



# State of Wisconsin


LEGISLATIVE REFERENCE BUREAU


## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**


Date Transfer Requested: 01/31/2006 (Per: DAK)



### Appendix A

 The 2005 drafting file for LRB 05a2191/1  
has been copied/added to the 2005 drafting file for  
**LRB 05a2209**

 The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

 This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

**2005 DRAFTING REQUEST**

**Assembly Amendment (AA-AB785)**

Received: 01/26/2006

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: John Townsend (608) 266-3156

By/Representing: Mary Matthias (LC)

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact: Leg. Council

Addl. Drafters:

Subject: Mental Health - protect place

Extra Copies: Mary Matthias (Leg. Council)  
Laura Rose (Leg. Council)

Submit via email: YES

Requester's email: Rep.Townsend@legis.state.wi.us

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

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**Topic:**

Reveal name of reporter for emergency placement; rights of proposed ward at hearing for protective placement

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 01/27/2006	jdyer 01/30/2006		_____			
/1			jfrantze 01/30/2006	_____	sbasford 01/30/2006	sbasford 01/30/2006	

FE Sent For:

<END>

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/?	dkennedy	1/30/06	JL	Self			

FE Sent For:

<END>

# Elder Law Section

 **State Bar of Wisconsin**  
Wisconsin Lawyers. Expert Advisers. Serving You.

Townsend  
1:00 Tues  
copy to Mathias  
& L. Rose

6

## Testimony in Support of AB 785

Prepared by: Attorney Betsy Abramson, Advisor  
Elder Law Section, State Bar of Wisconsin

January 25, 2006

Assembly Aging and Long Term Care Committee

**Bruce A. Tammi**, Chairperson  
Tammi, Cohn & Cavey

**Jeffrey P. Clark**, Chairperson-Elect  
Lathrop & Clark LLP

**Alexandra L. Waeffler**, Secretary  
Nelson, Irvings & Waeffler SC

**Barbara J. Becker**, Treasurer  
Becker & Hickey SC

**Andrew P. Brusky**, Immediate Past  
Chairperson  
Brusky & Sjostrom SC

**Louis E. Archambault**  
Adams & Woodrow SC

**Helen Marks Dicks**  
Coalition of Wisconsin Aging Groups

**Jeffery J. Drach**  
Drach Law Firm

**Patricia J. Nelson**  
Nelson, Irvings & Waeffler SC

**James B. Noble**  
James B Noble SC

**Carol J. Wessels**  
Wessels Law Office LLC

The Elder Law Section of the State Bar of Wisconsin represents over 900 elder law attorneys located in every county of Wisconsin. We are deeply concerned about the needs of elders, with special concerns for those most vulnerable to abuse and neglect – physical, financial, sexual and emotional. We help clients access community resources, including county social services, elder abuse agencies and domestic violence programs. We work closely and confidentially with clients to plan ahead for their financial, housing and physical well-being so as to avoid their family members or others needing to pursue court-ordered guardianships or protective services/placement for them, in the event of mental incapacity. When individuals are in need of court-ordered protections, we work hard to ensure that the court system honors their rights to the most limited restrictions on or removal of their rights and the least restrictive environment for any placement.

The Elder Law Section has led the current legislative effort to reform Wisconsin's guardianship system, under ch. 880, Wis. Stats. The bill before you today, AB 785, to recodify Ch. 55, is its natural companion.

Chapter 55 was first created in 1973 and in the intervening thirty years, it has never been comprehensively reviewed and updated. Since that time, tens of thousands of both elders and adults age 18-59 with mentally incapacities have needed adult protective services, including placements. Research on the needs of people with mental incapacities, development of community alternatives, creation of various long-term care programs and county experiences with adult protective services have all been significant. There have also been many important court cases affecting these issues, ranging from which individuals constitute "interested persons," to annual reviews of all protective placements. Chapter 55 has been long overdue for a full review and we applaud the efforts of the Legislative Council in its careful work in this recodification.

We strongly support this bill as it makes great strides in codifying case law, clarifying procedures and creating new procedures that carefully balance the rights of individuals with [alleged] mental incapacities with protection of the subject individual's rights.

### State Bar of Wisconsin

5302 Eastpark Blvd. ♦ P.O. Box 7158 ♦ Madison, WI 53707-7158  
(800) 728-7788 ♦ (608) 257-3838 ♦ Fax (608) 257-5502 ♦ Internet: [www.wisbar.org](http://www.wisbar.org) ♦ Email: [service@wisbar.org](mailto:service@wisbar.org)

The bill codifies the *Watts* decision (requiring, among other provisions, an annual review of protectively placed individuals) more than 20 years after the decision and clarifies many important procedural issues in ch. 55 court proceedings, including time limits, attendance at hearings, rights of "interested persons" and the articulation of procedures for court-ordered protective services. The bill also creates much more workable procedures and standards regarding the administration of psychotropic medications and revises procedures for transfers, modifications and terminations of protective placement.

While our Section voted overwhelmingly to support the bill, we have two suggestions for modest language change in an amendment:

- (1) Emergency protective placement – p. 85 section 144. We believe that the bill should be amended to require in situations where the emergency placement is made on the basis of the "reliable report," that the name of the individual who made the report to the sheriff, police officer, fire fighter or guardian not be anonymous, although the name of the reporter need not be in the petition.
- (2) Presence of the ward at the hearing – p. 139-140, section 199. The proposed language regarding the factors for the *guardian ad litem* to consider when determining whether to require or waive the [proposed] ward presence at the hearing is not as protective of the [proposed] ward's rights as the language regarding his or her presence at guardianship hearings in SB 391 (the Guardianship Reform bill). Given that the two proceedings are often combined, we believe the language should be identical. We therefore suggest substituting the stronger, more protective language of SB 391 on this point for the language in AB 785. (See SB 391, page 83, lines 9-20.)

We note that this bill is one of three bills currently being considered by the Legislature: AB 539, the Adult Protective Services Modernization bill (also arising out of Legislative Council's Ch. 55 committee), SB 391, the Guardianship Reform bill (crafted largely by our Section) and this bill, AB 785. We applaud this comprehensive effort to recodify Chapter 55 and urge its passage, with the two small changes we have outlined above.

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*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*

**BILL**

1 examining physician or psychologist under s. 54.36 (1) at least 96 hours before the  
2 time of the hearing.

3 ~~(2) STANDARD OF PROOF.~~ Any determination by the court as to whether the  
4 proposed ward is incompetent or is a spendthrift shall be by clear and convincing  
5 evidence.

6 (3) PRESENCE OF PROPOSED GUARDIAN. The proposed guardian and any proposed  
7 standby guardian shall be physically present at the hearing unless the court excuses  
8 the attendance of either or, for good cause shown, permits attendance by telephone.

9 (4) PRESENCE OF PROPOSED WARD. (a) *Adult proposed ward.* The petitioner shall  
10 ensure that the proposed ward attends the hearing unless the attendance is waived  
11 by the guardian ad litem. In determining whether to waive attendance by the  
12 proposed ward, the guardian ad litem shall consider the ability of the proposed ward  
13 to understand and meaningfully participate, the effect of the proposed ward's  
14 attendance on his or her physical or psychological health in relation to the  
15 importance of the proceeding, and the proposed ward's expressed desires. If the  
16 proposed ward is unable to attend the hearing because of residency in a nursing  
17 home or other facility, physical inaccessibility, or a lack of transportation and if the  
18 proposed ward, guardian ad litem, advocate counsel, or other interested person so  
19 requests, the court shall hold the hearing in a place where the proposed ward may  
20 attend.

21 (b) *Minor proposed ward.* A minor is not required to attend the hearing.

22 (6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed  
23 guardian is inappropriate, the court shall request that a petition proposing a suitable  
24 guardian be filed, shall set a date for a hearing to be held within 30 days, and shall

no  
in  
person

**Kennedy, Debora**

---

**From:** Betsy J. Abramson [abramson@mailbag.com]  
**Sent:** Thursday, January 26, 2006 3:04 PM  
**To:** Matthias, Mary; Rose, Laura  
**Subject:** "One more thing" for AB 785

Mary and Laura: Just one more (ha!) thing for AB 785. When going through this, a guy from DHFS noticed a conflict between SB 391 and AB 785. Here's a summary of how I told Debora to address it in SB 391. Can you please direct her to do the same with AB 785. This is something that a lot of folks have raised and Ellen Henningsen, DIANNE GREENLEY and I agreed to:

**Admissions to facilities without a protective placement where subject individual has a diagnosis of mental illness or developmental disability.** Dan Zimmerman of DHFS had noticed a conflict between AB 785's proposed changes to 55.055(1)(b) ( p. 66, lines 22-23 of that draft) and SB 391's proposed changes to 55.05(5)(b)2 – p. 100, lines 16-24 (nothing comparable to AB 785's language on this point). The language in SB 391 (and we'll deal with AB 785 separately) should be revised to language such as: "Admission under this paragraph is not permitted for an individual for whom the primary purpose of the admission is for treatment or services related to the individual's mental illness or developmental disability."

So, we need her to make sure AB 785 matches that. ok? Thanks! BA

Betsy J. Abramson  
Attorney / Elder Law Consultant  
520 Miller Ave.  
Madison, WI 53704  
(608) 332-7867  
[abramson@mailbag.com](mailto:abramson@mailbag.com)

**Kennedy, Debora**

---

**From:** Matthias, Mary  
**Sent:** Friday, January 27, 2006 11:59 AM  
**To:** Kennedy, Debora  
**Subject:** FW: "One more thing" for AB 785

oops- i sent to the wrong deb kennedy

---

**From:** Matthias, Mary  
**Sent:** Friday, January 27, 2006 10:42 AM  
**To:** Kennedy, Deborah M. DOC  
**Subject:** FW: "One more thing" for AB 785

this too- in the simple am. to AB 785

---

**From:** Betsy J. Abramson [mailto:[abramson@mailbag.com](mailto:abramson@mailbag.com)]  
**Sent:** Thursday, January 26, 2006 3:04 PM  
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01/27/2006



**Kennedy, Debora**

---

**From:** Matthias, Mary  
**Sent:** Friday, January 27, 2006 11:59 AM  
**To:** Kennedy, Debora  
**Subject:** FW: AB 785 - one more last last thing...Presence of Ward

this one too!

---

**From:** Matthias, Mary  
**Sent:** Friday, January 27, 2006 10:42 AM  
**To:** Kennedy, Deborah M. DOC  
**Subject:** FW: AB 785 - one more last last thing...Presence of Ward

deb- if this seems good to you please draft an amendement for the exec next wed. I think it would be best to put everything for AB 785 in one simple amendment.

---

**From:** Betsy J. Abramson [mailto:[abramson@mailbag.com](mailto:abramson@mailbag.com)]  
**Sent:** Thursday, January 26, 2006 4:48 PM  
**To:** Matthias, Mary; Rose, Laura  
**Subject:** AB 785 - one more last last thing...Presence of Ward

Woops! Just realized that my testimony on AB 785 had wrong page/section reference about presence of [proposed] ward at hearing. I referenced pp. 139-140, Section 199, lines 7-line 8ish., which is actually an amendment of 880.08(1) - i.e., the GUARDIANSHIP statute. What I should have pointed out is pp. 94 - Section 160, lines 11-22. That's the bad news - my bad. But the good news is that in working on this, we've now discovered that AB 785 has different language FOR GUARDIANSHIP CASES (880) re: presence of proposed ward than AB 785 does FOR GUARDIANSHIP CASES. So, the language of SB 391, page 83, lines 9-20, should be put into BOTH spots in AB 785 - section 160 and Section 199. Could you please so direct Debora?

Thank you.  
It's hard to type when one's face is so dang red. BA

Betsy J. Abramson  
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(608) 332-7867  
[abramson@mailbag.com](mailto:abramson@mailbag.com)

01/27/2006

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**Kennedy, Debora**

---

**From:** Matthias, Mary  
**Sent:** Friday, January 27, 2006 12:01 PM  
**To:** Kennedy, Debora  
**Subject:** FW: amendments to AB 785

egads- I just realized I sent all these e-mails to the wrong person. Sorry!!!

---

**From:** Matthias, Mary  
**Sent:** Thursday, January 26, 2006 11:53 AM  
**To:** Kennedy, Deborah M. DOC  
**Subject:** amendments to AB 785

Hi Deb-

Could you draft up 2 amendments to AB 785? We need them by 1:00 pm next Tuesday; the exec is scheduled for Wed. Feb 1 at 1 pm.

They look pretty easy and were both suggested by Betsy- I will bring her testimony down to you right now.

thanks--

Mary.



(MON a.m.)  
State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBa2191/1

DAK: ^:...

Jld

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~  
ASSEMBLY AMENDMENT,  
TO 2005 ASSEMBLY BILL 785

1 At the locations indicated, amend the bill as follows:

2 1. Page 66, line 22: delete lines 22 and 23 and substitute "Admission under  
3 this paragraph is not permitted for an individual for whom the primary purpose of  
4 admission is for treatment or services related to the individual's mental illness or  
5 developmental disability."

6 2. Page 85, line 6: after "made" insert "by a person who identifies himself or  
7 herself".

8 3. Page 94, line 14: delete lines 14 to 19 and substitute:

9 "(2) ATTENDANCE. The petitioner shall ensure that the individual sought to be  
10 protected attends the hearing on the petition unless, after a personal interview, the  
11 guardian ad litem waives the attendance and so certifies in writing to the court the  
12 specific reasons why the individual is unable to attend. In determining whether to

1 waive attendance by the individual, the guardian ad litem shall consider the ability  
2 of the individual to understand and meaningfully participate, the effect of the  
3 individual's attendance on his or her physical or psychological health in relation to  
4 the importance of the proceeding, and the individual's expressed desires. If the  
5 individual is unable to attend a hearing only because of residency in a nursing home  
6 or other facility, physical inaccessibility, or lack of transportation, the court shall, if" ✓

7 **4.** Page 139, line 20: after ~~the~~ <sup>cause</sup> insert "petitioner shall ensure that the". ~~STRIKE~~

8 **5.** Page 139, line 21: delete "ward or ward shall be present at" and substitute  
9 "at ward or ward attends".

10 **6.** Page 140, line 1: after "litem" insert "waives the attendance and so". ✓

11 **7.** Page 140, line 2: delete lines 2 to 4 and substitute "certifies in writing to the  
12 court the specific reasons why the person proposed ward or ward is unable to attend.  
13 In determining whether to waive attendance by the proposed ward or ward, the  
14 guardian ad litem shall consider the ability of the proposed ward or ward to  
15 understand and meaningfully participate, the effect of the proposed ward's or ward's  
16 attendance on his or her physical or psychological health in relation to the  
17 importance of the proceeding, and the proposed ward's or ward's expressed desires.  
18 If the person". ✓

19 **8.** Page 140, line 5: after "of" insert "residency in a nursing home or other  
20 facility". ✓

21 **9.** Page 140, line 6: delete "or" and substitute ", or". ✓

22 (END)



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBa2191/1  
DAK:jld:jf

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