

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0121/P1dn

DAK:cjs:nwn

December 19, 2006

To Representative Townsend:

This bill reconciles differences resulting from the enactment of three large acts: 2005 Wisconsin Acts 264, 387, and 388. The bill is in preliminary form, to give you an opportunity to review it thoroughly before introduction. The bill is based on 2005 Senate Bill 731, but it necessarily differs from that bill in numerous respects, including all of the following:

1. At the time 2005 Senate Bill 731 was drafted, it was not yet possible to know all of the provisions, which the Revisor has subsequently identified, that were mutually inconsistent or that contained surplus language or incorrect cross-references as the result of the intersecting actions of the three acts. This bill deals with these additional problems. For each provision in this bill that treats a statute that was not treated in 2005 Senate Bill 731, or that treats a statute differently than it was treated in 2005 Senate Bill 731, I have included a ****NOTE in the bill in explanation. Also, in order to provide you with the most information possible, I am separately sending you copies of the Revisor's galley proofs for the 05-06 Wisconsin statutes, for chapters 54 and 55 and s. 46.90 (the main provisions affected by the three acts). As you will see, the galley proofs contain numerous brackets and Revisor Notes indicating incorrect cross references, mutual inconsistencies, and merged statutes.
2. Because 2005 Senate Bill 731 was drafted to be acted on by the Legislature in the 2003-2005 session before the dates on which the three acts were to take effect, that bill itself had a delayed effective date of December 1, 2006, and had nonstatutory provisions that voided parts of the the three acts that were mutually inconsistent. Since this bill will be for the 2007-2009 session and the three acts will all have taken effect before that session starts, the voiding sections have been removed, and the bill's effective date is the first day of the first month following publication.
3. In order to address an objection made to 2005 Senate Bill 731, this bill adopts the amendments to s. 55.03 (1) under 2005 Wisconsin Act 264, rather than under 2005 Wisconsin Act 387. The effect of this change is that a guardian, other than an agency, is no longer prohibited from providing protective services or protective placement for the guardian's ward.
4. In order to address a second objection made to 2005 Senate Bill 731, this bill adopts the amendments to s. 49.001 (8) under 2005 Wisconsin Act 387, rather than 2005

Wisconsin Act 264. The effect of this change is that the definition of “Voluntary,” for purposes of ch. 49, stats., would read: ““Voluntary” means according to an individual’s free choice, if competent, or by choice of his or her guardian if the individual is adjudicated incompetent.”

In general, in drafting this bill, I consulted with Laura Rose, Deputy Director of the Joint Legislative Council; Betsy Abramson, who had been a member of the Joint Legislative Council Study Committee that produced the bills that later became Acts 264 and 388 and a member of the committee of the Elder Law Section of the Wisconsin State Bar Association that produced the bill that later became Act 387; and Bruce Hoesly, Assistant Revisor of Statutes. I further consulted the galley proofs of the 05–06 Wisconsin Statutes provided by the Revisor, and used the following principles:

1. If the galley proofs indicated that a statutory section treatment by two or more acts was mutually inconsistent, I repealed and recreated the section using the version decided to be most appropriate.
2. If the galley proofs indicated that the Revisor had merged a statutory section that had been affected by two or more acts, I repealed and recreated the section without change, unless an error existed, in which case I corrected the error and made a note of the correction.
3. If the galley proofs indicated that the Revisor had merged a statutory section that had been affected by two or more acts but had placed brackets around language that was surplusage or that needed to be added to complete the sense, I amended the provision to deal with the bracketed language appropriately.

This bill does *not* include any of the following:

1. Provisions that are renumbered, with no other change, by the Revisor in the galley proofs. (The exception to this is the treatment of ss. 55.01 (4g), (6), (6d), (6g), and (6t), stats., which, as I indicate in a ****NOTE in the bill, I recommend be deleted when this bill is redrafted for introduction.)
2. Provisions that are affected only by 2005 Wisconsin Acts other than Acts 264, 387, and 388; any necessary cross–reference changes will, I assume, be addressed by the Revisor in subsequent Revisor’s bills.
3. Corrections to provisions affected by the three acts that merely place cross–reference citations in a different order but otherwise do not change them (that is, placing a reference to “ch. 880, 2003 stats.” before, rather than after, cross–references to statutes in current law). These changes are technical only and will, I assume, be addressed by the Revisor in subsequent Revisor’s bills.

This bill *does* contain the following policy changes from 2005 Senate Bill 731:

1. A change to s. 55.03 (1), as mentioned previously.
2. A change to s. 49.001 (8), as mentioned previously.
3. A deletion of a change to s. 55.001; this provision contains a minor inconsistency in the plural or singular of the word “disorder,” which will, I assume, be addressed by the Revisor in a subsequent Revisor’s bill.

4. Substitution of the word “report” for “statement” in s. 54.36 (1) and substitution of the word “statement” for “report” in s. 54.40 (4) (c), for consistency and clarity.
5. Insertion of the word “annually” in s. 55.19 (intro.), for consistency.
6. Substitution of the word “shall” for “may” in s. 55.19 (3) (br), in order to require, rather than permit, a court to order a county department to obtain any additional necessary information about an individual in an annual review of an order authorizing involuntary administration of psychotropic medication.
7. An expansion of s. 609.65 (1) (intro.), which concerns requirements for certain insurers providing coverage for court-ordered services for persons with mental illness, to include persons receiving protective services or under protective placement. Not making this inclusion previously was an error.
8. A cross-reference change, from s. 55.12 to s. 55.08 (1) in s. 55.06. Section 55.08 (1) (the correct cross reference) sets forth standards for an order of protective placement, whereas s. 55.12 (the incorrect cross reference) deals with requirements on county departments and others if an order is issued.
9. Creation of s. 54.44 (5). This provision was originally s. 880.33 (2) (e) and provided that a hearing on a petition for involuntary administration of psychotropic medication be open unless the proposed ward, his or her attorney, or the attorney of a foreign ward moved that it be closed; if closed, only interested persons, their attorneys, and witnesses may be present. Act 264 repealed this provision, indicating that the act creates in s. 55.14 a new procedure for these types of petitions; however, s. 55.14 is silent on this issue. Act 387 expanded s. 880.33 (2) (e) to require every hearing under the guardianship chapter to be closed, unless the proposed ward, his or her attorney, or the attorney for a foreign ward moves that it be open. Because Act 264 was enacted first, the provision was deleted and not printed by the Revisor. This bill restores the provision, in the form that it was rendered by Act 387, with the addition of the words “or ward”; the bill also amends s. 54.44 (1) (a), (2), and (4) (title), (a), and (b) to include “or ward”.
10. A resolution of the substantive conflicts and redundancies between s. 54.25 (2) (d) 2. a. and (4) (a) concerning consent by the guardian to voluntary and involuntary administration to the ward of medical examinations, medications, and treatment that are in the ward’s best interest.
11. Other potential policy changes in the bill, about which I have questions, which are addressed by means of ****NOTES following each such provision.

The bill also contains numerous, very minor, technical changes that do not change the substantive provisions.

I would be happy to meet with you if you have questions about the bill or to provide any additional assistance you may need with respect to it. Please don’t hesitate to call.

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