8 ~~setting, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the~~  
9 ~~individual, taking into account information presented by all affected parties. The~~  
10 ~~prohibition of placements in units for the acutely mentally ill does not prevent~~  
11 ~~placement by a court for short-term diagnostic procedures under par. (d). Placement~~  
12 ~~in a locked unit shall require a specific finding of the court as to the need for such~~  
13 ~~action. A placement facility may transfer a patient from a locked unit to a less~~  
14 ~~restrictive environment without court approval.~~

NOTE: Renumbers and reorganizes the provisions relating to an order for protective placement or services; clarifies that an individual who is subject to an order of protective placement or services may be detained on an emergency basis under s. 51.15 or involuntarily committed under s. 51.20, or voluntarily admitted to a treatment facility for inpatient care under s. 51.10 (8).

15 **SECTION 135.** 55.06 (9) (b) of the statutes is repealed.

16 **SECTION 136.** 55.06 (9) (c) of the statutes is repealed.

NOTE: SECTIONS 135 and 136 repeal provisions that have been incorporated into other statutory sections.

17 **SECTION 137.** 55.06 (9) (d) of the statutes is repealed.

18 **SECTION 138.** 55.06 (9) (e) of the statutes is repealed.

NOTE: SECTIONS 137 and 138 repeal provisions that have been found unconstitutional.

19 **SECTION 139.** 55.06 (10) (a) 1. of the statutes is renumbered 55.18 (1) (a) (intro.)

20 and amended to read:

1           55.18 (1) (a) (intro.) ~~The county department or any agency which is responsible~~  
2 ~~for a protective placement of the individual's county of residence shall, except as~~  
3 ~~provided in sub. (1m), annually review the status of each person placed at least once~~  
4 ~~every 12 months from the date of admission. The court in its order of placement may,~~  
5 ~~however, require that such review be conducted more frequently individual who has~~  
6 ~~been provided protective placement. The review shall include in writing an a visit~~  
7 ~~to the individual and a written evaluation of the physical, mental and social~~  
8 ~~condition of each such person, and the individual and the service needs of the~~  
9 ~~individual. The review shall be made a part of the permanent record of such person.~~  
10 ~~The review shall include recommendations for discharge or placement in services~~  
11 ~~which place less restrictions on personal freedom, where appropriate. The results~~  
12 ~~of the review shall be furnished to the department in such form as the department~~  
13 ~~may require and shall be furnished to the court that ordered the placement and to~~  
14 ~~the person's guardian. the individual. The county department shall inform the~~  
15 ~~guardian of the individual of the review at the time the review is made and shall,~~  
16 ~~before completing a report of the review, invite the individual and the guardian to~~  
17 ~~submit comments or information concerning the individual's need for protective~~  
18 ~~placement or protective services. Not later than the first day of the 11th month after~~  
19 ~~the initial order is made for protective placement for an individual and, except as~~  
20 ~~provided in par. (b), annually thereafter, the county department shall do all of the~~  
21 following:

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NOTE: Renumbers and amends provisions relating to annual review of protective placement. Provides that the individual's guardian must be notified of the review and invite the individual and the guardian to submit comments or information concerning the individual's need for protective placement or protective services.

NOTE: Requires the county department of the county of residence of a protectively placed individual to annually review the status of the individual, as required by *State ex. rel. Watts and County of Dunn v. Goldie H.*, as described in the PREFATORY NOTE. Specifies



the required elements of the review, including a visit to the individual and a written evaluation of the individual's condition.

1           **SECTION 140.** 55.06 (10) (a) 2. of the statutes is renumbered 55.18 (1) (ar) and  
2 amended to read:

3           55.18 (1) (ar) If the ~~person~~ individual has a developmental disability and is  
4 protectively placed in an intermediate facility or a nursing facility, the agency that  
5 is responsible for the protective placement shall notify in writing the county  
6 department of the county of residence of the ~~person~~ individual that is participating  
7 in the program under s. 46.278 or, if s. 46.279 (4m) applies to the ~~person~~ individual,  
8 the department, at least 120 days before the review. The county department so  
9 notified or, if s. 46.279 (4m) applies, the department's contractor, shall develop a plan  
10 under s. 46.279 (4) and furnish the plan to the court that ordered the protective  
11 placement and to the ~~person's~~ individual's guardian. The court shall order that the  
12 ~~person~~ individual be transferred to the noninstitutional community setting in  
13 accordance with the plan unless the court finds that protective placement in the  
14 intermediate facility or nursing facility is the most integrated setting, as defined in  
15 s. 46.279 (1) (bm), that is appropriate to the needs of the ~~person~~ individual taking into  
16 account information presented by all affected parties.

17           **SECTION 141.** 55.06 (10) (b) of the statutes is renumbered 55.17 (1) and  
18 amended to read:

19           55.17 (1) PETITION. ~~The~~ An individual, the individual's guardian or guardian  
20 ad litem, the department, an agency, a guardian or a ward a county department or  
21 agency with it contracts under s. 55.02 (2), or any other interested person may file  
22 a petition at any time ~~petition the court for modification or for~~ for termination of a an  
23 order for protective placement. ~~A- or protective services. The petition shall be served~~

1 on the individual; the individual's guardian; the individual's attorney and guardian  
 2 ad litem, if any; and the county department. The petition to terminate a protective  
 3 placement shall allege that the conditions which warranted placement as specified  
 4 in sub. (2) are no longer present. A petition shall be heard if a hearing has not been  
 5 held within the previous 6 months but a hearing may be held at any time in the  
 6 discretion of the court. The petition shall be heard within 21 days of its receipt by  
 7 the court individual no longer meets the standards under s. 55.08 (1) for  
 8 court-ordered protective placement or under s. 55.08 (2) for court-ordered protective  
 9 services.

NOTE: Revises the provisions relating to a petition for protective services or placement. These provisions expand who may petition and who must be served with the petition; and remove provisions regarding hearing on the petition, which are placed in a separate provision.

10 **SECTION 142.** 55.06 (10) (c) of the statutes is repealed.

NOTE: Repeals a provision in current law that provides that termination of a guardianship or attainment of the age of majority by a minor terminates a protective placement order. ~~(Is this recreated anywhere else? If not, why not? Oversight?)~~

11 **SECTION 143.** 55.06 (11) (a) of the statutes is renumbered 55.135 (1) and  
 12 amended to read:

13 55.135 (1) If, from personal observation of, or a reliable report made to, a  
 14 sheriff, police officer, fire fighter, guardian, if any, or authorized representative of a  
 15 board designated under s. 55.02 or an agency designated by it county department or  
 16 an agency with which it contracts under s. 55.02 (2), it appears probable that an  
 17 individual will suffer irreparable injury or death or will present is so totally  
 18 incapable of providing for his or her own care or custody as to create a substantial  
 19 risk of serious physical harm to himself or herself or others as a result of  
 20 developmental disabilities, infirmities of aging, chronic degenerative brain disorder,  
 21 serious and persistent mental illness, or other like incapacities if not immediately

1 placed, the person making the observation or to whom the report is made may take  
2 into custody and transport the individual to an appropriate medical or protective  
3 placement facility. The person making emergency protective placement shall  
4 prepare a statement at the time of detention providing specific factual information  
5 concerning the person's observations or reports made to the person and the basis for  
6 emergency placement. The statement shall be filed with the director of the facility  
7 and ~~shall also be filed~~ with any petition under ~~sub. (2)~~ s. 55.075. At the time of  
8 emergency protective placement the individual shall be informed by the director of  
9 the facility or the director's designee, ~~both~~ orally and in writing, of his or her right  
10 to contact an attorney and a member of his or her immediate family and the right to  
11 have an attorney provided at public expense, as provided under s. 967.06 and ch. 977,  
12 if the individual is a ~~child~~ minor or is indigent. The director or designee shall also  
13 provide the individual with a copy of the statement by the person making emergency  
14 protective placement.

NOTE: Changes a provision in current law regarding emergency protective placement, by providing that, in addition to the personal observation of a law enforcement officer, firefighter, guardian or authorized representative of a county department, detention may be made based on a reliable report made to one of these persons.

15 **SECTION 144.** 55.06 (11) (am) of the statutes is renumbered 55.135 (2) and  
16 amended to read:

17 55.135 (2) Whoever signs a statement under ~~par. (a)~~ sub. (1) knowing the  
18 information contained ~~therein~~ in the statement to be false is guilty of a Class H  
19 felony.

20 **SECTION 145.** 55.06 (11) (ar) of the statutes is renumbered 55.135 (3) and  
21 amended to read:

22 55.135 (3) A person who acts in accordance with this subsection section is not  
23 liable for any actions performed in good faith.

1           **SECTION 146.** 55.06 (11) (b) of the statutes is renumbered 55.135 (4) and  
2 amended to read:

3           55.135 (4) ~~Upon detention~~ When an individual is detained under this section,  
4 a petition shall be filed under ~~sub. (2) s. 55.075~~ by the person making such the  
5 emergency protective placement and a preliminary hearing shall be held within 72  
6 hours, excluding Saturdays, Sundays and legal holidays, to establish probable cause  
7 to believe the grounds for protective placement under ~~sub. (2) s. 55.08 (1)~~. The sheriff  
8 or other person making emergency protective placement under ~~par. (a) sub. (1)~~ shall  
9 provide the individual with written notice and orally inform him or her of the time  
10 and place of the preliminary hearing. If the detainee is not under guardianship, a  
11 petition for guardianship shall accompany the protective placement petition, except  
12 in the case of a minor who is alleged to be developmentally disabled. In the event that  
13 protective placement is not appropriate, the court may elect to treat a petition for  
14 protective placement as a petition for commitment under s. 51.20 or 51.45 (13).

15           **SECTION 147.** 55.06 (11) (c) of the statutes is renumbered 55.135 (5) and  
16 amended to read:

17           55.135 (5) Upon ~~a~~ finding of probable cause under ~~par. (b) sub. (4)~~, the court  
18 may order temporary protective placement up to 30 days pending the hearing for a  
19 permanent protective placement, or the court may order such protective services as  
20 may be required. If the court orders under this subsection an individual who has a  
21 developmental disability ~~is ordered, under this paragraph, to be temporarily placed~~  
22 receive temporary protective placement in an intermediate facility or in a nursing  
23 facility, and if at the hearing for permanent protective placement the court orders  
24 that the individual be ~~protectively placed~~ provide protective placement, the court  
25 may, before commencement of permanent protective placement, extend the

1 temporary protective placement order for not more than 90 days if necessary for the  
2 county department that is participating in the program under s. 46.278 or, if s. 46.279  
3 (4m) applies, the department's contractor to develop the plan required under s.  
4 46.279 (4).

5 **SECTION 148.** 55.06 (11) (d) of the statutes is renumbered 55.135 (6) and  
6 amended to read:

7 55.135 (6) A law enforcement agency, fire department, or county department  
8 ~~designated under s. 55.02 or an agency designated by that county department or~~  
9 ~~agency with which it contracts under s. 55.02 (2)~~ shall designate at least one  
10 employee authorized to take an individual into custody under this ~~subsection~~ section  
11 who shall attend the in-service training on emergency detention and emergency  
12 protective placement offered by a county department of community programs under  
13 s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the  
14 designated employee's jurisdiction offers an in-service training program.

15 **SECTION 149.** 55.06 (12) of the statutes is renumbered 55.055 (5) and amended  
16 to read:

17 55.055 (5) ~~When~~ If a ward lives with ~~the~~ his or her guardian, the guardian may  
18 make temporary protective placement of the ward. ~~Placement may be made, to~~  
19 provide the guardian with a vacation or to ~~temporarily~~ release the guardian  
20 ~~temporarily~~ for a family emergency. ~~Such~~ The temporary protective placement may  
21 be made for not more than 30 days but the court may, upon application, grant an  
22 additional period not to exceed 60 days in all. The application shall include ~~such~~ any  
23 information as ~~that~~ the court may reasonably deem necessary. When reviewing the  
24 application, the court shall provide the least restrictive temporary protective  
25 placement ~~which~~ that is consistent with the needs of the ward.

1           **SECTION 150.** 55.06 (14) of the statutes is renumbered 55.175 and amended to  
2 read:

3           **55.175 Discharge from protective placement.** Prior to discharge from a  
4 protective placement, the appropriate board which is responsible for placement  
5 county department shall review the need for provision of continuing protective  
6 services or for continuation of full or limited guardianship or provision for such a  
7 guardianship if the individual has no guardian. ~~Recommendation shall be made~~ The  
8 county department shall make a recommendation to the court if the recommendation  
9 includes a course of action for which court approval would be required. Prior to  
10 discharge from any state institute or center for the developmentally disabled, the  
11 department shall make such the review under s. 51.35 (7).

12           **SECTION 151.** 55.06 (15) of the statutes is repealed.

NOTE: Repeals a provision regarding the responsibilities of a guardian to the ward,  
since these provisions are present in ch. 880, stats. ~~(check section number)~~ ✓

13           **SECTION 152.** 55.06 (16) of the statutes is renumbered 55.21 and amended to  
14 read:

15           **55.21 Centers for the developmentally disabled.** Placements Protective  
16 placements to centers for the developmentally disabled and discharges from such  
17 institutions shall be in compliance with s. 51.35 (4).

18           **SECTION 153.** 55.06 (17) of the statutes is renumbered 55.22 and amended to  
19 read:

20           **55.22 Records.** (1) (intro.) ~~Any~~ No records of the court pertaining to protective  
21 services or protective placement proceedings, including evaluations, reviews and  
22 recommendations prepared under sub. (8) (c) s. 55.11 (1) (c), are ~~not~~ open to public  
23 inspection but are any record is available to all of the following:

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

3 (b) The subject's individual's attorney or guardian ad litem, without the  
4 subject's individual's consent and without modification of the records, in order to  
5 prepare for any court proceedings relating to the subject's individual's protective  
6 services or protective placement or relating to the subject's individual's  
7 guardianship.

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

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

14 (3) All treatment and service records pertaining to a ~~person~~ an individual who  
15 is protected under this chapter or for whom application has been made for protection  
16 under this chapter are confidential and ~~privileged to the subject~~. Section 51.30  
17 governs access to treatment and service records.

NOTE: Renumbers a provision in current law relating to records in protective placement and services proceedings and makes minor wording changes.

18 **SECTION 154.** 55.06 (18) of the statutes is renumbered 55.20 and amended to  
19 read:

20 **55.20 Appeals.** An appeal may be taken to the court of appeals from a final  
21 judgment or final order under this ~~section~~ chapter within the time period specified  
22 in s. 808.04 (3) and in accordance with s. 809.30 by the subject of the petition or the  
23 individual's guardian, by any petitioner, or by the representative of the public.

1           **SECTION 155.** 55.07 of the statutes is renumbered 55.23, and 55.23 (1) and (2),  
2 as renumbered, are amended to read:

3           55.23 (1) The rights and limitations upon rights, procedures for enforcement  
4 of rights, and penalties prescribed in s. 51.61 apply to persons individuals who  
5 receive services under this chapter, whether on a voluntary or involuntary basis.

6           (2) A parent who has been denied periods of physical placement under s. 767.24  
7 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian with respect to  
8 access to a child's minor's records under this chapter.

9           **SECTION 156.** 55.075 of the statutes is created to read:

10           **55.075 Protective services or protective placement; petition.** Except as  
11 provided in s. 971.14 (6) (b):

12           (1) WHO MAY PETITION.

13           (2) CONTENTS OF PETITION.

14           (3) PETITION FOR GUARDIANSHIP; REVIEW OF INCOMPETENCY.

15           (4) FEES AND COSTS OF PETITION. (a) ~~Except as provided in par. (b),~~ the court shall  
16 award, from the assets of the individual sought to be protectively placed or  
17 protectively served, payment of the petitioner's reasonable attorney fees and costs,  
18 unless the court finds, after considering all of the following, that it would be  
19 inequitable to do so:

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

23           2. The ability of the estate of the individual sought to be protectively placed or  
24 protectively served to pay the petitioner's reasonable attorney fees and costs.

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



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

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

7           **(5) WHERE A PETITION MAY BE FILED; VENUE; COUNTY OF RESPONSIBILITY.**

8           (b) The court in which a petition is first filed under par. (a) shall determine  
9 venue. The court shall direct that proper notice be given to any potentially  
10 responsible or affected county. Proper notice is given to a potentially responsible or  
11 affected county if written notice of the proceeding is sent by certified mail to the  
12 county's clerk and corporation counsel. After all potentially responsible or affected  
13 counties and parties have been given an opportunity to be heard, the court shall  
14 determine that venue lies in the county in which the petition is filed under par. (a)  
15 or in another county, as appropriate. If the court determines that venue lies in  
16 another county, the court shall order the entire record certified to the proper court.  
17 A court in which a subsequent petition is filed shall, upon being satisfied of an earlier  
18 filing in another court, summarily dismiss the subsequent petition.

NOTE: Renumbers and reorganizes provisions relating to a petition for protective placement or services. Adds to ch. 55 provisions similar to those in current s. 880.24 (3), stats., requiring the court to award payment of reasonable attorney fees and costs to a person who petitions for protective services or placement. Also, adds new provisions relating to venue in a protective placement or services proceeding.

19           **SECTION 157.** 55.08 of the statutes is created to read:

20           **55.08 Protective services or protective placement: standards. (1)**

21           PROTECTIVE PLACEMENT. A court may under s. 55.12 order protective placement for  
22 an individual who meets all of the following standards:

1           (2) PROTECTIVE SERVICES. A court may under s. 55.12 order protective services  
2 for an individual who meets all of the following standards:

3           (a) The individual has been determined to be incompetent by a circuit court or  
4 is a minor who is alleged to be developmentally disabled and on whose behalf a  
5 petition for a guardianship has been submitted.

6           (b) As a result of developmental disabilities, degenerative brain disorder,  
7 serious and persistent mental illness, or other like incapacities, the individual will  
8 incur a substantial risk of physical harm or deterioration or will present a  
9 substantial risk of physical harm to others if protective services are not provided.

NOTE: Renumbers and reorganizes provisions relating to standards that a court must consider when determining whether an individual meets the standards for protective placement; adds standards that a court must consider when determining whether an individual meets the standards for court-ordered protective services. Although courts order protective services under current law, there are no specific statutory provisions for courts to follow when ordering protective services.

10           **SECTION 158.** 55.09 of the statutes is created to read:

11           **55.09 Notice of petition and hearing for protective services or**  
12 **placement.**

13           (2) OTHER NOTICE REQUIRED. In addition to the notice required under sub. (1),  
14 notice shall be served, personally or by mail, at least 10 days before the time set for  
15 a hearing, upon all of the following:

16           (a) The guardian ad litem, legal counsel, and guardian, if any, of the individual  
17 sought to be protected.

18           (b) The agent under an activated power of attorney for health care, if any, of the  
19 individual sought to be protected.

20           (c) The presumptive adult heirs, if any, of the individual sought to be protected.

1 (d) Other persons who have physical custody of the individual sought to be  
2 protected whose names and addresses are known to the petitioner or can with  
3 reasonable diligence be ascertained.

4 (e) The county department.

5 (f) Any governmental or private body or group from whom the individual sought  
6 to be protected is known to be receiving aid.

7 (g) Any other persons or entities that the court may require.

8 (h) The department, if the individual sought to be protected may be placed in  
9 a center for the developmentally disabled.

10 (i) The county department that is participating in the program under s. 46.278  
11 of the county of residence of the individual sought to be protected, if the individual  
12 has a developmental disability and may be placed in an intermediate facility or a  
13 nursing facility, except that, for an individual sought to be protected to whom s.  
14 46.279 (4m) applies, this notice shall instead be served on the department.

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

NOTE: Creates a new section relating to notice of petition and hearing for protective services or placement, which incorporates and reorganizes provisions in current law regarding who must be served with notice of a hearing for protective services or placement.

18 **SECTION 159.** 55.10 of the statutes is created to read:

19 **55.10 Hearing on petition for protective services or protective**  
20 **placement.**

21 **(2) ATTENDANCE.** The individual sought to be protected shall be present at the  
22 hearing on the petition unless, after a personal interview, the guardian ad litem  
23 certifies in writing to the court that the individual is unwilling to participate or

1 unable to participate in a meaningful way or certifies other specific reasons why the  
2 individual is unable to attend. If the individual is unable to attend a hearing only  
3 because of physical inaccessibility or lack of transportation, the court shall, if  
4 requested by the individual, the individual's guardian ad litem, the individual's  
5 counsel, or other interested person, hold the hearing in a place where the individual  
6 is able to attend.

7 (3) HEARING TO BE OPEN. The hearing shall be open, unless the individual sought  
8 to be protected, or his or her attorney acting with the consent of the individual sought  
9 to be protected, requests that it be closed. If the hearing is closed, only persons in  
10 interest, including representatives of providers of service and their attorneys and  
11 witnesses, may be present.

12 (4) RIGHTS. The following provisions apply to all hearings under this chapter  
13 except transfers of placement under s. 55.15 and summary hearings under ss. 55.18  
14 (3) (d) and 55.19 (3) (d):

15 (a) *Counsel; costs.* The individual sought to be protected has the right to counsel  
16 whether or not the individual is present at the hearing on the petition. The court  
17 shall require representation by full legal counsel whenever the petition alleges that  
18 the individual is not competent to refuse psychotropic medication under s. 55.14, the  
19 individual sought to be protected requested such representation at least 72 hours  
20 before the hearing, the guardian ad litem or any other person states that the  
21 individual sought to be protected is opposed to the petition, or the court determines  
22 that the interests of justice require it. If the individual sought to be protected or any  
23 other person on his or her behalf requests but is unable to obtain legal counsel, the  
24 court shall appoint legal counsel. Counsel shall be provided at public expense, as  
25 provided under s. 967.06 and ch. 977, if the individual is indigent. If the individual

1 sought to be protected is an adult who is indigent, and if counsel was not appointed  
2 under s. 977.08, the county in which the hearing is held is liable for any fees due the  
3 individual's legal counsel. If the individual sought to be protected is represented by  
4 counsel appointed under s. 977.08 in a proceeding for the appointment of a guardian  
5 under s. 880.33, the court shall order the counsel appointed under s. 977.08 to  
6 represent under this section the individual sought to be protected.

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

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

NOTE: Creates a new section on hearing on the petition for protective placement  
or services, which incorporates and reorganizes provisions in current law. Also, modifies  
provision regarding attendance of the individual to be protected at the hearing. Specifies  
the rights that apply to all hearings under ch. 55. These rights are present under current  
law, but are contained in ch. 880 and only cross-referenced currently in ch. 55. This  
provisions specifies these rights within ch. 55 for easier reference.

16 **SECTION 160.** 55.11 of the statutes is created to read:

17 **55.11 Comprehensive evaluation; recommendations; statements.**

18 (2) If requested by the individual sought to be protected, or anyone on the  
19 individual's behalf, the individual sought to be protected has the right at his or her  
20 own expense, or, if indigent, at the expense of the county where the petition is filed,  
21 to secure an independent comprehensive evaluation, if an independent  
22 comprehensive evaluation has not already been made. The individual, or anyone on

1 the individual's behalf, may present a report of this independent comprehensive  
2 evaluation or the evaluator's personal testimony as evidence at the hearing.


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

8 (4) Where applicable by reason of the particular disability, the county  
9 department or an agency with which it contracts under s. 55.02 (2) that has  
10 responsibility where the individual has legal residence shall make a  
11 recommendation for protective placement or protective services.

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

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

NOTE: Creates a new section relating to a comprehensive evaluation in a protective placement or services proceeding, which incorporates and reorganizes provisions in current law. Also, creates a right to request an independent evaluation by a person who is the subject of a protective placement proceeding that is parallel to the right to request an independent evaluation in s. 880.33 (2) (b) when a person is the subject of a guardianship proceeding.

*close up space*  
*De* This right to an independent evaluation applies when such an evaluation has not already been made. For example, if a person who is the subject of both a guardianship and protective placement proceeding requested an independent evaluation under s. 880.33 (2) (b), the person would not also be able to request an independent evaluation under s. 55.11. 

1           **SECTION 161.** 55.12 of the statutes is created to read:

2           **55.12 Order for protective services or protective placement.**

3           (7) If an individual to be protectively placed is a resident of a facility licensed  
4 for 16 or more beds, the court may consider whether moving the individual would  
5 create a serious risk of harm to that individual.

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

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

NOTE: Moves provisions in current s. 55.06 (9) (a), relating to orders for protective services or protective placements, to a newly created statutory section, s. 55.12. Also, creates additional provisions that clarify court orders relating to moving an individual who is a resident of a facility licensed for 16 or more beds; court orders for protective services as an alternative to placement; and court orders for psychotropic medication as a protective service.

10          **SECTION 162.** 55.13 (2) and (3) of the statutes are created to read:

11          55.13 (2) If the county department or agency with which the county  
12 department contracts under s. 55.02 (2) that is providing emergency protective  
13 services to an individual under sub. (1) has reason to believe that the individual  
14 meets the criteria for protective services under s. 55.08 (2), the county department  
15 or agency may file a petition under s. 55.075. If a petition is filed, a preliminary  
16 hearing shall be held within 72 hours, excluding Saturdays, Sundays, and legal

1 holidays, to establish probable cause that the criteria under s. 55.08 (2) are present.  
2 The county department or agency shall provide the individual with written notice  
3 and orally inform the individual of the time and place of the preliminary hearing.  
4 If the individual is not under guardianship, a petition for guardianship shall  
5 accompany the petition under s. 55.08 (2), except in the case of a minor who is alleged  
6 to be developmentally disabled.

7 (3) Upon finding probable cause under sub. (2), the court may order emergency  
8 protective services to continue to be provided for up to 60 days pending the hearing  
9 on protective services under s. 55.10.

NOTE: Creates new provisions to provide direction to a county department that is providing emergency protective services to permit the department to file a petition for protective services for an individual who is receiving emergency protective services.

10 **SECTION 163.** 55.135 (title) of the statutes is created to read:

11 **55.135 (title) Emergency and temporary protective placement.**

NOTE: Creates a title for new statutory section on emergency and temporary protective placement.

12 **SECTION 164.** 55.14 of the statutes is created to read:

13 **55.14 Involuntary administration of psychotropic medication.** (1) In  
14 this section:

15 (a) “Involuntary administration of psychotropic medication” means any of the  
16 following:

17 1. Placing psychotropic medication in an individual’s food or drink with  
18 knowledge that the individual protests receipt of the psychotropic medication.

19 2. Forcibly restraining an individual to enable administration of psychotropic  
20 medication.

21 3. Requiring an individual to take psychotropic medication as a condition of  
22 receiving privileges or benefits.



1           (c) “Protest” means make more than one discernible negative response, other  
2 than mere silence, to the offer of, recommendation for, or other proffering of  
3 voluntary receipt of psychotropic medication. “Protest” does not mean a discernible  
4 negative response to a proposed method of administration of the psychotropic  
5 medication.

6           (d) “Psychotropic medication” means a prescription drug, as defined in s. 450.01  
7 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

8           (2) Involuntary administration of psychotropic medication, with consent of a  
9 guardian, may be ordered as a protective service under the requirements of this  
10 section.

11           (3) In addition to the other requirements of this chapter pertaining to petitions  
12 for protective services, a petition under this section shall allege that all of the  
13 following are true:

14           (a) A physician has prescribed psychotropic medication for the individual.

15           (b) The individual is not competent to refuse psychotropic medication.

16           (c) The individual has refused to take the psychotropic medication voluntarily  
17 or attempting to administer psychotropic medication to the individual voluntarily is  
18 not feasible or is not in the best interests of the individual. If the petition alleges that  
19 the individual has refused to take psychotropic medication voluntarily, the petition  
20 shall identify the reasons, if known, for the individuals refusal to take psychotropic  
21 medication voluntarily. The petition also shall provide evidence showing that a  
22 reasonable number of documented attempts to administer psychotropic medication  
23 voluntarily using appropriate interventions that could reasonably be expected to  
24 increase the individual’s willingness to take psychotropic medication voluntarily  
25 have been made and have been unsuccessful. If the petition alleges that attempting

1 to administer psychotropic medications to the individual voluntarily is not feasible  
2 or is not in the best interests of the individual, the petition must identify specific  
3 reasons supporting that allegation.

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

7 (e) Unless psychotropic medication is administered involuntarily, the  
8 individual will incur an immediate or imminent substantial probability of physical  
9 harm, impairment, injury, or debilitation or will present a substantial probability of  
10 physical harm to others. The substantial probability of physical harm, impairment,  
11 injury, or debilitation shall be evidenced by one of the following:

12 1. The individual's history of at least 2 episodes, one of which has occurred  
13 within the previous 24 months, that indicate a pattern of overt activity, attempts,  
14 threats to act, or omissions that resulted from the individual's failure to participate  
15 in treatment, including psychotropic medication, and that resulted in a finding of  
16 probable cause for commitment under s. 51.20 (7), a settlement agreement approved  
17 by a court under s. 51.20 (8) (bg), or commitment ordered under s. 51.20 (13).

18 2. Evidence that the individual meets one of the dangerousness criteria set  
19 forth in s. 51.20 (1) (a) 2. a. to e.

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

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

5           (6) If requested by an individual who is the subject of a petition under this  
6 section or anyone on his or her behalf, the individual has the right at his or her own  
7 expense, or if indigent at the expense of the county in which the petition is filed, to  
8 secure an independent medical or psychological examination relevant to the issues  
9 of whether the allegations in the petition required under sub. (3) are true, and  
10 whether involuntary administration of psychotropic medication is in the best  
11 interest of the individual, and to present a report of this independent evaluation or  
12 the evaluator's personal testimony as evidence at the hearing.

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

16           (8) The court may issue an order authorizing an individual's guardian to  
17 consent to involuntary administration of psychotropic medication to the individual  
18 and may order involuntary administration of psychotropic medication to the  
19 individual as a protective service, with the guardian's consent, if the court or jury  
20 finds by clear and convincing evidence that the allegations in the petition required  
21 under sub. (3) are true, all other requirements for involuntary administration of  
22 psychotropic medication under this section have been met, psychotropic medication  
23 is necessary for treating the condition described in the statement under sub. (4), and  
24 all other requirements of this chapter for ordering protective services have been met.  
25 An order under this section shall do all of the following:

1           (a) Direct the development of a treatment plan for the individual specifying the  
2 protective services, including psychotropic medication as ordered by the treating  
3 physician, that the individual should receive. If the individual resides in a nursing  
4 home or hospital, the nursing home or hospital shall develop the treatment plan. If  
5 the individual resides elsewhere, the county department or an agency with which it  
6 contracts under s. 55.02 (2) shall develop the treatment plan. The treatment plan  
7 shall include a plan for the involuntary administration of psychotropic medication  
8 to the individual. The treatment plan is subject to the approval of the guardian and  
9 to review and approval by the court. If the court approves the plan, the court shall  
10 order the county department or an agency with which it contracts under s. 55.02 (2)  
11 to ensure that psychotropic medication is administered in accordance with the  
12 treatment plan.

13           (b) Order the individual to comply with the treatment plan under par. (a). The  
14 order shall provide that if the individual fails to comply with provisions of the  
15 treatment plan that require the individual to take psychotropic medications, the  
16 medications may be administered involuntarily with consent of the guardian. The  
17 order shall specify the methods of involuntary administration of psychotropic  
18 medication to which the guardian may consent. An order authorizing the forcible  
19 restraint of an individual shall specify that a person licensed under s. 441.06, 441.10,  
20 or 448.05 (2) or (5) shall be present at all times that psychotropic medication is  
21 administered in this manner and shall require the person or facility using forcible  
22 restraint to maintain records stating the date of each administration, the medication  
23 administered, and the method of forcible restraint utilized.

24           (9) If an individual who is subject to an order under this section is not in  
25 compliance with the order because he or she refuses to take psychotropic medication

1 as ordered under the treatment plan, and it is necessary for the individual to be  
2 transported to an appropriate facility for forcible restraint for administration of  
3 psychotropic medication, the corporation counsel may file with the court a statement  
4 of the facts of the noncompliance of the individual. The statement shall be sworn to  
5 be true and shall be based upon the information and belief of the person filing the  
6 statement. The statement shall be signed by the individual's guardian and by the  
7 director or designee of the county department or an agency with which it contracts  
8 under s. 55.02 (2) to develop and administer the treatment plan. Upon receipt of the  
9 statement of noncompliance, if the court finds by clear and convincing evidence that  
10 the individual has substantially failed to comply with the administration of  
11 psychotropic medication as ordered under the treatment plan, the court may issue  
12 an order authorizing the sheriff or any other law enforcement agency in the county  
13 in which the individual is found or in which it is believed that the individual may be  
14 present to take the individual into custody and transport him or her to an  
15 appropriate facility for administration of psychotropic medication using forcible  
16 restraint, with consent of the guardian.

17 (10) Nothing in this section prohibits the involuntary administration of  
18 psychotropic medication as an emergency protective service under s. 55.13.

19 (11) The county department or an agency with which it contracts under s. 55.02  
20 (2) shall provide to the department a copy of any order issued under this section that  
21 applies to any protectively placed individual in the county.

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

24 (13) An order under this section is subject to annual review under s. 55.19.

NOTE: Establishes a procedure by which a court may order involuntary administration of psychotropic medication, with consent of a guardian, as a protective service, as described in detail in the PREFATORY NOTE.

1           **SECTION 165.** 55.15 of the statutes is created to read:

2           **55.15 Transfer of an individual under a protective placement order.**

3           **(1) TRANSFERS AUTHORIZED.** An individual under a protective placement order may  
4           be transferred between protective placement units, between protective placement  
5           facilities, or from a protective placement unit to a medical facility. The individual  
6           may not be transferred, under the protective placement order, to any facility for  
7           which commitment procedures are required under ch. 51.

8           **(2) WHO MAY TRANSFER.** A guardian, a county department or agency with which  
9           it contracts under s. 55.03 (2) that provided protective placement to the individual  
10          pursuant to the order of the court, the department, or a protective placement facility  
11          may transfer an individual under a protective placement order under the  
12          requirements of this section, notwithstanding the fact that a court order has named  
13          a specific facility for the protective placement of the individual.

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

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

21          **(5) NOTICE OF TRANSFER.** (a) *Nonemergency transfer.* A person or entity who  
22          initiates a transfer shall provide 10 days' prior written notice of a transfer to the court  
23          that ordered the protective placement and to each of the other persons and entities

1 specified in sub. (2) who did not initiate the transfer. The notice of transfer shall  
2 include notice of the right of the individual under a protective placement, the  
3 individual's attorney, if any, or other interested person to petition the court for a  
4 hearing on the transfer.

5 (b) *Emergency transfer.* If an emergency makes it impossible to provide the  
6 notice specified in par. (a) or to obtain the prior written consent of the guardian  
7 specified in sub. (3), the individual may be transferred without the prior written  
8 consent of the guardian and without the notice specified in par. (a). Written notice  
9 shall be provided immediately upon transfer to each of the persons and entities  
10 specified under sub. (2) who did not initiate the transfer. Notice shall also be  
11 provided to the court that ordered the protective placement within a reasonable time,  
12 not to exceed 48 hours from the time of transfer. The notice shall include notice of  
13 the right to file with the court under sub. (6) a petition objecting to the ~~emergency~~  
14 transfer. *emergency*

15 (6) PETITION. An individual under protective placement, the individual's  
16 guardian, the individual's attorney, if any, or any other interested person may file a  
17 petition with the court objecting to a proposed transfer or to an emergency transfer  
18 made under sub. (5) (b). The petition shall specify the reasons for the person's  
19 objection to the transfer.

20 (7) HEARING. (a) The court shall order a hearing within 10 days after the filing  
21 of a petition under sub. (6).

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

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

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

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

12 (8) STANDARD FOR TRANSFER. In determining whether to approve a proposed  
13 transfer or an emergency transfer made under sub. (5) (b), the court shall consider  
14 all of the following:

15 (a) Whether the requirements of s. 55.12 (2) and (6) are met.

16 (b) Whether the protective placement is in the least restrictive environment  
17 consistent with the requirements of s. 55.12 (3), (4), and (5) or, if the transfer is to an  
18 intermediate facility or nursing facility, is in the most integrated setting, as defined  
19 in s. 46.279 (1) (bm).

20 (c) Whether the protective placement is in the best interests of the person under  
21 protective placement.

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

24 (a) If the court finds that the individual continues to meet the standards under  
25 s. 55.08 (1) and the individual's proposed protective placement does not meet the



1 standards for transfer under sub. (8), the court shall issue an order prohibiting the  
2 transfer. The court shall include the information relied upon as a basis for the order  
3 and shall make findings based on the standards under sub. (8) in support of the  
4 denial of the transfer.

5 (b) If the court finds that the individual continues to meet the standards under  
6 s. 55.08 (1) and the proposed transfer meets the standard under sub. (8), the court  
7 shall approve the proposed transfer. The court may order protective services along  
8 with transfer of protective placement. The court shall include the information relied  
9 upon as a basis for the order and shall make findings based on the standards in s.  
10 55.08 (1) in support of the need for continued protective placement.

11 (c) If the court finds that the individual no longer meets the standards under  
12 s. 55.08 (1), the court shall terminate the protective placement, as provided in s.  
13 55.17.

NOTE: Revises the provisions in current law regarding transfers of protective placements. 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 or the Department of Health and Family Services (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, the department, and the placement facility. Further, this bill requires that a county, the department, or 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. Under the bill, if a guardian, ward 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, or within 96 hours after filing of the petition in the case of an emergency transfer made without the required prior written notice and prior written consent of the guardian.

*Close up  
Space*

For nonemergency transfers, the purpose of the hearing is to determine whether the proposed placement meets the standards of s. 55.12 (2) and (6) and is in the best interests of the ward. For emergency transfers made without the required prior written notice and without prior written consent of the guardian, the purpose of the hearing is to determine whether there is probable cause to believe that the transfer meets the standards and is necessary for the best interests of the ward.

14 **SECTION 166.** 55.16 of the statutes is created to read:

*is in the least restrictive environment or most integrated setting*