

1           **SECTION 196.** 880.06 (1) of the statutes is amended to read:

2           880.06 (1) ORIGINAL PROCEEDING. The court ~~wherein in which~~ a petition is first  
3 filed ~~under s. 880.07~~ shall determine venue. ~~If it is determined~~ The court shall direct  
4 that proper notice be given to any potentially responsible or affected county. Proper  
5 notice is given to a potentially responsible or affected county if written notice of the  
6 proceeding is sent by certified mail to the county's clerk and corporation counsel.  
7 After all potentially responsible or affected counties and parties have been given an  
8 opportunity to be heard, the court shall determine that venue lies in the county in  
9 which the petition is first filed or in another county, as appropriate. If the court  
10 determines that venue lies in another county, the court shall order the entire record  
11 certified to the proper court. A court ~~wherein in which~~ a subsequent petition is filed  
12 shall, upon being satisfied of an earlier filing in another court, summarily dismiss  
13 such 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.

14           **SECTION 197.** 880.07 (1m) of the statutes is repealed.

NOTE: Repeals a provision describing the required contents of a petition alleging that a proposed ward is incompetent to refuse psychotropic medications to reflect that the bill creates a new procedure for these types of petitions in s. 55.14.

15           **SECTION 198.** 880.07 (2m) of the statutes is created to read:

16           880.07 (2m) Whenever a petition for guardianship on the ground of  
17 incompetency is filed with respect to an individual who resides in a facility licensed  
18 for 16 or more beds, a petition for protective placement of the individual shall also  
19 be filed.

NOTE: Requires the filing of a protective placement petition whenever a petition for guardianship on the ground of incompetency is filed with respect to a person who resides in a facility licensed for 16 or more beds.

1           **SECTION 199.** 880.08 (1) of the statutes is amended to read:

2           880.08 (1) ~~INCOMPETENTS~~ PROPOSED WARD OR WARD. A petitioner shall have  
3 notice served of a petition for appointment or change of a guardian upon ~~the a~~  
4 ~~proposed incompetent~~ ward or ward and existing guardian, if any, by personal  
5 service at least 10 days before the time set for hearing. If ~~such~~ the proposed  
6 ~~incompetent~~ ward or ward is in custody or confinement, a petitioner shall have notice  
7 served by registered or certified mail on the proposed ~~incompetent's~~ ward's or ward's  
8 custodian, who shall immediately serve it on the proposed ~~incompetent~~ ward or  
9 ward. The custodian shall inform the proposed ~~incompetent~~ ward or ward of the  
10 complete contents of the notice ~~and, certify thereon~~ on it that the custodian served  
11 and informed the proposed ~~incompetent~~ ward or ward, and ~~returned~~ return the  
12 certificate and notice to the circuit judge. The notice shall include the names of all  
13 persons who are petitioning for guardianship. A copy of the petition shall be attached  
14 to the notice. ~~The court shall cause the proposed incompetent, if able to attend, to~~  
15 ~~be produced~~ ward or ward shall be present at the hearing. ~~The proposed incompetent~~  
16 ~~is presumed able to attend unless, after a personal interview, the guardian ad litem~~  
17 ~~certifies in writing to the court~~ that the proposed ward or ward is unwilling to  
18 participate or unable to participate in a meaningful way or certifies other specific  
19 reasons why the person proposed ward or ward is unable to attend. If the ~~person~~  
20 proposed ward or ward is unable to attend a hearing only because of physical  
21 inaccessibility or lack of transportation, the court shall ~~hold the hearing in a place~~  
22 ~~where the person may attend,~~ if requested by the proposed ward or ward, guardian  
23 ad litem, adversary counsel for the proposed ward or ward, or other interested  
24 person. ~~Such,~~ hold the hearing in a place where the proposed ward or ward is able  
25 to attend. The notice shall also be given personally or by mail at least 10 days before

1 the hearing to the proposed incompetent's ward's or ward's counsel, if any, guardian  
2 ad litem, presumptive adult heirs or other persons who have legal or physical custody  
3 of the proposed incompetent ward or ward whose names and addresses are known  
4 to the petitioner or can with reasonable diligence be ascertained, to any  
5 governmental or private agency, charity or foundation from which the proposed  
6 incompetent ward or ward is receiving aid and to such other persons or entities as  
7 the court may require. The court shall then proceed under s. 880.33.

NOTE: Specifies that the court need not hold a hearing on appointment of a guardian for a person alleged to be incompetent in the presence of the person under certain circumstances. These provisions are identical to provisions inserted into ch. 55 by SECTION 159 of the bill.

8 **SECTION 200.** 880.24 (3) (a) of the statutes is renumbered 880.24 (3), and 880.24  
9 (3) (intro.), as renumbered, is amended to read:

10 880.24 (3) (intro.) ~~Except as provided in par. (b), when~~ When a guardian is  
11 appointed, the court shall award from the ward's estate payment of the petitioner's  
12 reasonable attorney fees and costs, ~~including those fees and costs, if any, related to~~  
13 ~~protective placement of the ward,~~ unless the court finds, after considering all of the  
14 following, that it would be inequitable to do so:

15 **SECTION 201.** 880.24 (3) (b) of the statutes is renumbered 880.24 (3) (cm) and  
16 amended to read:

17 880.24 (3) (cm) ~~If the court finds that~~ Whether the ward had executed a durable  
18 power of attorney under s. 243.07 or a power of attorney for health care under s.  
19 155.05 or had engaged in other advance planning to avoid guardianship, ~~the court~~  
20 ~~may not make the award specified in par. (a).~~

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

21 **SECTION 202.** 880.33 (1) of the statutes is amended to read:

1           880.33 (1) Whenever it is proposed to appoint a guardian on the ground of  
2 incompetency, a licensed physician or licensed psychologist, or both, shall furnish a  
3 written statement concerning the mental condition of the proposed ward, based upon  
4 examination. The privilege under s. 905.04 shall not apply to this statement. A copy  
5 of the statement shall be provided to the proposed ward, guardian ad litem, and  
6 attorney. ~~Prior to the examination, under this subsection, of a person alleged to be~~  
7 ~~not competent to refuse psychotropic medication under s. 880.07 (1m), the person~~  
8 ~~shall be informed that his or her statements may be used as a basis for a finding of~~  
9 ~~incompetency and an order for protective services, including psychotropic~~  
10 ~~medication.~~ The person individual shall also be informed that he or she has a right  
11 to remain silent and that the examiner is required to report to the court even if the  
12 person individual remains silent. The issuance of such a warning to the person  
13 individual prior to each examination establishes a presumption that the person  
14 individual understands that he or she need not speak to the examiner.

15           **SECTION 203.** 880.33 (2) (a) 1. of the statutes is amended to read:

16           880.33 (2) (a) 1. The proposed ward has the right to counsel whether or not  
17 present at the hearing on determination of competency. The court shall in all cases  
18 require the appointment of an attorney as guardian ad litem in accordance with s.  
19 757.48 (1) and shall in addition require representation by full legal counsel ~~whenever~~  
20 ~~the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours~~  
21 ~~before the hearing, the alleged incompetent requests; the guardian ad litem or any~~  
22 ~~other person states that the alleged incompetent is opposed to the guardianship~~  
23 ~~petition; or the court determines that the interests of justice require it.~~ The proposed  
24 ward has the right to a trial by a jury if demanded by the proposed ward, attorney,  
25 or guardian ad litem, ~~except that if the petition contains the allegations under s.~~

1 880.07 (1m) and if notice of the time set for the hearing has previously been provided  
2 to the proposed ward and his or her counsel, a jury trial is deemed waived unless  
3 demanded at least 48 hours prior to the time set for the hearing. The number of  
4 jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney, or  
5 guardian ad litem shall have the right to present and cross-examine witnesses,  
6 including the physician or psychologist reporting to the court under sub. (1). The  
7 attorney or guardian ad litem for the proposed ward shall be provided with a copy  
8 of the report of the physician or psychologist at least 96 hours in advance of the  
9 hearing. Any final decision of the court is subject to the right of appeal.

10 SECTION 204. <sup>create autoreb Q</sup> 880.33 (2) (a) 2. of the statutes is amended to read:

11 880.33 (2) (a) 2. If the person proposed ward requests but is unable to obtain  
12 legal counsel, the court shall appoint legal counsel. If the person proposed ward is  
13 represented by counsel appointed under s. 977.08 in a proceeding for under a petition  
14 for protective placement brought under s. 55.06 or for the appointment of a guardian  
15 under s. 880.07 (1m) 55.075, the court shall order the counsel appointed under s.  
16 977.08 to represent the person proposed ward. <sup>create autoreb X</sup>

17 SECTION 205. 880.33 (2) (d) of the statutes is repealed. <sup>create autoreb Y</sup>

18 SECTION 206. 880.33 (2) (e) of the statutes is repealed. <sup>use autoreb Q</sup>

NOTE: SECTIONS 202 to <sup>204</sup> 206 replace the term "person" with "individual" (check  
wording of other NOTES describing this change) (\*\*\*)Revise NOTE to reflect repeal of  
language pertaining to petitions alleging incompetency to refuse psych meds if that is  
what we decide to do.\*\*\*

19 SECTION 207. 880.33 (2) (f) of the statutes is created to read:

20 880.33 (2) (f) An interested person may participate in the hearing on the  
21 petition at the court's discretion.

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

NOTE: <sup>CS</sup> Sections 205 and 206 repeal provisions pertaining  
to a hearing on a petition alleging that a proposed ward  
is incompetent to refuse psychotropic medications, to reflect that  
the bill creates a new procedure for these types of petitions in s. 55.14.

note: std

or "proposed ward"  
as appropriate

1           **SECTION 208.** 880.33 (3) of the statutes is amended to read:

2           880.33 (3) In a finding of limited incompetency, guardianship of the person  
3 shall be limited in accordance with the order of the court accompanying the finding  
4 of incompetence. If the proposed incompetent has executed a power of attorney for  
5 health care under ch. 155, the court shall give consideration to the appointment of  
6 the health care agent for the individual as the individual's guardian. The court shall  
7 make a specific finding as to which legal rights the ~~person~~ individual is competent  
8 to exercise. Such rights include but are not limited to the right to vote, to marry, to  
9 obtain a motor vehicle operator's license or other state license, to hold or convey  
10 property, and the right to contract. The findings of incompetence must be based upon  
11 clear and convincing evidence. The court shall determine if additional medical or  
12 psychological testimony is necessary for the court to make an informed decision  
13 respecting competency to exercise legal rights and may obtain assistance in the  
14 manner provided in s. ~~55.06(8)~~ 55.11 whether or not protective placement is made.  
15 The guardian, ward, or any interested person may at any time file a petition with the  
16 court requesting a restoration of any such legal right, and specifying the reasons  
17 therefor. ~~Such~~ The petition may request that a guardianship of the person be  
18 terminated and a guardianship of property be established.

NOTE: Replaces the term "person" with individual and amends a cross-reference to reflect renumbering if ch. 55 in the bill.

19           **SECTION 209.** 880.33 (4m) of the statutes is repealed.

NOTE: Repeals a provision in ch. 880 authorizing a court to appoint a guardian to consent to or refuse psychotropic medications on behalf of a ward to reflect that the bill creates a new procedure in s. 55.14 authorizing a guardian to make these decisions.

20           **SECTION 210.** 880.33 (4r) of the statutes is repealed.

NOTE: Repeals a provision in ch. 880 under which a court may authorize a guardian to consent to forcible administration of psychotropic medications to a ward under certain circumstances, to reflect that the bill creates a new procedure in s. 55.14 for a court to provide this authorization.

1           **SECTION 211.** 880.33 (6) of the statutes is amended to read:

2           880.33 (6) All court records pertinent to the finding of incompetency are closed  
3 but subject to access as provided in s. ~~55.06 (17)~~ 55.22. The fact that a person an  
4 individual has been found incompetent is accessible to any person who demonstrates  
5 to the custodian of the records a need for that information.

NOTE: Amends a cross-reference to reflect renumbering and amendment of ch. 55  
in a provision of current law pertaining to guardianship.

6           **SECTION 212.** 880.33 (7) of the statutes is amended to read:

7           880.33 (7) A finding of incompetency and appointment of a guardian under this  
8 subchapter is not grounds for involuntary protective placement. Such placement A  
9 protective placement may be made only in accordance with s. ~~55.06~~ ch. 55.

NOTE: Amends a cross-reference to reflect renumbering and amendment of ch. 55  
in a provision of current law pertaining to guardianship.

10          **SECTION 213.** 880.331 (1) of the statutes is amended to read:

11          880.331 (1) APPOINTMENT. The court shall appoint a guardian ad litem  
12 whenever it is proposed that the court appoint a guardian on the ground of  
13 incompetency under s. 880.33, ~~protectively place a person~~ provide protective  
14 placement to an individual or order protective services under s. ~~55.06~~ ch. 55, review  
15 any protective placement or protective service order under s. ~~55.06~~ 55.18, or  
16 terminate a protective placement under s. ~~55.06~~ 55.17.

NOTE: Amends a cross-reference to reflect renumbering and amendment of ch. 55  
in a provision in current law that requires the court to appoint a guardian ad litem in  
incompetency cases.

17          **SECTION 214.** 880.331 (4) (am) and (ar) of the statutes are created to read:

18          880.331 (4) (am) Interview the proposed guardian and any other person  
19 seeking appointment as guardian.

20          (ar) Make a recommendation to the court regarding the fitness of the proposed  
21 guardian.

NOTE: Adds two items to the list of duties of a guardian ad litem in incompetency cases: the duty to interview the proposed guardian and any other person seeking appointment as a guardian and the duty to make a recommendation to the court regarding the fitness of the proposed guardian.

1           **SECTION 215.** 880.331 (4) (dm), (dr) and (ds) of the statutes are created to read:

2           880.331 (4) (dm) Inform the court and the petitioner or petitioner's counsel, if  
3 any, if the proposed ward requests representation by counsel.

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

5           (ds) Notify the guardian of the right to be present at and participate in the  
6 hearing, to present and cross-examine witnesses, to receive a copy of any evaluation  
7 under s. 55.11 (1) (intro.) or (2), and to secure and present a report on an independent  
8 evaluation under s. 880.33 (2) (b).

NOTE: Adds three items to the list of duties of a guardian ad litem in incompetency cases: the duty to inform the court and the petitioner or his or her counsel if the proposed ward requests representation by counsel; the duty to attend all court proceedings relating to the guardianship; and the duty to notify the guardian of certain rights of the guardian.

9           **SECTION 216.** 880.331 (5) (intro.) of the statutes is amended to read:

10           880.331 (5) DUTIES IN PROTECTIVE SERVICES REVIEWS. (intro.) In any review of  
11 a protective placement under s. ~~55.06~~ or of a protective service services order made  
12 under s. ~~55.05~~ 55.12, the guardian ad litem shall do all of the following:

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55 in a provision in current law that sets forth the duties of a guardian ad litem in incompetency cases.

13           **SECTION 217.** 880.34 (6) of the statutes is repealed.

NOTE: Repeals provisions in current law pertaining to annual review of an order authorizing a guardian to consent to forcible administration of psychotropic medications to a ward under certain circumstances, to reflect that the bill creates a new annual review procedure of that type of authorization in s. 55.19.

14           **SECTION 218.** 880.38 (1) of the statutes is amended to read:

15           880.38 (1) A guardian of the person of an incompetent, upon order of the court,  
16 may have custody of the person ward, may receive all notices on behalf of the person  
17 ward, and may act in all proceedings as an advocate of the person ward, but may not



1 have the power to bind the ward or the ward's property, or to represent the ward in  
 2 any legal proceedings pertaining to the property, unless the guardian of the person  
 3 is also the guardian of the property. A guardian of the person of an incompetent or  
 4 a temporary guardian of the person of an incompetent may not make a permanent  
 5 protective placement of the ward unless ordered by a court under s. ~~55.06~~ 55.12 but  
 6 may admit a ward to certain residential facilities under s. ~~55.05 (5)~~ 55.055 or make  
 7 an emergency protective placement under s. ~~55.06 (11)~~ 55.135. The guardian of the  
 8 person ~~has the power to apply~~ may petition for protective placement under s. ~~55.06~~  
 9 55.075 (1) and for commitment under s. 51.20 or 51.45 (13).

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55  
 in a provision of current law that sets forth the rights and duties of guardians.

10 **SECTION 219.** 880.38 (2) of the statutes is amended to read:

11 880.38 (2) A guardian of the person shall endeavor to secure necessary care,  
 12 services, or appropriate protective placement on behalf of the ward. Subject to any  
 13 limitation imposed by the court under s. 880.33 (8) (b), a guardian may consent,  
 14 without further court involvement, to involuntary administration of medication,  
 15 other than psychotropic medication, and involuntary medical treatment that is in  
 16 the ward's best interest. A guardian may consent to involuntary administration of  
 17 psychotropic medication only under a court order under s. 55.14. In determining  
 18 whether medication, other than psychotropic medication, or medical treatment is in  
 19 the ward's best interest, the guardian shall consider the invasiveness of the  
 20 medication or treatment and the likely benefits and side effects of the medication or  
 21 treatment.

NOTE: 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

2003

or s. 880.33  
 (Am) or (Ar), state

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 (8).

1           **SECTION 220.** 880.38 (3) of the statutes is amended to read:

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

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55  
in a provision of current law that requires a guardian to make an annual report on the  
condition of the ward to the court and the county.

11           **SECTION 221.** 880.38 (4) of the statutes is created to read:

12           880.38 (4) (a) In this subsection, “protest” means make more than one  
13 discernible negative response, other than mere silence, to the offer of,  
14 recommendation for, or other proffering of voluntary receipt of psychotropic  
15 medication. “Protest” does not mean a discernible negative response to a proposed  
16 method of administration of the psychotropic medication.

17           (b) A guardian may, without court approval, give an informed consent to the  
18 voluntary receipt by the guardian’s ward of medication, including any appropriate  
19 psychotropic medication, if the guardian has first made a good-faith attempt to  
20 discuss with the ward the voluntary receipt of the medication and if the ward does  
21 not protest.

NOTE: Creates a definition of “protest” and creates a provision under which a guardian may provide informed consent to voluntary receipt of medication, including psychotropic medication, by a ward.

1           **SECTION 222.** 940.285 (1) (a) of the statutes is renumbered 940.285 (1) (am).

2           **SECTION 223.** 940.285 (1) (b) of the statutes is renumbered 940.285 (1) (ag) and  
3 amended to read:

4           940.285 (1) (ag) “~~Infirmities of aging~~ “Degenerative brain disorder” has the  
5 meaning specified in s. 55.01 (3) given in s. 55.01 (1v).

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” and amends cross-references to reflect renumbering and amendment of ch. 55, in the statute that establishes certain crimes related to the maltreatment of vulnerable adults.

6           **SECTION 224.** 940.285 (1) (e) (intro.) of the statutes is amended to read:

7           940.285 (1) (e) (intro.) “Vulnerable adult” means any person 18 years of age or  
8 older who either is a developmentally disabled person or has ~~infirmities of aging~~  
9 degenerative brain disorder, mental illness or other like incapacities and who is:

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” and amends cross-references to reflect renumbering and amendment of ch. 55, in the statute that establishes certain crimes related to the maltreatment of vulnerable adults.

10          **SECTION 225.** 940.295 (1) (hm) of the statutes is renumbered 940.295 (1) (cg)  
11 and amended to read:

12          940.295 (1) (cg) “~~Infirmities of aging~~ Degenerative brain disorder” has the  
13 meaning given in s. 55.01 (3) (1v).

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” and amends a cross-reference to reflect renumbering and amendment of ch. 55, in the statute that establishes crimes related to the abuse and neglect of patients and residents of certain facilities.

14          **SECTION 226.** 940.295 (1) (t) (intro.) of the statutes is amended to read:

15          940.295 (1) (t) (intro.) “Vulnerable person” means any person who either is a  
16 developmentally disabled person or has ~~infirmities of aging~~ degenerative brain  
17 disorder, mental illness or other like incapacities and who is:

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” in the statute that establishes crimes related to the abuse and neglect of patients and residents of certain facilities.

1           **SECTION 227.** 971.14 (6) (b) of the statutes is amended to read:

2           971.14 (6) (b) When the court discharges a defendant from commitment under  
3 par. (a), it may order that the defendant be taken immediately into custody by a law  
4 enforcement official and promptly delivered to a facility specified in s. 51.15 (2), an  
5 approved public treatment facility under s. 51.45 (2) (c), or an appropriate medical  
6 or protective placement facility. Thereafter, detention of the defendant shall be  
7 governed by s. 51.15, 51.45 (11), or ~~55.06 (11)~~ 55.135, as appropriate. The district  
8 attorney or corporation counsel may prepare a statement meeting the requirements  
9 of s. 51.15 (4) or (5), 51.45 (13) (a), or ~~55.06 (11)~~ 55.135 based on the allegations of the  
10 criminal complaint and the evidence in the case. This statement shall be given to the  
11 director of the facility to which the defendant is delivered and filed with the branch  
12 of circuit court assigned to exercise criminal jurisdiction in the county in which the  
13 criminal charges are pending, where it shall suffice, without corroboration by other  
14 petitioners, as a petition for commitment under s. 51.20, or 51.45 (13) or ~~55.06 (2)~~ a  
15 petition for protective placement under s. 55.075. This section does not restrict the  
16 power of the branch of circuit court in which the petition is filed to transfer the matter  
17 to the branch of circuit court assigned to exercise jurisdiction under ch. 51 in the  
18 county. Days spent in commitment or protective placement pursuant to a petition  
19 under this paragraph shall not be deemed days spent in custody under s. 973.155.

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55  
in a provision of current law pertaining to detention of a criminal defendant found to be  
incompetent.

20           **SECTION 228.** 977.05 (4) (i) 8. of the statutes is created to read:

1           977.05 (4) (i) 8. Cases involving individuals who are subject to petitions for  
2 protective placement under ch. 55.

NOTE: Requires the state public defender to provide legal services in cases involving individuals who are subject to petitions for protective placement.

3           **SECTION 229. Nonstatutory provisions.**

4           (1) REVIEW OF ORDER; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.

5 For an individual who is subject to an order appointing a guardian under section  
6 880.33 (4m), 2003 stats., and to an order initially issued under section 880.33 (4r),  
7 2003 stats., that is in effect on the effective date of this subsection, the county  
8 department of the individual's county of residence shall, no later than 9 months after  
9 the effective date of this subsection, review the individual's status under the  
10 requirements of section 55.19 of the statutes, as created by this act.

11          (2) TRANSITION; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.

12 Notwithstanding the treatment of sections 55.05 (2) (d) and 880.33 (4m) and (4r) of  
13 the statutes by this act, all orders issued under sections 55.05 (2) (d), 2003 stats., and  
14 880.33 (4m) and (4r), 2003 stats., in effect on the effective date of this subsection,  
15 remain in effect until modified or terminated by a court order under section 55.16,  
16 55.17, or 55.19 of the statutes, as created by this act.

17          (3) TRANSITION; ORDERS FOR PROTECTIVE PLACEMENT AND PROTECTIVE SERVICES.

18 Notwithstanding the treatment of sections 55.05 and 55.06 of the statutes by this act,  
19 all orders issued under section 55.05 (2) (d), 2003 stats., or section 55.06 (9) (a) or (11)  
20 (c), 2003 stats., in effect on the effective date of this subsection, remain in effect until  
21 modified or terminated by a court order under section 55.16, 55.17, 55.18, or 55.19  
22 of the statutes, as created by this act or section 55.175 or 55.20 of the statutes, as  
23 affected by this act.

1 (4) RULES; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION. The  
2 department of health and family services shall submit in proposed form the rules  
3 required under section 50.02 (2) (ad) of the statutes, as created by this act, to the  
4 legislative council staff under section 227.15 (1) of the statutes no later than the first  
5 day of the 6th month beginning after the effective date of this subsection.

6 **SECTION 230. Initial applicability.**

7 (1) EMERGENCY PROTECTIVE SERVICES OR EMERGENCY AND TEMPORARY PROTECTIVE  
8 PLACEMENT. The treatment of sections 46.011 (2), 46.10 (2), 46.279 (4) (e) and (5),  
9 49.001 (5m), 49.45 (30m) (b), 51.15 (5), 51.39, 51.40 (2) (a) 2., 51.42 (1) (b) and (3) (ar)  
10 4. d., 51.437 (4) (c), ~~55.01 (4g), (4t), and (6x)~~, 55.02 (2) (b) 4., 55.043 (4) (b), 55.05 (3),  
11 (4) (title), (a), (b), and (c), and (5) (c) 2. and 3., 55.06 (1) (intro.) and (d), (11) (a), (am),  
12 (ar), (b), (c), and (d), and (12), 55.13 (2) and (3), 55.135 (title), 165.85 (4) (b) 1d. b.,  
13 165.86 (2) (b), 301.01 (2) (intro.), 757.69 (1) (h), 880.38 (1), and 971.14 (6) (b) of the  
14 statutes first applies to emergency protective services provided and emergency and  
15 temporary protective placements made on the effective date of this subsection.

16 (2) PROTECTIVE PLACEMENT OR PROTECTIVE SERVICES. The treatment of sections  
17 46.10 (2), 46.275 (4) (b) 1., 46.279 (2), (4) (c), (d), and (e), 49.001 (8), 49.45 (30m) (b),  
18 50.03 (5m) (c), 51.20 (1) (am), 51.39, 51.40 (2) (a) 1., 55.001, 55.01 (1d), (4g), (4t), (6),  
19 (6m), (6p), (6r), (6t), (6v), (6x), and (6y), 55.02, 55.03, 55.04 (title), (1), (2), (3), and (4),  
20 55.045, 55.05 (3), and (5) (b) 2. and (c) 3., 55.055 (2), 55.06 (1) (intro.), (a), (b), (c), and  
21 (d), (2) (intro.), (a), (b), (c), and (d), (3) (a), (b), and (c), (4), (5), (5m), (6), (7), (8) (intro.),  
22 (a), (b), and (c), (9) (a), (11) (b) and (c), (15), (16), and (18), 55.075, 55.08, 55.09, 55.10,  
23 55.11, 55.12, 609.65 (1) (intro.), 809.30 (1) (b) 5. and (3), ~~880.07 (2m)~~, 880.33 (2) (a) 2.,  
24 (3), and (7), 880.331 (1), and (5) (intro.), 971.14 (6) (b), and 977.05 (4) (i) 8. of the  
25 statutes, the renumbering and amendment of section 55.01 (4) of the statutes, and

880.07 (2m)

1 the creation of section 55.01 (4) (c) of the statutes first apply to petitions for protective  
2 placement or protective services brought on the effective date of this subsection.

3 (3) DIAGNOSES OF SERIOUS AND PERSISTENT MENTAL ILLNESS. The treatment of  
4 sections 46.27 (6r) (b) 2., ~~46.972 (3) (a) and (b)~~, 49.43 (10v), 49.45 (6m) (i) 2. and (25)  
5 (am) 2., 51.01 (3g) and (3s), 51.20 (7) (d) 1. (intro.) and b., 51.35 (4m) (intro.), 51.40  
6 (2) (intro.), 51.421 (1), (2), and (3) (c), 51.67 (intro.) and (2), 55.001, 55.01 (6r) and (6v),  
7 55.06 (2) (c), and (11) (a), 55.08 (2) (b), and 880.01 (7m) of the statutes first applies  
8 to diagnoses of serious and persistent mental illness made on the effective date of this  
9 subsection. 560.9811 (1) and (2), ✓

10 (4) DIAGNOSES OF DEGENERATIVE BRAIN DISORDER. The treatment of sections  
11 46.286 (1) (intro.) and (3) (a) (intro.), 46.90 (1) (c) and (d), 51.01 (2g) (b), (3g), and (5)  
12 (a), 55.001, 55.01 (1v), (2), (3), and (6r), 55.06 (2) (c) and (11) (a), 55.08 (2) (b), 880.01  
13 (2), (4), (5), and (7m), 940.285 (1) (a), (b), and (e) (intro.), and 940.295 (1) (hm) and  
14 (t) (intro.) of the statutes first applies to diagnoses of degenerative brain disorder  
15 made on the effective date of this subsection.

16 (5) REQUEST FOR VOLUNTARY PROTECTIVE SERVICES. The treatment of sections  
17 55.05 (title), (2) (intro.), (a), (b), and (c), and (3) of the statutes first applies to a  
18 request made on the effective date of this subsection.

19 (6) ADMISSIONS. The treatment of sections 46.10 (2), 51.10 (4m) (a) (intro.), 51.10  
20 (8), 51.39, 55.05 (5) (title), (a), (b) 1. and 2., (c) (intro.), 1., 2., and 3. and (d), 55.055  
21 (1) (c) and (d) and (2), 55.06 (1) (d) and (12), and 880.38 (1) of the statutes first applies  
22 to admissions made on the effective date of this subsection.

23 (7) INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION. The treatment  
24 of sections ~~50.02 (2) (a), 51.03 (3) (a) 6,~~ 55.05 (2) (d), 55.09 (3), 55.10 (4) (a), 55.14,  
25 55.16 (2) (c) ~~1,~~ and 2., 55.17 (4) (b), 55.18 (1) (bm), 609.65 (1) (intro.), 880.01 (7m) and

1 (8m), 880.07 (1m), 880.33 (1), (2) (a) 1. and 2., (d), (e), and (f), (4m), and (4r), 880.34  
2 (6), and 880.38 (2) of the statutes first applies to a petition for the involuntary  
3 administration of psychotropic medication brought on the effective date of this  
4 subsection.

5 (8) ANNUAL REVIEW OF ORDER FOR PROTECTIVE PLACEMENTS. The treatment of  
6 sections 46.279 (2) and (4) (d), 49.45 (30m) (c) 2., 55.02 (2) (b) 3., 55.06 (4) and (10)  
7 (a) 1. and 2., 55.18, 609.65 (1) (intro.), 808.075 (4) (c) 1., 851.72 (11), 880.331 (1) and  
8 (5) (intro.), and 880.38 (3) of the statutes first applies to a review conducted on the  
9 effective date of this subsection.

10 (9) PROTECTIVE PLACEMENT TRANSFER. The treatment of sections 20.435 (2) (gk),  
11 51.39, 55.06 (9) (b), (c), (d), and (e), 55.15, and 808.075 (4) (c) 2. of the statutes first  
12 applies to a transfer of an individual under a protective placement order made on the  
13 effective date of this subsection.

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

18 (11) TERMINATION OF PROTECTIVE PLACEMENTS OR PROTECTIVE SERVICES. The  
19 treatment of sections 55.06 (10) (b) and (c) and (14), 55.17, 808.075 (4) (c) 1., and  
20 880.331 (1) of the statutes first applies to a petition for termination of an order for  
21 protective placement or protective services brought on the effective date of this  
22 subsection.

23 (12) PETITIONS FOR GUARDIANSHIP. The treatment of sections 880.06 (1), 880.07  
24 (1m) and (2m), 880.08 (1), 880.24 (3) (a) and (b), 880.33 (2) (a) 1. and 2., (d), (e), and  
25 (f), (3), (4m), (4r), (6), and (7), 880.331 (4) (am), (ar), (dm), (dr), and (ds), 880.34 (6),



1 and 880.38 (1), (2), (3), and (4) of the statutes first applies to petitions for  
2 guardianship made on the effective date of this subsection.

3 (13) ADMISSIONS OF INCAPACITATED INDIVIDUALS. The treatment of section 50.06  
4 (2) (c) and (d) of the statutes first applies to an admission of an incapacitated  
5 individual made on the effective date of this subsection.

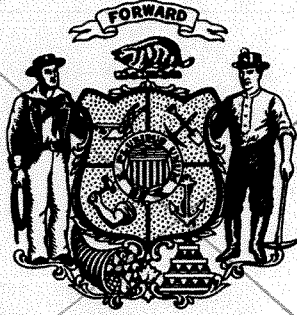
6 (14) INVESTIGATIONS BY COUNTY PROTECTIVE SERVICES AGENCIES. The treatment  
7 of sections 55.043 (1) (a) (intro.), 1., and 3. and (b) 1. and 2. a. and b. and (4) (a) and  
8 (b) and 813.123 (4) (a) (intro.) and 2., (5) (a) (intro.) and 3. b., (6) (c), (7), and (11) of  
9 the statutes first applies to conduct of an investigation made on the effective date of  
10 this subsection.

11 (13) RECORDS. The treatment of sections 46.21 (2m) (c), 46.215 (1m), 46.22 (1)  
12 (dm), 46.23 (3) (e), 46.283 (7) (b), 46.284 (7) (b), 51.42 (3) (e), 51.437 (4r) (b), 55.06 (17),  
13 55.22 (title), 767.24 (7) (b), and 880.33 (6) of the statutes first applies to a record made  
14 on the effective date of this subsection.

15 (END)

D-NOTE

# State of Wisconsin



55.18

LPS: green arrow (v) points to new strikes

2005 Assembly Bill 296

Date of enactment:  
Date of publication\*:

## 2005 WISCONSIN ACT

AN ACT to amend 46.279 (2) and 46.279 (3) of the statutes; relating to: modifying certain restrictions on admissions to, protective placements in, or transfers to intermediate care facilities for the mentally retarded and nursing homes.

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

SECTION 1. 46.279 (2) of the statutes is amended to read: <sup>create autobref</sup>

46.279 (2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES. Except as provided in sub. (5), no person may protectively place or continue protective placement of an individual with a developmental disability in an intermediate facility and no intermediate facility may admit or continue service for such an individual unless, before the protective placement, continued placement following review under s. 55.06 (10), or admission and after having considered a plan developed under sub. (4), a court under s. 55.06 (9) (a) or (10) (a) 2, finds that protective placement in the intermediate facility is the most integrated setting that is appropriate to the needs of the individual or that the county of residence of the individual would not reasonably be able to provide community-based care in accordance with the plan within the limits of available state and federal funds and county funds required to be appropriated to match state funds, 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.

SECTION 2. 46.279 (3) of the statutes is amended to read: <sup>create autobref</sup>

46.279 (3) PLACEMENTS AND ADMISSIONS TO NURSING FACILITIES. Except as provided in sub. (5), if the department or an entity determines from a screening under s. 49.45 (6c) (b) that an individual requires active treatment for developmental disability, no individual may be protectively placed in a nursing facility or have protective placement in a nursing facility continued following review under s. 55.06 (10), and no nursing facility may admit or continue service for the individual, unless ~~it is determined from the department or entity that conducts the screening~~ determines that the individual's need for care cannot fully be met in an intermediate facility or under a plan under sub. (4) or that the county of residence of the individual would not reasonably be able to provide community-based care in accordance with the plan within the limits of available state and federal funds and county funds required to be appropriated to match state funds.

↑ as affected by 2005 Wisconsin Act... (Assembly Bill 296)

USE 2x

\* Section 991.11, WISCONSIN STATUTES 2003-04: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

55.12 or 55.18 (1) (ar)

55.18

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0026/P2dn  
DAK:cjs:rs

September 26, 2005

stays

To Laura Rose and Mary Matthias:

1. Please note my revised amendment of s. 46.286 (3) (a) 3., stats.; the statute previously did not make sense.

2. Please note that I deleted "and temporary" from the table of contents title for s. 55.13. That title differed from the actual title in the bill for s. 55.13, as renumbered from s. 55.05 (4) (title), stats. I believe it was my error.

3. According to my notes of our July 25, 2005, meeting, the following issues should be revisited, possibly in a future amendment to or substitute amendment of this bill:

a. Section 55.10 (3), stats. (as created). The term "persons in interest" (which, as used here, specifically includes service providers, their representatives, and witnesses) is unclear. The bill defines "interested person" at s. 55.01 (4), and the terms are not congruent. Your decision was to not change this provision, as it was modeled on s. 880.33 (2) (e), stats.

b. The reference to "legal" residence in s. 55.11 (4) (as created), which seems unnecessary and confusing.

c. The required written consent of the guardian under s. 55.15 (3).

d. Adding reference to s. 55.13 in ss. 165.85 (4) (b) 1d. b., 165.86 (2) (b), and 880.38 (1), stats.

e. Clarifying what "assistance" means in s. 880.33 (3), stats., i.e., whether it may mean that a court may request a county department to provide an evaluation for an individual.

f. Renumbering s. 880.331 (5), stats., into ch. 55, if the Committee wants to retain these provisions.

g. Amending s. 880.38 (3), stats., to tie into ch. 55; at your instruction, I have for now repealed the last sentence. Note that this subsection is referred to in s. 55.02 (2) (b) 3.

4. I have included in this draft all of the NOTES that you have provided me, except for the NOTE for s. 51.40 (2) (g) 1., stats., which is removed from the bill, as explained later

in this Drafter's Note. Not all the individual bill SECTIONS have NOTES. Also, some of the NOTES provided me are incomplete, and the numbers of the SECTIONS in this redraft change; I have attempted to correct wrong SECTION numbers referenced in the Notes, but please also check them.

5. This redraft repeals s. 55.05 (5) (a), stats., rather than renumbering it s. 55.055 (1). In revising the numbers for s. 55.055, I discovered that I had skipped numbering s. 55.055 (4) in 05-0026/P1 and have fixed the numbers accordingly.

2 6. Under the National Probate Court Standards referenced in *In the Matter of the Guardianship of Jane E. P. v. Unified Board of Grant and Iowa Counties*, Wis. Sup. Ct. (July 7, 2005), standards and procedures are provided for two situations: (1) the transfer of a guardianship to a foreign jurisdiction; and (2) the receipt and acceptance of a guardianship transferred from a foreign jurisdiction.

For receipt and acceptance of a transferred guardianship, the standards and procedures include all of the following:

- a. Court receives, for a transfer of a guardianship, a properly-executed petition that is certified by a foreign jurisdiction.
- b. Court accepts petition without a formal hearing unless requested by the court on its own motion or by motion of the ward or another interested person.
- c. Court notifies the foreign court of the receipt and acceptance of the petition.
- d. Court notifies the guardian of any administrative procedures necessary to bring the foreign guardianship into compliance with state law.
- e. Not later than 90 days after acceptance of the transfer, court conducts a hearing for review of the guardianship and, if necessary to bring into compliance with state law, modification.
- f. Unless a change in the ward's circumstances warrants otherwise, court gives effect to the foreign determination of incompetence and recognizes the appointment of the guardian.

At least these questions arise:

- a. Do you want these procedures to replace language in the bill under s. 55.055 (1) (c) or (d)? (Note that the *Jane E. P.* opinion seems to provide two different deadlines (60 days and 90 days) for conduct of a hearing for review of the guardianship.)
- b. Note that the *Jane E. P.* opinion indicates that, if receipt and acceptance procedures are followed, it is unnecessary to file a petition for guardianship as required under s. 55.06 (3) (c), stats. (renumbered s. 55.075 (5) (a)); that provision would need an exception, if the opinion's standards are followed.
- c. Should any provision be made under the *Watts* review language for review of a ward who is transferred from a foreign jurisdiction?
- d. Do you want the standards and procedures set forth in *Jane E. P.* for transfer of a guardianship to a foreign jurisdiction?

e. Are these matters better addressed in the Legislative Council bill on residency and county of responsibility, under s. 51.40, stats.?

7. My notes from our July 25 meeting indicate that Mary would review the treatment of s. 55.06 (1) (b), stats. (renumbered s. 55.075 (4) (b) and amended) in light of my \*\*\*\*NOTE. I have left that \*\*\*\*NOTE in this redraft because this issue is not yet resolved.

8. Please review s. 55.06 (6), stats. (renumbered s. 55.10 (4) (b)) with regard to the issue of a required interview by a GAL of an existing guardian. Is this drafted as you want? Because I amended this subsection, I did not also create s. 880.331 (4) (as), as originally proposed; is that your intent?

3 9. At your instruction, I have renumbered s. 55.06 (10) (a) 2., stats., to be s. 55.18 (1) (ar) and have technically amended it. This provision concerns an individual with a developmental disability who is protectively placed in an intermediate facility for the mentally retarded or in a nursing home. The agency that is responsible for the protective placement must notify the county department of the individual's county of residence, if that county department is participating in the CIP IB MA waiver program under s. 46.278 at least 120 days before a court review of the placement (I am unsure if the "review" is the *Watts* review.). (If the individual resides in Jefferson County, DHFS must be notified.) The county department that is notified (or the DHFS contractor if DHFS is notified) must develop a plan under s. 46.279 (4), stats., to provide home or community-based care for the individual in a noninstitutional setting. Unless the court finds that placement in the ICFMR or nursing facility is the most integrated setting that is appropriate to the needs of the individual, taking into account information presented by all affected parties, the court must order that the individual be transferred to a noninstitutional community setting in accordance with the plan.

The problem with this provision is that the standard used ("the most integrated setting") is not the same as the standard specified in s. 55.18 (3) (e) ("least restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5)").

The provision in question, s. 55.06 (10) (a) 2., stats., has three cross-references. Assuming that the "review" is a *Watts* review, I have included it and the cross-references in the Initial Applicability provision, concerning annual reviews.

The Committee may wish to review this issue.

4 10. ~~One of Laura's NOTES for SECTION 145,~~ addresses the repeal of s. 55.06 (10) (c), stats., which concerns the termination of a guardianship and revocation of a protective placement or protective services. So far as I can find in the draft, this provision is not elsewhere created, as in s. 55.17, where it would seem appropriate. Should it be renumbered?

11. Please recheck the treatment of s. 51.10 (8), stats. Does the language meet your intent?

12. Please review my changes to s. 55.16 (2) (b) 1. to 3.; are they what you intended? Should s. 55.16 (2) (b) 3. refer only to requirements of s. 55.12 (4) and (5)?

13. Your instructions from our meeting on July 25 with respect to use of the term "county protective services agency" in s. 55.18 (4) were to "change to county department throughout." This term is defined in ch. 55, stats., and used extensively in s. 55.043, stats., which is the subject of LRB-0025/1. I have changed ss. 55.05 (4) (b) (renumbered s. 55.13 (4)) and 55.18 (4), but have not otherwise changed s. 55.043 or other cross-references; do you want me to?

5 14. I have, as requested, removed the draft's treatment of s. 880.06 (2), stats. (which was repealed and recreated in 05-0026/P1), and I will place it, along with its accompanying \*\*\*\*NOTE, in 05-2339, which is the residency and venue bill.

6 15. I have conflicting notes on the \*\*\*\*Note under SECTION 231 (2) in 05-0026/P1. I had added reference to s. 880.33 (4m), stats., in SECTION 231 (1) and (2); one of my notes indicates that this action was okay, and another says that Laura will review it and get back to me. Please take a look at it.

7 16. One of the most difficult aspects of this bill concerns the initial applicability section. Please carefully review the provisions in SECTION 231, especially SECTION 231 (7), relating to involuntary administration of psychotropic medication, in relationship to the nonstatutory transition provisions and to the wording of s. 55.19 (intro.).

8 17. I discovered notes from our February 3, 2005, meeting with Betsy Abramson and Gerard Gierl. Those notes indicate all of the following, which I have done in this draft and for which I would appreciate review:

a. Remove underscored "extraordinary circumstances" language from s. 55.075 (5) (a) (renumbered from s. 55.06 (3) (c) and state "The county of residence, as determined by the court, under s. 51.40, or by the guardian, is the county of responsibility."

b. Change, in s. 55.075 (5) (a) the language referring to s. 51.22 (4) to "due to circumstances, including those specified in s. 51.22 (4)". I think this language change is important, because it indicates the possibility of circumstances such as those under s. 51.40 (2) (b), but it's also very broad.

In addition, I believe that it is important to note that Gerard has specifically indicated to me the circumstances under which a court would determine the county of residence: if an individual has not received services under ch. 46, 51, or 55 or if an individual has received services under ch. 46, 51, or 55 that have been terminated and has established residence in a county other than that in which the individual resided when the services were received. I think it would improve the provision greatly to have these circumstances specified in it.

18. Please see my change to the language of s. 55.16 (2) (c), to align it with other provisions of that section.

Debra A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0026/1dn  
DAK:cjs:ch

October 13, 2005

To Laura Rose and Mary Matthias:

1. According to my notes of our July 25, 2005, meeting, the following issues should be revisited, possibly in a future amendment to or substitute amendment of this bill:

a. Section 55.10 (3), stats. (as created). The term "persons in interest" (which, as used here, specifically includes service providers, their representatives, and witnesses) is unclear. The bill defines "interested person" at s. 55.01 (4), and the terms are not congruent. Your decision was to not change this provision, as it was modeled on s. 880.33 (2) (e), stats.

b. The reference to "legal" residence in s. 55.11 (4) (as created), which seems unnecessary and confusing.

c. The required written consent of the guardian under s. 55.15 (3).

d. Adding reference to s. 55.13 in ss. 165.85 (4) (b) 1d. b., 165.86 (2) (b), and 880.38 (1), stats.

e. Clarifying what "assistance" means in s. 880.33 (3), stats., i.e., whether it may mean that a court may request a county department to provide an evaluation for an individual.

f. Renumbering s. 880.331 (5), stats., into ch. 55, if the Committee wants to retain these provisions.

g. Amending s. 880.38 (3), stats., to tie into ch. 55; at your instruction, I have for now repealed the last sentence. Note that this subsection is referred to in s. 55.02 (2) (b) 3.

2. Under the National Probate Court Standards referenced in *In the Matter of the Guardianship of Jane E. P. v. Unified Board of Grant and Iowa Counties*, Wis. Sup. Ct. (July 7, 2005), standards and procedures are provided for two situations: (1) the transfer of a guardianship to a foreign jurisdiction; and (2) the receipt and acceptance of a guardianship transferred from a foreign jurisdiction.

For receipt and acceptance of a transferred guardianship, the standards and procedures include all of the following:



- a. Court receives, for a transfer of a guardianship, a properly-executed petition that is certified by a foreign jurisdiction.
- b. Court accepts petition without a formal hearing unless requested by the court on its own motion or by motion of the ward or another interested person.
- c. Court notifies the foreign court of the receipt and acceptance of the petition.
- d. Court notifies the guardian of any administrative procedures necessary to bring the foreign guardianship into compliance with state law.
- e. Not later than 90 days after acceptance of the transfer, court conducts a hearing for review of the guardianship and, if necessary to bring into compliance with state law, modification.
- f. Unless a change in the ward's circumstances warrants otherwise, court gives effect to the foreign determination of incompetence and recognizes the appointment of the guardian.

At least these questions arise:

- a. Do you want these procedures to replace language in the bill under s. 55.055 (1) (c) or (d)? (Note that the *Jane E. P.* opinion seems to provide two different deadlines (60 days and 90 days) for conduct of a hearing for review of the guardianship.)
  - b. Note that the *Jane E. P.* opinion indicates that, if receipt and acceptance procedures are followed, it is unnecessary to file a petition for guardianship as required under s. 55.06 (3) (c), stats. (renumbered s. 55.075 (5) (a)); that provision would need an exception, if the opinion's standards are followed.
  - c. Should any provision be made under the *Watts* review language for review of a ward who is transferred from a foreign jurisdiction?
  - d. Do you want the standards and procedures set forth in *Jane E. P.* for transfer of a guardianship to a foreign jurisdiction?
  - e. Are these matters better addressed in the Legislative Council bill on residency and county of responsibility, under s. 51.40, stats.?
3. At your instruction, I have renumbered s. 55.06 (10) (a) 2., stats., to be s. 55.18 (1) (ar) and have technically amended it. This provision concerns an individual with a developmental disability who is protectively placed in an intermediate facility for the mentally retarded or in a nursing home. The agency that is responsible for the protective placement must notify the county department of the individual's county of residence, if that county department is participating in the CIP IB MA waiver program under s. 46.278 at least 120 days before a court review of the placement (I am unsure if the "review" is the *Watts* review.). (If the individual resides in Jefferson County, DHFS must be notified.) The county department that is notified (or the DHFS contractor if DHFS is notified) must develop a plan under s. 46.279 (4), stats., to provide home or community-based care for the individual in a noninstitutional setting. Unless the court finds that placement in the ICFMR or nursing facility is the



most integrated setting that is appropriate to the needs of the individual, taking into account information presented by all affected parties, the court must order that the individual be transferred to a noninstitutional community setting in accordance with the plan.

The problem with this provision is that the standard used (“the most integrated setting”) is not the same as the standard specified in s. 55.18 (3) (e) (“least restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5)”).

The provision in question, s. 55.06 (10) (a) 2., stats., has three cross-references. Assuming that the “review” is a *Watts* review, I have included it and the cross-references in the Initial Applicability provision, concerning annual reviews.

The Committee may wish to review this issue.

4. The repeal of s. 55.06 (10) (c), stats., concerns the termination of a guardianship and revocation of a protective placement or protective services. So far as I can find in the draft, this provision is not elsewhere created, as in s. 55.17, where it would seem appropriate. Should it be renumbered?

5. I have, as requested, removed the draft’s treatment of s. 880.06 (2), stats. (which was repealed and recreated in 05-0026/P1), and I will place it, along with its accompanying \*\*\*\*NOTE, in 05-2339, which is the residency and venue bill.

6. I have conflicting notes on the \*\*\*\*Note under SECTION 231 (2) in 05-0026/P1. I had added reference to s. 880.33 (4m), stats., in SECTION 231 (1) and (2); one of my notes indicates that this action was okay, and another says that Laura will review it and get back to me. Please take a look at it.

7. One of the most difficult aspects of this bill concerns the initial applicability section. Please carefully review the provisions in SECTION 231, especially SECTION 231 (7), relating to involuntary administration of psychotropic medication, in relationship to the nonstatutory transition provisions and to the wording of s. 55.19 (intro.).

8. I discovered notes from our February 3, 2005, meeting with Betsy Abramson and Gerard Gierl. Those notes indicate all of the following, which I have done in this draft and for which I would appreciate review:

a. Remove underscored “extraordinary circumstances” language from s. 55.075 (5) (a) (renumbered from s. 55.06 (3) (c) and state “The county of residence, as determined by the court, under s. 51.40, or by the guardian, is the county of responsibility.”

b. Change, in s. 55.075 (5) (a) the language referring to s. 51.22 (4) to “due to circumstances, including those specified in s. 51.22 (4)”. I think this language change is important, because it indicates the possibility of circumstances such as those under s. 51.40 (2) (b), but it’s also very broad.

In addition, I believe that it is important to note that Gerard has specifically indicated to me the circumstances under which a court would determine the county of residence: if an individual has not received services under ch. 46, 51, or 55 or if an individual has received services under ch. 46, 51, or 55 that have been terminated and has established

residence in a county other than that in which the individual resided when the services were received. I think it would improve the provision greatly to have these circumstances specified in it.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: [debora.kennedy@legis.state.wi.us](mailto:debora.kennedy@legis.state.wi.us)

**Barman, Mike**

---

**From:** Rose, Laura  
**Sent:** Friday, October 14, 2005 1:12 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-0026/1 Topic: Protective placement and protective services

It has been requested by <Rose, Laura> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0026/1 Topic: Protective placement and protective services