

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

INSERT ADD 1-1 ✓

**** Please review the Drafter's Note that
accompanies this bill; it gives a guide to
numerous drafting decisions made for the bill.

✓

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

INSERT ADD 4-15

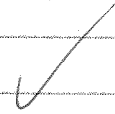
**** NOTE: ~~the provision, which was~~

The treatment of this provision was in 2005 Senate

Bill 731; I have additionally changed ~~an~~ an

incorrect cross-reference, from s. 55.02, to

s. 55.043 (1d). Okay?



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

INSERT ADD 5.13

**** ~~ADD~~ NOTE: I added this because
it involves a changed cross-reference and
it was decided to include other provisions
with necessary cross-reference changes. Okay?

✓

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

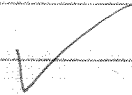
Library (608-266-7040)

Legal (608-266-3561)

LRB

INSERT ADD 5-18

*** NOTE: I added this because it involves a changed cross-reference and it was decided to include other provisions with necessary cross-reference changes. Okay?



INSERT ADD 6-10

X

Section #. 48.415 (3) (a) of the statutes is amended to read:

48.415 (3) (a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33 (2) (a), (b) or (c), licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b) or ⁽²⁾developmental disability as defined in s. 55.01 (2) ⁽²⁾or (5);

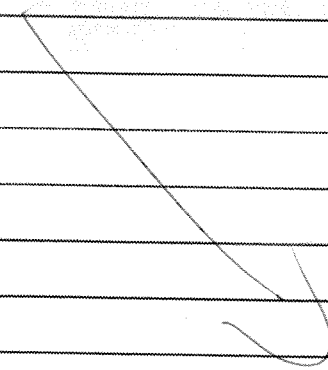
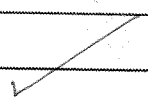
History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275; 1997 a. 35, 80, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109; 2005 a. 277, 293.

Other like incapacities,
as defined in s. 55.01 ✓

**** NOTE: ~~this I inserted~~ ^{added} this because it involves an incorrect cross-reference, and it was decided to include other provisions with necessary cross-reference changes. Okay? ✓

INSERT ADD 13-7

**** NOTE: In merging this provision, the Revisor omitted reference to subsection (1) of s. 55.135; I have restored that reference.



INSERT ADD 13-7

p. 2 of 2

Section #. 54.25 (2) (c) 4 ^{and 5} of the statutes ^{are} ~~is~~ consolidated and renumbered 54.25 (2) (c) 4.

54.25 (2) (c) 4. Regardless of whether a guardian is appointed, a court may declare that an individual is not competent to exercise the right to register to vote or to vote in an election if it finds by clear and convincing evidence that the individual is incapable of understanding the objective of the elective process. If the petition for a declaration of incompetence to vote is not part of a petition for guardianship, the same procedures shall apply as would apply for a petition for guardianship.

History: 2005 a. 264 s. 221; 2005 a. 387 ss. 100, 476, 511, 513, 514; 2005 a. 451 s. 177; s. 13.93 (1) (b), (2) (c).

**** NOTE: Act 387 created an unnumbered subdivision following s. 54.25 (2) (c) 4, The Revisor renumbered the subdivision to be s. 54.25 (2) (c) 5., but it appears to be part of s. 54.25 (2) (c) 4. This section of the bill consolidates the two provisions.

End of INSERT ADD
13-7



INSERT ADD 15-1

**** NOTE: I have changed this provision from the way it appeared in 2005 Senate Bill 731, to delete inadvertent redundant language and to delete reference to a protective service order reviews under ~~s.~~ s. 55.18, which deals only with reviews of protective placements.



INSERT ADD 15-2

Section #. 54.40 (4) (c) of the statutes is amended to read:

54.40 (4) (c) Interview the proposed guardian, the proposed standby guardian, if any, and any other person seeking appointment as guardian and report to the court concerning the suitability of each individual interviewed to serve as guardian and concerning the report under s. 54.15 (8).

History: 2005 a. 264 ss. 213 to 215; 2005 a. 387 ss. 100, 477 to 487, 496, 497; Stats. 2005 s. 54.40; s. 13.93 (1) (b), (2) (c).

statement

***NOTE: I added this provision to correct an incorrect cross-reference; the document under s. 54.15 (8) to which this provision refers is a statement, not a report.

INSERT ADD 15-12

p. 108
5

Section #. 54.44 (1) (a) of the statutes, as affected by ~~2007 Wisconsin Act 2005 Wisconsin~~
~~Acts 264 and 387~~, is amended to read:

or ward

54.44 (1) (a) *Time of hearing for petition.* A petition for guardianship, other than a petition under par. (b) or (c) or s. 54.50 (1), shall be heard within 90 days after it is filed. The guardian ad litem and attorney for the proposed ward shall be provided with a copy of the report of the examining physician or psychologist under s. 54.36 (1) at least 96 hours before the time of the hearing.

History: 2005 a. 387 ss. 100, 333; s. 13.93 (1) (b).

**** NOTE: Please see the description of this provision in the Drafter's Note.

INSERT ADD 15-12

p. 2
of
58

Section #. 54.44 (2) of the statutes, as affected by ~~2007 Wisconsin Act 2004 Wisconsin Acts~~
~~264 and 387, is repealed and recreated to read:~~ is amended

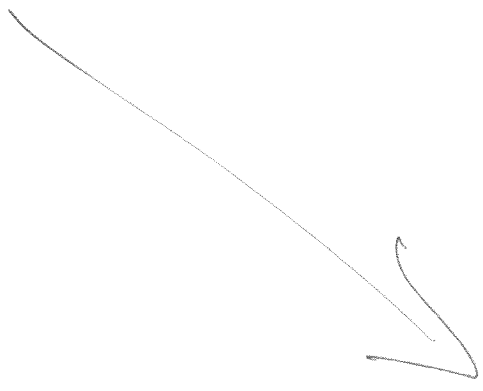
54.44 (2) STANDARD OF PROOF. Any determination by the court as to whether the proposed ward
a minor is incompetent, or a spendthrift shall be by clear and convincing evidence.

History: 2005 a. 387 ss. 100, 333; s. 13.93 (1) (b).

or ward is

**** NOTE: Please see the description of this provision in the Drafter's Note.

STET.
leave
as
typed



INSERT ADD 15.12

p. 3 of 5

Section #. 54.44 (4) (title) of the statutes is amended to read:

54.44 (4) (title) PRESENCE OF PROPOSED WARD.

CS
~~OR WARD~~

History: 2005 a. 387 ss. 100, 333; s. 13.93 (1) (b).

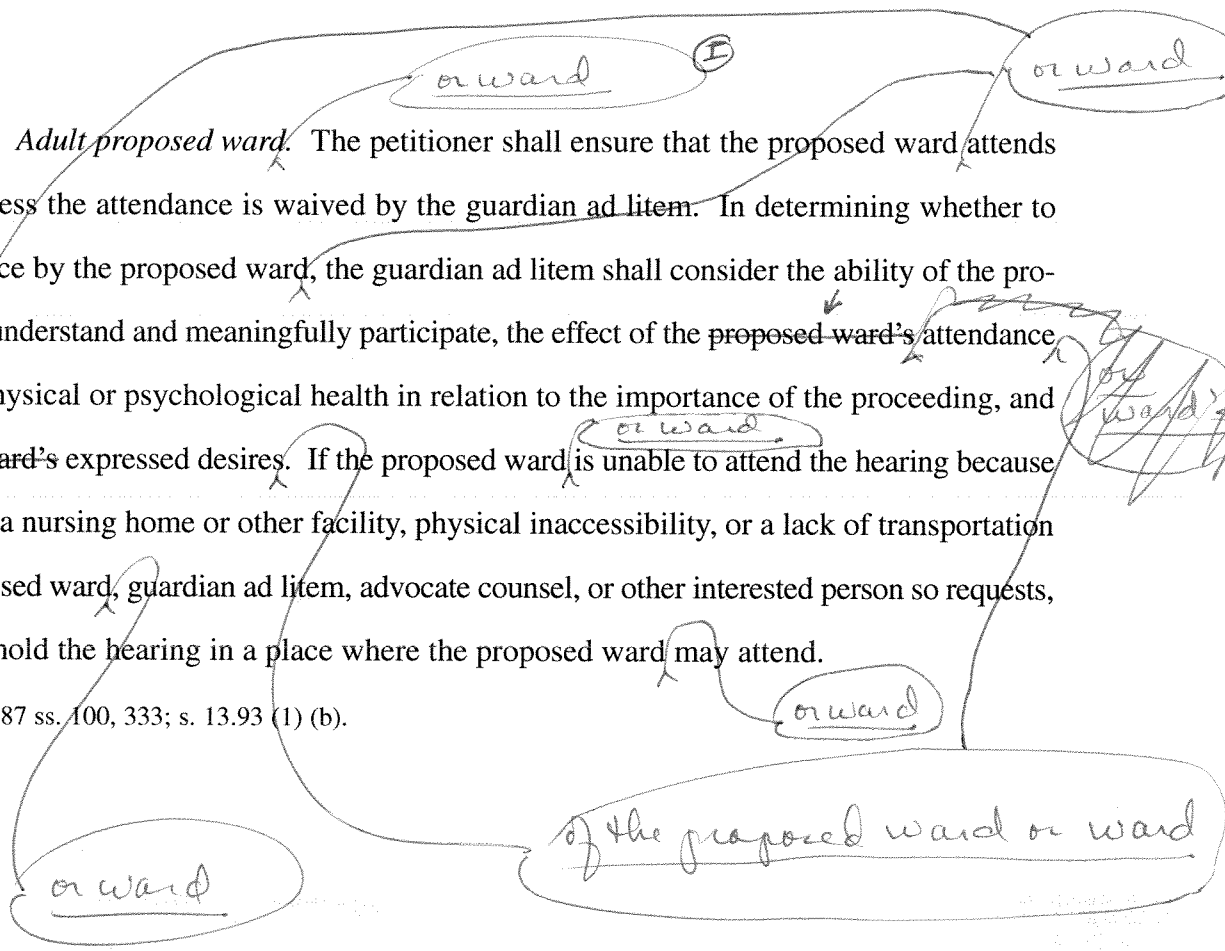
*** NOTE: Please see the description of this provision in the Drafter's Note.



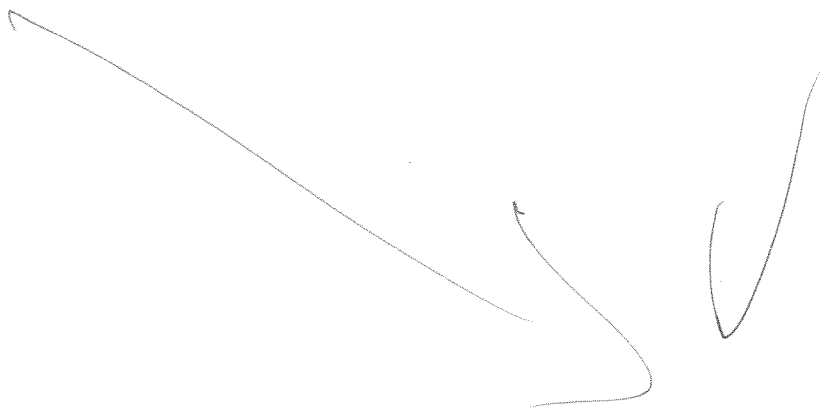
Section #. 54.44 (4) (a) of the statutes is amended to read:

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

History: 2005 a. 387 ss. 100, 333; s. 13.93 (1) (b).



*** NOTE: Please see the description of this provision in the Drafter's Note.



Section #. 54.44 (4) (b) of the statutes is amended to read:

oward ^(I)

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

History: 2005 a. 387 ss. 100, 333; s. 13.93 (1) (b).

proposed ward or ward

*** NOTE: Please see the description of this provision in the Drafter's Note.

End B
INSERT
ADD 15-12



(INSERT ADD 17-7)

*** NOTE: This provision is ⁱⁿ slightly
~~form~~ different from than as it appeared in 2005 Senate
Bill 731; it shows the striking of surplus language.



Section #. 55.01 (6r) (k) of the statutes is amended to read:

55.01 (6r) (k) Any services that, when provided to an individual with developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacity, keep the individual safe from abuse, neglect, or misappropriation of property or prevent the individual from experiencing deterioration or from inflicting harm on himself or herself or another person.

History: 1973 c. 284; 1975 c. 393, 430; 1979 c. 221; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1991 a. 316; 1993 a. 445; 2003 a. 33; 2005 a. 264, 387, 388; s. 13.93 (1) (b) and (2) (c).

financial exploitation,

self-neglect

in other statutes

*** NOTE: This provision was created by Act 264; however, Act 388 replaced the term "misappropriation of property" with "financial exploitation" and added services for self-neglect. The amendments to this provision align the two Acts.

Section #. 55.02 (3) of the statutes is amended to read:



~~55.02~~ (3) CORPORATION COUNSEL. The corporation counsel of the county in which the petition is brought may or, if requested by the court, shall assist in conducting proceedings under this chapter.

History: 1973 c. 284; 1975 c. 393; 1979 c. 221; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1985 a. 332 s. 251 (3); 1993 a. 445; 2001 a. 103; 2005 a. 264 ss. 80, 116; 2005 a. 387, 388.

Subsection (3)

as

**** NOTE: This provision, renumbered and amended by 2005 Wisconsin Act 264, was inadvertently deleted when repealing and recreating s. 55.02.



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

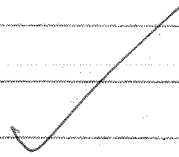
Library (608-266-7040)

Legal (608-266-3561)

LRB

INSERT ADD 20-17

****NOTE: Please see the Drafter's Note
for an explanation of this provision.



INSERT ADD 21-15

Ⓟ[ⓑ] 55.08 (1)(b) The individual is a minor who is not alleged to have a developmental disability and on whose behalf a petition for guardianship has been submitted, or is an adult who has been determined to be incompetent by a circuit court.

**** NOTE: I reworded this provision to more closely parallel the language in s. 55.08 (2)(a), ^{align} and to better align subject and verb. Please review.



✓
Section #. 55.08 (2) (b) of the statutes is amended to read:

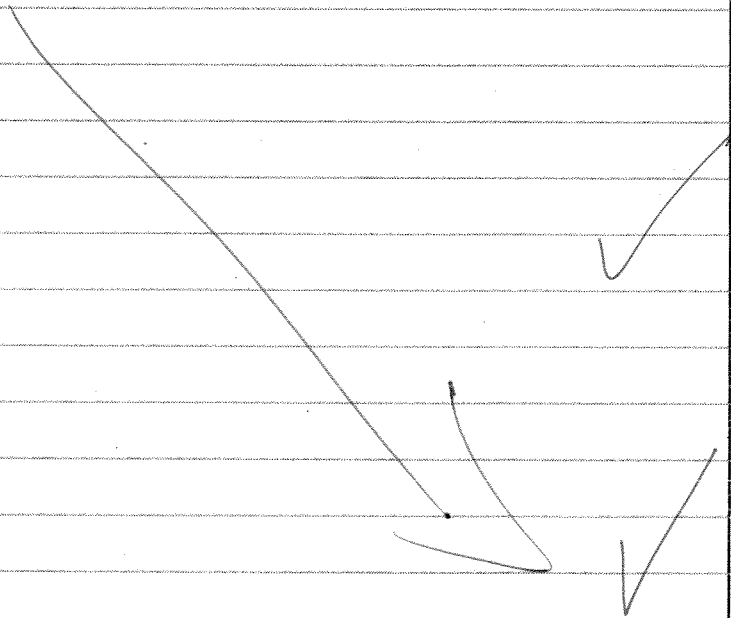
55.08 (2) (b) As a result of developmental ~~disabilities~~^{disability}, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual will incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others if protective services are not provided.

History: 2005 a. 264 ss. 119 to 122, 158; 2005 a. 387 s. 111; 2005 a. 388 s. 164; s. 13.93 (2) (c).

**** NOTE: In this provision I changed "disabilities" to the singular, to be consistent with other provisions.

INSERT ADD 30-7

**** NOTE: Acts 264 and 387 created almost identical versions of this provision. The difference was the cross-reference; I have chosen the ~~re~~ renumbered and more current cross-reference.



Section #. 55.14 (6) of the statutes, as created by ~~2007 Wisconsin Act~~ 2005 Wisconsin Acts 264 and 387, is repealed and recreated to read:

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

History: 2005 a. 264 ss. 165, 195; 2005 a. 387 ss. 121, 302; s. 13.93 (2) (c).

**** Acts 264 and 387 created nearly identical versions of this provision. The difference was that Act 264 used "issues," whereas Act 387 used the singular; I have chosen the Act 264 version.

End of
INSERT ADD
30.7

✓
✓

INSERT ADD 30-22

**** NOTE: Nearly identical versions of this provision were created by Acts 264 and 387; I have chosen the Act 264 version, which ^{requires} requires a county department to ensure that psychotropic medication, but not all protective services, are administered in accordance with the treatment plan.



INSERT ADD 33-4

Section #. 55.18 (2) (f) 4. of the statutes is amended to read:

55.18 (2) (f) 4. The individual or the individual's guardian or guardian ad litem requests a full ~~due process hearing under this section~~ for the individual.

History: 2005 a. 264 ss. 140, 141, 169.

that meets the requirements of s. 55.10(4)

**** NOTE: I amended this provision to conform to the references to hearings under s. 55.19 (1)(b), (2)(b) 6. and (f) 4., and (3)(d) (intro).
Okay?



(INSERT ADD 33-9)

Section #. 55.19 (1) (a) (intro.) of the statutes, as created by ~~2007 Wisconsin Act~~ 2005 Wisconsin Acts 264 and 387, is repealed and recreated to read:

55.19 (1) (a) (intro.) The county department of the individual's county of residence shall, except as provided in sub. (1m), review, in compliance with the requirements of this section, the status of each individual who is the subject of the order. The review shall include a visit to the individual and a written evaluation of the physical, mental, and social condition of the individual that is relevant to the issue of the continued need for the order. The review shall be made a part of the permanent record of the individual. The county department shall inform the guardian of the individual of the review at the time the review is made and shall, before completing a report of the review, invite the individual and the guardian to submit comments or information concerning the individual's need for involuntary administration of psychotropic medication or other protective services. Not later than the first day of the 11th month after the initial order is made for an individual, except as provided in par. (b), and at least annually thereafter, the county department shall do all of the following:

History: 2005 a. 264, 387; s. 13.93 (2) (c).

**** NOTE: Acts 264 and 387 created nearly identical versions of this provision; ~~which the Revisor~~ I have chosen the version printed by the Revisor, but have added a comma after "review" in the fourth sentence.



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

INSERT ADD 33-18

**** NOTE: This provision differs from
the version shown in 2005 Senate Bill 731, so
as to conform to Act ²⁶⁴~~387~~, rather than Act ³⁸⁷~~264~~.



INSERT ADD ~~33-15~~ 34-3

**** NOTE: This provision was created by both Act 264 and Act 387; I have chosen the Act 264 version (using "individual's," rather than "his or her"). However, I have also changed the reference to a "full due process hearing under this section" to a hearing "that meets the requirements of s. 55.10(4)," to align this provision with others within s. 55.19.



INSERT ADD 35-12

Section #. 560.9811 (1) of the statutes is amended to read:

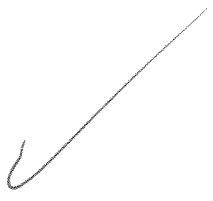


mental illness

560.9811 (1) In this section, "~~mental illness~~ serious and persistent" has the meaning given in s. 51.01 (14t).

History: 2005 a. 25 s. 908; 2005 a. 264.

*** NOTE: I added this provision to correct an incorrectly transposed phrase.
transposed



INSERT ADD 36-10

Section #. 757.69 (1) (h) of the statutes, as affected by ~~2007 Wisconsin Act~~ 2005 Wisconsin Acts 264 and 387, is repealed and recreated to read:

757.69 (1) (h) Hear petitions for commitment and conduct probable cause hearings under ss. 51.20, 51.45, 55.13, and 55.135, conduct reviews of guardianships under ch. 54 and reviews of protective placements and protective services under ch. 55, advise a person alleged to be mentally ill of his or her rights under the United States and Wisconsin constitutions, and, if the person claims or appears to be unable to afford counsel, refer the person to the authority for indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4).

NOTE: Par. (h) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

History: 1977 c. 323, 449; 1979 c. 32; 1979 c. 89; 1979 c. 209 s. 4; 1979 c. 352, 356; 1983 a. 279; 1985 a. 126, 202, 234, 332; 1987 a. 3, 27, 71, 378, 398; 1989 a. 7, 12, 31, 246; Sup. Ct. Order, 158 Wis. 2d xxv (1990); 1991 a. 39, 269; 1993 a. 318, 451, 481; 1995 a. 77; 1997 a. 191, 192, 292; 1999 a. 32; 2001 a. 16; 2001 a. 61 ss. 93 to 109, 173, 175, 177, 180; 2001 a. 105; 2005 a. 264, 387; s. 13.93 (2) (c).

**** NOTE: I added this provision because it was printed merged by the Revisor and appears to have no conflict, and it was decided to include in this bill other provisions merged by the Revisor. I have made no change in the version printed by the Revisor. Okay?



INSERT ADD 37-7

**** NOTE: This provision is ⁱⁿ slightly
different ^{form} from than as it appeared in 2005
Senate Bill 131; it shows the striking of
surplus language.



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

INSERT ADD 37-16

**** NOTE: This provision ~~is~~ addition
was amended in 2005 Senate Bill 731 $\frac{1}{2}$, to
change the cross-reference from s. 55.06 to ch. 55;
in this bill, I have also struck "the individual
at risk under s. 55.05," because it is redundant.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

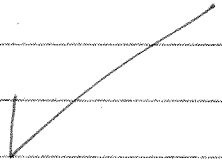
LRB

Research (608-266-0341) · Library (608-266-7040) Legal (608-266-3561)

LRB

INSERT ADD 38-10

**** NOTE: I have repealed and recreated
this provision to correct a minor omission and
addition by the Revisor, as well as to eliminate
the redundant phrase "individual at risk."



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0121/7dn

DAK.....

PI

treats a statute that was not treated
or that treats a statute differently than it was treated in 2005 Senate Bill 731

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 was not contained 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. ✓

CS

✓ 2. Because 2005 Senate Bill 731 was drafted for action by the Legislature in the 2003-2005 session before the delayed effective dates of 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 acts will all have taken effect before that session starts, the voiding sections have been removed, and the act's effective date is the first day of the first month following publication. ✓

to be acted on on which

three

bill's

✓ 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, which I have noted.
- 3. If the galley proofs indicated that the Revisor had merged a statutory section that had been affected by two or more acts but that bracketed language was surplusage, I amended the provision to deal with the bracketed language appropriately.

This bill does *not* include all 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), (6), (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 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), for consistency and clarity.

and substitution of the word "statement" for "report" in s. 54.40 (4)(c)

in which case I corrected the error and made a note of the correction.

had placed brackets around

of that needed to be added to complete the sense

6d

CS

only

- 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 hearings on petitions 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, ~~as affected~~ by Act 387, with the addition of the words "or ward". ✓

10. A resolution of the substantive conflicts and redundancies between s. 54.25 (2) (d) 2. a. and (4), ^{(a) rendered} concerning consent by the guardian to voluntary and involuntary administration to the ward of medical examinations and treatment that are in the ward's best interest. medications,

11. Other potential policy changes in the bill, about which I have questions, which are addressed by means of ^(CS)****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.

Debora A. Kennedy
 Managing Attorney
 Phone: (608) 266-0137
 E-mail: debora.kennedy@legis.wisconsin.gov

in the form that it was

; the bill also amends s. 54.44 (1)(a), (2), and (4) (title), (a), and (b) to include "or ward"

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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*Securing the present
 and protecting
 the future*

TO: Laura Rose
 FROM: Ellen Henningsen
 Wisconsin Guardianship Support Center
 RE: Reconciliation bill for 2005 Acts 264, 387 and 388
 DATE: December 21, 2006

Thank you for your willingness to consider the following items for inclusion in the reconciliation bill regarding 2005 Acts 264, 387 and 388 that is expected to be introduced in 2007. Some are probably already included in the draft but just to be sure I thought I'd share them with you.

I am listing items in statutory numeric order, based on the Revisor's version of the statutes.

1. **46.90 (1) (eg) 3 – Elder abuse reporting system** - agent under Financial POA should also refer to s. 243.10 in addition to s. 243.07.
2. **50.06 (2) (d) 3 – Certain admissions to facilities** – remove “file a petition for protective placement under s. 55.075” since one will have already been filed.
3. **54.10 (3) (a) 1 – Appointment of guardian** - permits filing for guardianship at 17 years and 9 months which, if protective placement is also being filed, is inconsistent with Ch. 55's provision permitting filing for protective placement at 17 years and 6 months. Should be consistent.
4. **54.10 (3) (d) – Appointment of guardian** - the cross-reference is to 55.06 (8) but there is no such subsection – I note the Revisor has inserted the correct cross-reference.
5. **54.15 – Selection of guardian; nominations; preferences; other criteria** - The intro states “The court shall do one of the following and shall consider all of the following nominations, applicable preferences, and criteria in determining who is appointed as guardian:” Delete “shall do one of the following and”.
6. **54.15 (8) – Statement of Acts** – It isn't clear if standby or successor guardians need to complete a Statement since the requirement references

a 54.44 hearing. Also, it isn't clear if corporate guardians need to complete a Statement since how would a corporation answer these questions? Also, it would seem that temporary guardians do not have to complete a Statement since they do not fall within the definition of "guardian" and thus not within the definition of "proposed guardian" in that they are appointed under 54.50, not 54.10. I would therefore delete "at least 96 hours before the hearing under s. 54.44" and replace it with "Prior to appointment" or something like that. I'm not sure what to suggest regarding corporate guardians – perhaps require all staff of the corporate guardian to complete and require subsequently newly hired staff to complete upon being hired?

7. **54.15 (8) (a) 3. – Statement of Acts** – In addition to Chs. 440 to 480, the statutory reference for attorneys should also be included.
8. **54.19 (1) - Duties of guardian of the estate** - the last sentence is missing words - "Subject to this possession, the title of all the income and assets of the ward and the increment and proceeds of the income and assets of the ward remain in the ward's name and not in the guardian's."
9. **54.19 (8) – Duties of guardian of the estate** - delete "an" before "incompetent."
10. **54.25 (2) (d) 2.a. – Guardian authority to exercise certain powers** - 54.56 (3) (b) is the wrong cross-reference.
11. **54.25 (2) (d) 2.a. – Guardian authority to exercise certain powers** - The guardian's authority to consent to involuntary, non-psych meds is missing – I have included you on e-mails to Debora Kennedy regarding this subject so won't repeat the analysis here.
12. **54.36 (1) – Examination of proposed ward** - In the 2nd sentence, change "statement" to "report".
13. **54.38 (2) (b) – Notice of Hearing, Service and Delivery** - it is not clear if the reference to "by mail" means regular mail or certified mail return receipt requested.
14. **54.40 – GAL** - include a deadline for filing the GAL report?
15. **54.40 (4) (ds) – GAL** - includes cross-reference to 880.33 (2) (b). (Revisor has inserted new cross-reference)
16. **54.40 (4) (dm) & (g) - GAL** - duties are redundant
17. **54.44 (2) – Standard of Proof** - add "is" before "a minor"

18. **54.47 – Lis pendens, void contracts** – delete the phrase “unless notified by the guardian in writing” or include what it is that the guardian is providing notice of.
19. **54.50 - Temporary guardian** – GAL should be required to interview and make a recommendation regarding suitability, just like the GAL does for a permanent guardian.
20. **54.52 (2) – Standby guardianship** - use of “court is temporarily unable” doesn’t make sense.
21. **54.60 (1) – Inventory** - inventory is to include a list of income and assets – delete income because an inventory is a static report as of a date certain and reporting income isn’t applicable in this kind of report. Note that the new inventory form on wicourts.gov has ignored income.
22. **54.60 (2) – (6) – Inventory** – per section 584 (2) of Act 387, these sections initially apply to a petition for guardianship filed on the effective date. Assuming I understand what this means, it seems that they don’t apply to inventories not yet filed in guardianships that were granted prior to December 1 or filed prior to December 1 but not yet granted. They should apply to all inventories yet to be filed regardless of when the guardianship was granted.
23. **54.62 – Accounts-** per section 584 (15) of Act 387, certain parts initially apply to annual accounts that are due before April 15, 2006. Shouldn’t “before” be “after”? *on Dec. 1, 2006*
24. **54.62 – Accounts** - titled “Accounts” but (1) says “Annual reports”. *accounts*
Change title to “Reports and Account”?
25. **54.62 (2) – Display of Assets** – should also include examination of income and expenditures. *no*
26. **54.64 (2) (b) – Review and Modification** - remove language that permits court to control selection of ward’s attorney. There may be other places where similar language should be removed per the lecture you gave on the subject last June. *no*
27. **54.64 (3) (a) – Termination of guardianship of the person** - reference to spendthrift should be removed since guardians of the person aren’t appointed for spendthrifts. *all; tech.*

- ignore* 28. **54.68 (2) (h) and (i) – Cause for court action against a guardian** – these should be replaced by a general statement about lying on Statement.
- ignore* 29. **54.68 (5) – Removal of Paid Guardian** – this subsection might be more appropriately placed in sec. 54.64 since 54.64 (2) includes petitioning for removal of a guardian separate from the for cause process of sec. 54.68.
- ignore* 30. **54.76 (8) – Conservator** - last sentence – how does a deceased conservator who is also the PR give notice?
- ignore* 31. **55.135 – Emergency and temporary protective placement** – I believe the change to “reliable report” as the new standard for taking someone into custody was meant to make emergency protective placements easier. However, “personal knowledge” is still required to file a petition for protective placement, and I understand that some counties (if not most) believe that “personal knowledge” is the same as “personal observation” and thus the change to “reliable report” is ineffective. Change “personal knowledge” to “reliable report.”
- done* 32. **55.03 (1) – Agency as Guardian** - return to pre-November 1 language.
- ignore* 33. **813.123 – Restraining orders and injunctions for individuals at risk** – Per Tess Meuer of WCADV, 813.123 says a TRO last up to 7 days but other TRO’s in ch. 813 last up to 14 days.
- done* 34. **880.33 (2) (e) - regarding hearings being opened or closed** – this was repealed by Section 206 of Act 264. Thus Act 387’s treatment was given no effect. Act 387’s version should be adopted.

Thanks!

1/11/07 Mtg. w/ Minette Lawrence, Sandy Louergan, Laura
Roe, Beth Abramson, Ellen Henningsen, +

- D-N
- ① p. 4, l. 18 NOTE: ok
 - ② p. 28, l. 11 NOTE: ok
 - ③ p. 30, l. 16: AGENCY AS GUARDIAN AND PROVIDER
PROHIBITED - Minette will check w/ K. Underwood
 - ④ p. 50, l. 12 - 55.10 (no (4))
 - ⑤ p. 52, l. 25 - 55.10 (no (4))
 - ⑥ p. 54, l. 10 - " "
 - ⑦ p. 54, l. 18 " "
 - ⑧ p. 55, l. 22 " " ✓ Catch all refs
 - ⑨ p. 57, ll. 6-10 Marge + Ellen to decide which
version (880.331(5) (cites).)

⑩ See p. 3, # 23 Ellen's Memo - Amend SEC 584(15)

Generally: Minette will let DAK know when
③ is approved & when ⑩ is approved
Ellen will look at ⑨ & pare down
⑩ and look at psychotrop med
issues.

Kennedy, Debora

From: Ellen Henningsen [guardian@cwag.org]
Sent: Thursday, January 11, 2007 4:17 PM
To: Lawrence, Minette
Cc: Rose, Laura; Kennedy, Debora; Betsy Abramson; Sandy Lonergan; Margaret Resan; Ellen Henningsen
Subject: Memo re recon bill
Attachments: Recon Bill Jan 07 memo.doc

Attached is the memo regarding my suggestions for the reconciliation bill for 2005 Acts 264, 387 and 388.

If you have questions, please let me know.

Thanks.

<<Recon Bill Jan 07 memo.doc>>

Attorney Ellen J. Henningsen

Director, Wisconsin Guardianship Support Center

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TO: Rep. John Townsend
ATTN: Minette Lawrence

FROM: Ellen Henningsen
Wisconsin Guardianship Support Center

RE: Reconciliation Bill for 2005 Acts 264, 387 and 388

DATE: January 11, 2007

CC: Laura Rose, Legislative Council
Debora Kennedy, Legislative Reference Bureau
Betsy Abramson, Elder Law Section
Sandy Lonergan, State Bar of Wisconsin
Marge Resan, CWAG

*Securing the present
and protecting
the future*

As a follow-up to today's meeting regarding the reconciliation bill for 2005 Acts 264, 387 and 388, this memo lists the items not currently in the draft (0122/P1dn) which I believe the group agreed should be considered for inclusion. Thank you for your leadership on these bills last session and thanks also for your willingness to consider including the following items in the reconciliation bill.

I am listing items in statutory numeric order, based on the Revisor's version of the statutes.

- ✓ 1. **46.90 (1) (eg) 3 – Elder abuse reporting system** – definition of “fiscal agent” includes an agent under financial power of attorney under s. 243.07. It should also refer to s. 243.10. Alternatively, the reference should be to Ch. 243.
- ✓ 2. **50.06 (2) (d) 3 – Certain admissions to facilities** – in order to give consent to admission under this statute, a protective placement petition must have been filed with the court. But in the subsection added by Act 264, one option when the patient is objecting to admission is to “file a petition for protective placement under s. 55.075.” This should be removed since a petition will have already been filed.
- ✓ 3. **54.10 (3) (a) 1 – Appointment of guardian** – this section permits filing for guardianship at 17 years and 9 months. However, it is inconsistent with Ch. 55 which permits filing for protective placement at 17 years and 6 months. One isn't better than the other, but they should be consistent.

- ✓ 4. **54.15 – Selection of guardian; nominations; preferences; other criteria** - The intro states "The court shall do one of the following and shall consider all of the following nominations, applicable preferences, and criteria in determining who is appointed as guardian." The phrase "shall do one of the following and" is unnecessary and should be deleted.
- ✓ 5. **54.19 (1) - Duties of guardian of the estate** - the last sentence is missing words - "Subject to this possession, the title of all the income and assets of the ward and the increment and proceeds of the income and assets of the ward remain in the ward's name and not in the guardian's."
- ✓ 6. **54.19 (8) – Duties of guardian of the estate** - delete "an" before "incompetent."
- already in bill
drafted
difference
✓ 7. **54.44 (2) – Standard of Proof** - add "is" before "a minor"
- ✓ 8. **54.52 (2) – Standby guardianship** – delete "court is temporarily unable" as it doesn't make sense because the context is the unavailability of the guardian, not the court.
9. **54.62 – Accounts**- per section 584 (15) of Act 387, certain parts initially apply to annual accounts that are due before April 15, 2006. Change "before April 15, 2006" to "on or after December 1, 2006."
- ✓ 10. **54.62 – Accounts** – this section is about the financial accounts that guardians of the estate must file but the title of (1) is "Annual reports." Change title of (1) to "Annual accounts."
- ✓ 11. **54.64 (3) (a) – Termination of guardianship of the person** - reference to terminating a guardianship of the person for a spendthrift should be removed since guardians of the person aren't appointed for spendthrifts.

Again, we appreciate your support.

Thanks!

2/19/07: Eileen + DAK agreed that this was unnecessary to change. The initial app., since it applied before the act was effective, was an impossibility to comply with; and the statute, which requires submission before Apr. 15 annually would be effective on Act 387's eff date (12/1/06). Therefore, regular guardians would have filed by April 15, 2006, and regular and corporate (newly required) would be required to file (for 2 2006) by April 15, 2007.

(54.62(1))

Kennedy, Debora

From: Ellen Henningsen [guardian@cwag.org]
Sent: Tuesday, January 16, 2007 5:13 PM
To: Rose, Laura; Lawrence, Minette; Betsy Abramson; Kennedy, Debora; Sandy Lonergan; Margaret Resan
Cc: Ellen Henningsen
Subject: F/up from Thurs on Recon Bill

Hello all – hope everyone enjoyed the 3 day weekend.

Per our meeting last Thursday, here is my response to the two items that I was to review.

- 1) Section 33/page 18 of the draft bill (revisions to sec. 54.25 (2) (d) 2.a. and Section 35/page 19 (revisions to sec. 54.25 (4) (b))

SUMMARY: substance fine but language in section 35 should be moved.

I agree with the substance of both of these provisions; both provisions resolve the gap in the authority of a guardian of the person regarding consent to health care that was created when Act 264 and Act 387 was merged. Per section 33 on page 18, sec. 54.25 (2) (d) 2.a. would only deal with involuntary health care, that is decisions when the ward is objecting. Per section 35 on page 19, decisions regarding health care when the ward is not objecting (i.e., voluntary) would be moved out of (2) (d) to subs. (4).

Although I agree that the substance is completely covered, I think the draft should nevertheless be changed so that the guardian's authority regarding voluntary care is listed in subs. (2) (d), not in subs. (4). Subs. (2) (d) is where the laundry list of powers that the court can transfer from the ward to the guardian of the person is contained; to have one of the powers not be included there but put into subs. (4) means that subs. (2) (d) would be incomplete.

There are two ways to handle my suggestion – one is to have sec. 54.25 (2) (d) 2.a. include both involuntary and voluntary. The other is to use the language of the draft for the power for involuntary care and number it (ae) and then number the power for voluntary care (ag) or some such method of numbering; that way both items are in (2) (d) but do not cause the rest of the list to be renumbered.

This subject Vol. to Ct. approval!

- 2) Section 138/page 57 (revisions to sec. 55.195)

SUMMARY: I'm confused

I am confused by this section because nowhere in Ch. 54 or Ch. 55 does it say that a GAL must be appointed in reviews of protective services orders. Sec. 54.40 (1) lists the cases where a GAL must be appointed. It states that GALs must be appointed "to review any protective placement or protective service order under s. 55.18..." However, s. 55.18 doesn't apply to protective services orders; that's the codification of Watts which only applies to protective placement. There's no requirement specifically mentioned in s. 55.16 (modification of an order for PP or PS) or s. 55.17 (termination of an order for PP or PS).

That being said, I agree that current 55.195 should only refer to protective services orders, since GAL duties in protective placement reviews are handled separately. I suggest a change to the intro – "In any review pursuant to s. 55.16 and s. 55.17 of a protective services order under s. 55.12,.... (I hope I haven't missed any other sections). Also, as noted by Debora, change the reference to "placement" to "services."

Also check to see if there's anything in s. 55.18 (2) that should be included in s. 55.195. Finally, this language is oddly placed – could it be renumbered to s. 55.165?

Attorney Ellen J. Henningsen

Director, Wisconsin Guardianship Support Center

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Kennedy, Debora

From: Ellen Henningsen [guardian@cwag.org]
Sent: Wednesday, January 31, 2007 1:57 PM
To: Sandy Lonergan; Betsy Abramson; Kennedy, Debora; Lawrence, Minette; Bruce, Cory
Subject: FW: F/up from Thurs on Recon Bill

Here's my Jan 16 e-mail with Laura's response (her's is the only response I got). I agree with Laura's comments in #2. But what about renumbering it to 55.165?

*Attorney Ellen J. Henningsen
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From: Rose, Laura [mailto:Laura.Rose@legis.wisconsin.gov]
Sent: Monday, January 22, 2007 11:30 AM
To: Ellen Henningsen; Lawrence, Minette; Betsy Abramson; Kennedy, Debora; Sandy Lonergan; Margaret Resan
Subject: RE: F/up from Thurs on Recon Bill

Hello everyone,

I agree with Ellen's conclusion on point #1.

On point #2, I don't think the intro. language should be changed to include cross-references to ss. 55.16 and 55.17. Just keep it a general, to "any review of a protective services order. . .". I don't think any of us are sure under what circumstances a court would appoint a GAL to review a protective services order. However, it is probably a good idea to change the references in s. 55.195 to "services" rather than "placement", as Debora suggests in her drafter's note. Currently, s. 55.195 is just plain confusing and doesn't make any sense.

Just my 2 cents.

Laura

From: Ellen Henningsen [mailto:guardian@cwag.org]
Sent: Tuesday, January 16, 2007 5:13 PM
To: Rose, Laura; Lawrence, Minette; Betsy Abramson; Kennedy, Debora; Sandy Lonergan; Margaret Resan
Cc: Ellen Henningsen
Subject: F/up from Thurs on Recon Bill

Hello all – hope everyone enjoyed the 3 day weekend.

Per our meeting last Thursday, here is my response to the two items that I was to review.

01/31/2007

- 1) Section 33/page 18 of the draft bill (revisions to sec. 54.25 (2) (d) 2.a. and Section 35/page 19 (revisions to sec. 54.25 (4) (b))

SUMMARY: substance fine but language in section 35 should be moved.

I agree with the substance of both of these provisions; both provisions resolve the gap in the authority of a guardian of the person regarding consent to health care that was created when Act 264 and Act 387 was merged. Per section 33 on page 18, sec. 54.25 (2) (d) 2.a. would only deal with involuntary health care, that is decisions when the ward is objecting. Per section 35 on page 19, decisions regarding health care when the ward is not objecting (i.e., voluntary) would be moved out of (2) (d) to subs. (4).

Although I agree that the substance is completely covered, I think the draft should nevertheless be changed so that the guardian's authority regarding voluntary care is listed in subs. (2) (d), not in subs. (4). Subs. (2) (d) is where the laundry list of powers that the court can transfer from the ward to the guardian of the person is contained; to have one of the powers not be included there but put into subs. (4) means that subs. (2) (d) would be incomplete.

There are two ways to handle my suggestion – one is to have sec. 54.25 (2) (d) 2.a. include both involuntary and voluntary. The other is to use the language of the draft for the power for involuntary care and number it (ae) and then number the power for voluntary care (ag) or some such method of numbering; that way both items are in (2) (d) but do not cause the rest of the list to be renumbered.

- 2) Section 138/page 57 (revisions to sec. 55.195)

SUMMARY: I'm confused

I am confused by this section because nowhere in Ch. 54 or Ch. 55 does it say that a GAL must be appointed in reviews of protective services orders. Sec. 54.40 (1) lists the cases where a GAL must be appointed. It states that GALs must be appointed "to review any protective placement or protective service order under s. 55.18..." However, s. 55.18 doesn't apply to protective services orders; that's the codification of Watts which only applies to protective placement. There's no requirement specifically mentioned in s. 55.16 (modification of an order for PP or PS) or s. 55.17 (termination of an order for PP or PS).

That being said, I agree that current 55.195 should only refer to protective services orders, since GAL duties in protective placement reviews are handled separately. I suggest a change to the intro – "In any review pursuant to s. 55.16 and s. 55.17 of a protective services order under s. 55.12,..... (I hope I haven't missed any other sections). Also, as noted by Debora, change the reference to "placement" to "services." Also check to see if there's anything in s. 55.18 (2) that should be included in s. 55.195. Finally, this language is oddly placed – could it be renumbered to s. 55.165?

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Kennedy, Debora

From: Lawrence, Minette
Sent: Wednesday, January 31, 2007 3:18 PM
To: Kennedy, Debora
Cc: Rose, Laura
Subject: FW: Guardianship Bill

Deborah --- I think if you read back on this email, you will see what our conversation has been. Do you want to start with the redraft and then we can review it when I return? Any questions, you can get back to me or Laura Rose.

From: Rose, Laura
Sent: Wednesday, January 31, 2007 3:17 PM
To: Lawrence, Minette
Subject: RE: Guardianship Bill

maybe you should since you are the legislative requester???

From: Lawrence, Minette
Sent: Wednesday, January 31, 2007 3:06 PM
To: Rose, Laura
Subject: RE: Guardianship Bill

Then do you want to let Deborah know she can start it!

From: Rose, Laura
Sent: Wednesday, January 31, 2007 3:06 PM
To: Lawrence, Minette
Subject: RE: Guardianship Bill

Yes, I think they are fine.

Laura

From: Lawrence, Minette
Sent: Wednesday, January 31, 2007 3:05 PM
To: Rose, Laura
Subject: RE: Guardianship Bill

John agreed to all of the minor stuff --- so as far as I am concerned, the redraft can be started with the changes that Ellen made --- if you agree they all are ok!

From: Rose, Laura
Sent: Wednesday, January 31, 2007 3:03 PM
To: Lawrence, Minette
Subject: RE: Guardianship Bill

01/31/2007

I don't think we need to meet again. . .we agreed to the items in Ellen's January 11th memo, and the items in the January 16th email do not warrant a meeting.

Do you happen to know when we might see the redraft, Minette?

Laura

From: Lawrence, Minette
Sent: Wednesday, January 31, 2007 1:52 PM
To: 'Ellen Henningsen'; Sandy Lonergan; Bruce, Cory; Betsy Abramson; Kennedy, Debora; Rose, Laura
Subject: RE: Guardianship Bill

Laura -- what is your opinion?

From: Ellen Henningsen [mailto:guardian@cwag.org]
Sent: Wednesday, January 31, 2007 1:50 PM
To: Sandy Lonergan; Bruce, Cory; Betsy Abramson; Kennedy, Debora; Lawrence, Minette; Rose, Laura
Subject: RE: Guardianship Bill

We haven't set another meeting. I think we are waiting for the next draft which would incorporate the 11 items from my "short" memo of Jan 11 (assuming Rep. Townsend agreed) plus the two items (the authority of the GP over medical decisions and the duties of a GAL in protective services reviews) that I e-mailed about on Jan 16.

Here's my Jan 11 memo again plus I will resend my Jan 16 e-mail with Laura's response

Minette, are my 11 items in the Jan 11 memo okay?
And how does everyone feel about the 2 items in the Jan 16 e-mail?

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From: Sandy Lonergan [mailto:slonergan@wisbar.org]
Sent: Tuesday, January 30, 2007 2:17 PM
To: Bruce, Cory; Betsy Abramson; Ellen Henningsen; Kennedy, Debora; Lawrence, Minette; Rose, Laura
Subject: RE: Guardianship Bill

If it's okay with you, Cory, I would suggest that we include Jamie from Miller's office so that she, too, will know what's in/out/ etc. Let me know when you would like to meet.

Sandy

Sandra Lonergan

01/31/2007

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From: Bruce, Cory [mailto:Cory.Bruce@legis.wisconsin.gov]
Sent: Tuesday, January 30, 2007 10:35 AM
To: Betsy Abramson; Ellen Henningsen; Kennedy, Debora; Lawrence, Minette; Rose, Laura; Sandy Lonergan
Subject: Guardianship Bill

Hi everyone,
I just wanted to let you know that we heard back from Miller's office and he's asked that Luther take the lead on the bill. Sen. Miller will help do what he can to get it passed through the senate.

So what's next? And I should probably get a recap on what all was discussed at the meeting I couldn't make. I don't think I need the play by play, but probably should know the bigger items where bigger choices were made! Are you guys getting together again anytime soon?

Thanks,
Cory