



TUES. p.m., if possible
State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0121/P2

DAK:cjs:nan

D-NOTE

stays

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SAV

LPS: delete
all 4-star notes
from the draft

REGENERATE

1 AN ACT *to repeal* 54.25 (4) (a), 54.40 (4) (am), 54.40 (4) (ar), 54.40 (4) (dm) and
2 146.40 (1) (am); *to renumber and amend* 54.25 (4) (b); *to consolidate and*
3 *renumber* 54.25 (2) (c) 4. and 5.; *to amend* 46.90 (1) (eg) 1., 46.90 (1) (eg) 2.,
4 46.90 (1) (eg) 3., 46.90 (5m) (a), 46.90 (5m) (br) 2., 46.90 (6) (bt) 8., 48.368 (1),
5 48.415 (3) (a), 50.06 (2) (d) 3., 51.30 (4) (b) 17., 54.01 (13), 54.10 (3) (a) 1., 54.10
6 (3) (d), 54.15 (intro.), 54.15 (5), 54.15 (6), 54.19 (1), 54.19 (8), 54.25 (2) (b) 4.,
7 54.25 (2) (d) 2. a., 54.25 (2) (d) 2. n., 54.40 (4) (c), 54.40 (4) (ds), 54.44 (1) (a), 54.44
8 (2), 54.44 (4) (title), 54.44 (4) (a), 54.44 (4) (b), 54.48, 54.52 (2), 54.62 (1) (title),
9 54.64 (3) (a), 54.93 (1) (b), 55.01 (1f), 55.01 (6p), 55.01 (6r) (k), 55.03 (3), 55.043
10 (1r) (a) 2., 55.043 (4) (am), 55.043 (4) (b) 1., 55.043 (6) (bt) 8., 55.075 (1), 55.075
11 (3), 55.075 (5) (bm), 55.08 (2) (a), 55.08 (2) (b), 55.09 (1), 55.10 (4) (intro.), 55.10
12 (4) (a), 55.12 (6), 55.13 (2), 55.135 (4), 55.135 (5), 55.15 (2), 55.16 (3) (c), 55.17
13 (1), 55.18 (1) (b), 55.18 (2) (a), 55.18 (2) (b) 6., 55.18 (2) (f) 4., 55.18 (3) (a), 55.18
14 (3) (d) (intro.), 55.195 (4), 55.195 (5), 55.195 (6), 560.9811 (1), 813.123 (2) (b),
15 813.123 (4) (ar) 1., 813.123 (5) (a) 3. b., 813.123 (5) (ar) 1., 813.123 (5) (c) 1.,

1 813.123 (7) and 940.285 (1m); **to repeal and recreate** 46.21 (2m) (c), 46.215
2 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.286 (3) (a) 3., 49.001 (8), 50.06 (2) (c), 51.01
3 (5) (a), 51.01 (14t), 51.03 (3) (a) 6., 51.10 (8), 51.20 (7) (d) 1., 51.40 (2) (a) 1., 51.40
4 (2) (a) 2., 51.42 (3) (e), 51.437 (4r) (b), 54.01 (8), 54.25 (1) (a), 54.25 (1) (b) (intro.),
5 54.36 (1), 54.38 (2) (a), 54.40 (1), 54.42 (1) (a) (intro.), 54.42 (1) (c), 54.46 (3) (a),
6 54.75, 55.01 (1v), 55.01 (2), 55.01 (6v), 55.02, 55.03 (1), 55.043 (1r) (b) 2., 55.043
7 (1r) (c) 2. c., 55.043 (4) (b) 2., 55.055 (1) (a), 55.055 (1) (b), 55.055 (3) (c), 55.06,
8 55.075 (5) (a), 55.08 (1) (b), 55.08 (1) (c), 55.10 (4) (b), 55.11 (1) (c), 55.135 (1),
9 55.14 (1) (b) (intro.), 55.14 (2), 55.14 (3) (c), 55.14 (3) (e) (intro.), 55.14 (3) (e) 1.,
10 55.14 (5), 55.14 (6), 55.14 (7), 55.14 (8) (a), 55.14 (9), 55.14 (10), 55.14 (11),
11 55.175, 55.19 (intro.), 55.19 (1) (a) (intro.), 55.19 (1) (a) 1., 55.19 (1) (b), 55.19
12 (1) (bm), 55.19 (1) (c), 55.19 (1m), 55.19 (2) (b) 3., 55.19 (2) (b) 5., 55.19 (2) (b)
13 6., 55.19 (2) (c), 55.19 (2) (f) 4., 55.19 (2) (g), 55.19 (3) (b) (intro.), 55.19 (3) (bm),
14 55.19 (3) (br), 55.19 (3) (d) (intro.), 55.19 (3) (e) 1., 55.19 (3) (e) 2., 55.19 (3) (e)
15 3., 55.195 (intro.), 55.22 (2), 146.82 (2) (a) 7., 609.65 (1) (intro.), 757.69 (1) (h),
16 813.123 (3) (b), 813.123 (4) (a) (intro.), 813.123 (4) (a) 2. a., 813.123 (5) (a) (intro.)
17 and 813.123 (6) (c); and **to create** 54.44 (5), 54.44 (5m) (title), 940.295 (1) (cr)
18 and 940.295 (1) (hr) of the statutes; **relating to:** protective placements and
19 protective services; involuntary administration of psychotropic medication;
20 guardianships, conservatorships, and wards; and services for adults at risk and
21 elder adults at risk.

Analysis by the Legislative Reference Bureau

With respect to the laws relating to protective placements and protective services, involuntary administration of psychotropic medication, guardianships, conservatorships, wards, and services for adults at risk and elder adults at risk, this bill reconciles 2005 Wisconsin Acts 264, 387, and 388, as to provisions that were

mutually inconsistent and therefore could not be reconciled by the revisor of statutes in preparing the statutes. The bill makes numerous and diverse minor changes to correct incorrect cross-references, to align inconsistent provisions, to give effect to certain provisions superceded by subsequent acts, and to make more uniform the definitions of "developmental disability," "degenerative brain disorder," "serious and persistent mental illness," and "voluntary."

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

1 **SECTION 1.** 46.21 (2m) (c) of the statutes, as affected by 2005 Wisconsin Acts
2 264 and 388, is repealed and recreated to read:

3 **46.21 (2m) (c) Exchange of information.** Notwithstanding ss. 46.2895 (9), 48.78
4 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7) and 253.07
5 (3) (c), a subunit of a county department of human services or tribal agency acting
6 under this subsection may exchange confidential information about a client, without
7 the informed consent of the client, with any other subunit of the same county
8 department of human services or tribal agency, with a resource center, a care
9 management organization, or a family care district, with an elder-adult-at-risk
10 agency, an adult-at-risk agency, or any agency to which referral for investigation is
11 made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with a person providing services
12 to the client under a purchase of services contract with the county department of
13 human services or tribal agency or with a resource center, a care management
14 organization, or a family care district, if necessary to enable an employee or service
15 provider to perform his or her duties, or to enable the county department of human
16 services or tribal agency to coordinate the delivery of services to the client. An agency
17 that releases information under this paragraph shall document that a request for
18 information was received and what information was provided.

1 **SECTION 2.** 46.215 (1m) of the statutes, as affected by 2005 Wisconsin Acts 264,
2 388 and 406, is repealed and recreated to read:

3 **46.215 (1m) EXCHANGE OF INFORMATION; LONG-TERM CARE.** Notwithstanding ss.
4 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82,
5 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), a subunit of a county department of social
6 services or tribal agency acting under this section may exchange confidential
7 information about a client, without the informed consent of the client, with any other
8 subunit of the same county department of social services or tribal agency, with a
9 resource center, a care management organization, or a family care district, with an
10 elder-adult-at-risk agency, an adult-at-risk agency, or any agency to which referral
11 for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with a person
12 providing services to the client under a purchase of services contract with the county
13 department of social services or tribal agency or with a resource center, a care
14 management organization, or a family care district, if necessary to enable an
15 employee or service provider to perform his or her duties, or to enable the county
16 department of social services or tribal agency to coordinate the delivery of services
17 to the client. An agency that releases information under this subsection shall
18 document that a request for information was received and what information was
19 provided.

20 **SECTION 3.** 46.22 (1) (dm) of the statutes, as affected by 2005 Wisconsin Acts
21 264, 388 and 406, is repealed and recreated to read:

22 **46.22 (1) (dm) *Exchange of information; long-term care.*** Notwithstanding ss.
23 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82,
24 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), a subunit of a county department of social
25 services or tribal agency acting under this subsection may exchange confidential

1 information about a client, without the informed consent of the client, with any other
2 subunit of the same county department of social services or tribal agency, with a
3 resource center, a care management organization, or a family care district, with an
4 elder-adult-at-risk agency, an adult-at-risk agency, or any agency to which referral
5 for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with a person
6 providing services to the client under a purchase of services contract with the county
7 department of social services or tribal agency or with a resource center, a care
8 management organization, or a family care district, if necessary to enable an
9 employee or service provider to perform his or her duties, or to enable the county
10 department of social services or tribal agency to coordinate the delivery of services
11 to the client. An agency that releases information under this paragraph shall
12 document that a request for information was received and what information was
13 provided.

14 **SECTION 4.** 46.23 (3) (e) of the statutes, as affected by 2005 Wisconsin Acts 264,
15 388 and 406, is repealed and recreated to read:

16 46.23 (3) (e) *Exchange of information; long-term care.* Notwithstanding ss.
17 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82,
18 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), a subunit of a county department of
19 human services or tribal agency acting under this section may exchange confidential
20 information about a client, without the informed consent of the client, with any other
21 subunit of the same county department of human services or tribal agency, with a
22 resource center, a care management organization, or a family care district, with an
23 elder-adult-at-risk agency, an adult-at-risk agency, or any agency to which referral
24 for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with a person
25 providing services to the client under a purchase of services contract with the county

1 department of human services or tribal agency or with a resource center, a care
2 management organization, or a family care district, if necessary to enable an
3 employee or service provider to perform his or her duties, or to enable the county
4 department of human services or tribal agency to coordinate the delivery of services
5 to the client. An agency that releases information under this paragraph shall
6 document that a request for information was received and what information was
7 provided.

8 **SECTION 5.** 46.286 (3) (a) 3. of the statutes, as affected by 2005 Wisconsin Acts
9 264 and 388, is repealed and recreated to read:

10 46.286 (3) (a) 3. Is functionally eligible at the intermediate level and is
11 determined by an elder-adult-at-risk agency under s. 46.90 (2) or an adult-at-risk
12 agency designated under s. 55.043 (1d) to be in need of protective services or
13 protective placement under ch. 55.

14 **SECTION 6.** 46.90 (1) (eg) 1. of the statutes is amended to read:

15 46.90 (1) (eg) 1. A guardian of the estate appointed under ~~s. 880.03~~ s. 54.10.

16 **SECTION 7.** 46.90 (1) (eg) 2. of the statutes is amended to read:

17 46.90 (1) (eg) 2. A conservator appointed under ~~s. 880.31~~ s. 54.76.

18 **SECTION 8.** 46.90 (1) (eg) 3. of the statutes is amended to read:

19 46.90 (1) (eg) 3. An agent under a financial power of attorney under ~~s. 243.07~~
20 ch. 243.

****NOTE: The reference to s. 243.07, stats., is made broader, because more than one
relevant power of attorney is included in ch. 243, stats.

21 **SECTION 9.** 46.90 (5m) (a) of the statutes is amended to read:

22 46.90 (5m) (a) Upon responding to a report, the elder-adult-at-risk agency or
23 the investigative agency shall determine whether the elder adult at risk or any other

1 individual involved in the alleged abuse, financial exploitation, neglect, or
2 self-neglect is in need of services under this chapter or ~~ch. 47, 49, 51, 55 or 880 ch.~~
3 47, 49, 51, 54, or 55. From the appropriation under s. 20.435 (7) (dh), the department
4 shall allocate to selected counties not less than \$25,000 in each fiscal year, and within
5 the limits of these funds and of available state and federal funds and of county funds
6 appropriated to match the state and federal funds, the elder-adult-at-risk agency
7 shall provide the necessary direct services to the elder adult at risk or other
8 individual or arrange for the provision of the direct services with other agencies or
9 individuals. Those direct services provided shall be rendered under the least
10 restrictive conditions necessary to achieve their objective.

11 **SECTION 10.** 46.90 (5m) (br) 2. of the statutes is amended to read:

12 46.90 **(5m)** (br) 2. Take appropriate emergency action, including emergency
13 protective placement under s. ~~55.06~~ s. 55.135, if the elder-adult-at-risk agency
14 determines that the emergency action is in the best interests of the elder adult at risk
15 and the emergency action is the least restrictive appropriate intervention.

16 **SECTION 11.** 46.90 (6) (bt) 8. of the statutes is amended to read:

17 46.90 **(6)** (bt) 8. To the attorney or guardian ad litem for the elder adult at risk
18 who is the alleged victim named in the record, to assist in preparing for any
19 proceeding under ~~ch. 48, 51, 55, 813, 880, 971, or 975~~ ch. 48, 51, 54, 55, 813, 971, or
20 975 pertaining to the alleged victim.

21 **SECTION 12.** 48.368 (1) of the statutes is amended to read:

22 48.368 **(1)** If a petition for termination of parental rights is filed under s. 48.41
23 or 48.415 or an appeal from a judgment terminating or denying termination of
24 parental rights is filed during the year in which a dispositional order under s. 48.355,
25 an extension order under s. 48.365, a voluntary agreement for placement of the child

1 under s. 48.63, or a guardianship order under ch. 880, 2003 stats., or s. 48.977 or ~~ch.~~
2 ~~880~~ ch. 54 is in effect, the dispositional or extension order, voluntary agreement, or
3 guardianship order shall remain in effect until all proceedings related to the filing
4 of the petition or an appeal are concluded.

5 **SECTION 13.** 48.415 (3) (a) of the statutes is amended to read:

6 48.415 (3) (a) The parent is presently, and for a cumulative total period of at
7 least 2 years within the 5 years immediately prior to the filing of the petition has
8 been, an inpatient at one or more hospitals as defined in s. 50.33 (2) (a), (b) or (c),
9 licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as
10 defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or
11 (b) ~~or~~, developmental disability as defined in s. 55.01 (2), or other like incapacities,
12 as defined in s. 55.01 (5);

13 **SECTION 14.** 49.001 (8) of the statutes, as affected by 2005 Wisconsin Acts 264
14 and 387, is repealed and recreated to read:

15 49.001 (8) "Voluntary" means according to an individual's free choice, if
16 competent, or by choice of his or her guardian if the individual is adjudicated
17 incompetent.

18 **SECTION 15.** 50.06 (2) (c) of the statutes, as affected by 2005 Wisconsin Acts 264
19 and 387, is repealed and recreated to read:

20 50.06 (2) (c) A petition for guardianship for the individual under s. 54.34 and
21 a petition under s. 55.075 for protective placement of the individual are filed prior
22 to the proposed admission.

23 **SECTION 16.** 50.06 (2) (d) 3. of the statutes is amended to read:

24 50.06 (2) (d) 3. Comply with s. 55.135 if the requirements of s. 55.135 (1) are
25 met and emergency protective placement in that facility or another facility is

1 necessary ~~or file a petition for protective placement under s. 55.075.~~ The court, with
2 the permission of the facility, may order the incapacitated individual to remain in the
3 facility pending the outcome of the protective placement proceedings.

****NOTE: Reference to filing a petition is removed because a protective placement
petition would already have been filed.

4 **SECTION 17.** 51.01 (5) (a) of the statutes, as affected by 2005 Wisconsin Acts 264,
5 387 and 388, is repealed and recreated to read:

6 51.01 (5) (a) "Developmental disability" means a disability attributable to
7 brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, mental
8 retardation, or another neurological condition closely related to mental retardation
9 or requiring treatment similar to that required for individuals with mental
10 retardation, which has continued or can be expected to continue indefinitely and
11 constitutes a substantial handicap to the afflicted individual. "Developmental
12 disability" does not include dementia that is primarily caused by degenerative brain
13 disorder.

14 **SECTION 18.** 51.01 (14t) of the statutes, as affected by 2005 Wisconsin Acts 264,
15 387 and 388, is repealed and recreated to read:

16 51.01 (14t) "Serious and persistent mental illness" means a mental illness that
17 is severe in degree and persistent in duration, that causes a substantially diminished
18 level of functioning in the primary aspects of daily living and an inability to cope with
19 the ordinary demands of life, that may lead to an inability to maintain stable
20 adjustment and independent functioning without long-term treatment and support,
21 and that may be of lifelong duration. "Serious and persistent mental illness" includes
22 schizophrenia as well as a wide spectrum of psychotic and other severely disabling

1 psychiatric diagnostic categories, but does not include degenerative brain disorder
2 or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

3 **SECTION 19.** 51.03 (3) (a) 6. of the statutes, as affected by 2005 Wisconsin Acts
4 264 and 387, is repealed and recreated to read:

5 51.03 (3) (a) 6. The number of individuals authorized to consent to involuntary
6 administration of psychotropic medication under s. 55.14 (8) or for whom guardians
7 were appointed under s. 880.33 (4m), 2003 stats.

8 **SECTION 20.** 51.10 (8) of the statutes, as affected by 2005 Wisconsin Acts 264
9 and 387, is repealed and recreated to read:

10 51.10 (8) An adult for whom, because of incompetency, a guardian of the person
11 has been appointed in this state may be voluntarily admitted to an inpatient
12 treatment facility if the guardian consents after the requirements of sub. (4m) (a) 1.
13 are satisfied or if the guardian and the ward consent to the admission under this
14 section.

15 **SECTION 21.** 51.20 (7) (d) 1. of the statutes, as affected by 2005 Wisconsin Acts
16 264 and 387, is repealed and recreated to read:

17 51.20 (7) (d) 1. If the court determines after hearing that there is probable cause
18 to believe that the subject individual is a fit subject for guardianship and protective
19 placement or services, the court may, without further notice, appoint a temporary
20 guardian for the subject individual and order temporary protective placement or
21 services under ch. 55 for a period not to exceed 30 days, and shall proceed as if
22 petition had been made for guardianship and protective placement or services. If the
23 court orders only temporary protective services for a subject individual under this
24 paragraph, the individual shall be provided care only on an outpatient basis. The
25 court may order the involuntary administration of psychotropic medication as a

1 temporary protective service under this paragraph if it finds that there is probable
2 cause to believe that the allegations under s. 55.14 (3) (e) apply, that the individual
3 is not competent to refuse psychotropic medication and that the medication ordered
4 will have therapeutic value and will not unreasonably impair the ability of the
5 individual to prepare for and participate in subsequent legal proceedings. An
6 individual is not competent to refuse psychotropic medication if, because of serious
7 and persistent mental illness, and after the advantages and disadvantages of and
8 alternatives to accepting the particular psychotropic medication have been
9 explained to the individual, one of the following is true:

***NOTE: The words "the involuntary administration of," which originally existed
under 2005 Wisconsin Act 264 but were deleted by action of 2005 Wisconsin Act 387, were
added in the third sentence for clarification.

10 a. The individual is incapable of expressing an understanding of the
11 advantages and disadvantages of accepting treatment and the alternatives.

12 b. The individual is substantially incapable of applying an understanding of
13 the advantages, disadvantages and alternatives to his or her serious and persistent
14 mental illness in order to make an informed choice as to whether to accept or refuse
15 psychotropic medication.

16 **SECTION 22.** 51.30 (4) (b) 17. of the statutes is amended to read:

17 51.30 (4) (b) 17. To the elder-adult-at-risk agency designated under s. 46.90
18 (2) or other investigating agency under s. 46.90 for the purposes of s. 46.90 (4) and
19 (5), to the county department as defined in s. 48.02 (2g) or the sheriff or police
20 department for the purposes of s. 48.981 (2) and (3), or to the adult-at-risk agency
21 designated under ~~s. 55.02~~ s. 55.043 (1d) for purposes of s. 55.043. The treatment
22 record holder may release treatment record information by initiating contact with
23 the elder-adult-at-risk agency, adult-at-risk agency, or county department, as

1 defined in s. 48.02 (2g), without first receiving a request for release of the treatment
2 record from the elder-adult-at-risk agency, adult-at-risk agency, or county
3 department.

4 **SECTION 23.** 51.40 (2) (a) 1. of the statutes, as affected by 2005 Wisconsin Acts
5 264 and 387, is repealed and recreated to read:

6 51.40 (2) (a) 1. 'Commitment or protective placement or protective services.'
7 If an individual is under a court order of commitment under this chapter or protective
8 placement or protective services under s. 55.06, 2003 stats., or s. 55.12, the individual
9 remains a resident of the county in which he or she has residence at the time the
10 initial commitment or initial order for protective placement or protective services is
11 made. If the court makes no specific finding of a county of residence, the individual
12 is a resident of the county in which the court is located. After notice, including notice
13 to the corporation counsel of each affected county by certified mail, after opportunity
14 to be heard has been provided to all affected counties and parties, and if there is no
15 objection, the court may make a specific finding of a county of residence. If any
16 affected county or party objects to the court's proposed finding, the county or party
17 may request the department to make a determination under par. (g). Any transfer
18 of venue may be suspended until the department's determination is final.

19 **SECTION 24.** 51.40 (2) (a) 2. of the statutes, as affected by 2005 Wisconsin Acts
20 264 and 387, is repealed and recreated to read:

21 51.40 (2) (a) 2. 'Placement by a county.' Except for the provision of emergency
22 services under s. 51.15, 51.42 (1) (b), 51.437 (4) (c), or 51.45 (11) and (12), emergency
23 protective services under s. 55.13, or emergency protective placement under s.
24 55.135, if a county department or an agency of a county department places or makes
25 arrangements for placement of the individual into a facility, the individual is a

1 resident of the county of that county department. Any agency of the county
2 department is deemed to be acting on behalf of the county department in placing or
3 making arrangements for placement. Placement of an individual by a county
4 department or an agency of a county department in a facility outside the jurisdiction
5 of the county department or agency does not transfer the individual's legal residence
6 to the county in which the facility is located. If a resident of a county is physically
7 present in another county and is in need of immediate care, the county in which the
8 individual is present may provide for his or her immediate needs under s. 51.15,
9 51.20, 51.42 (1) (b), 51.437 (4) (c), or 51.45 (11) or (12), or ch. 54 or 55, without
10 becoming the individual's county of residence.

11 **SECTION 25.** 51.42 (3) (e) of the statutes, as affected by Wisconsin Acts 264 and
12 388, is repealed and recreated to read:

13 51.42 (3) (e) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78
14 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3)
15 (c) and 938.78 (2) (a), any subunit of a county department of community programs
16 or tribal agency acting under this section may exchange confidential information
17 about a client, without the informed consent of the client, with any other subunit of
18 the same county department of community programs or tribal agency, with a
19 resource center, a care management organization, or a family care district, or with
20 any person providing services to the client under a purchase of services contract with
21 the county department of community programs or tribal agency or with a resource
22 center, care management organization, or family care district, if necessary to enable
23 an employee or service provider to perform his or her duties, or to enable the county
24 department of community programs or tribal agency to coordinate the delivery of

1 services to the client. Any agency releasing information under this paragraph shall
2 document that a request was received and what information was provided.

3 **SECTION 26.** 51.437 (4r) (b) of the statutes, as affected by 2005 Wisconsin Acts
4 264 and 388, is repealed and recreated to read:

5 51.437 (4r) (b) Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83,
6 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), any
7 subunit of a county department of developmental disabilities services or tribal
8 agency acting under this section may exchange confidential information about a
9 client, without the informed consent of the client, with any other subunit of the same
10 county department of developmental disabilities services or tribal agency, with a
11 resource center, a care management organization, or a family care district, or with
12 any person providing services to the client under a purchase of services contract with
13 the county department of developmental disabilities services or tribal agency or with
14 a resource center, a care management organization, or a family care district, if
15 necessary to enable an employee or service provider to perform his or her duties, or
16 to enable the county department of developmental disabilities services or tribal
17 agency to coordinate the delivery of services to the client. Any agency releasing
18 information under this paragraph shall document that a request was received and
19 what information was provided.

20 **SECTION 27.** 54.01 (8) of the statutes, as affected by 2005 Wisconsin Acts 264,
21 387 and 388, is repealed and recreated to read:

22 54.01 (8) "Developmental disability" means a disability attributable to mental
23 retardation, cerebral palsy, epilepsy, autism, or another neurological condition
24 closely related to mental retardation or requiring treatment similar to that required
25 for individuals with mental retardation, which has continued or can be expected to

1 continue indefinitely, substantially impairs an individual from adequately providing
2 for his or her own care or custody, and constitutes a substantial handicap to the
3 afflicted individual. The term does not include dementia that is primarily caused by
4 degenerative brain disorder.

5 **SECTION 28.** 54.01 (13) of the statutes is amended to read:

6 54.01 (13) "Heir" means any person, including the surviving spouse, who is
7 entitled under the statutes of intestate succession to an interest in property of a
8 decedent. The state is an heir of the decedent and a person interested under s. 45.37
9 (10) and (11) when the decedent was a member of the Wisconsin Veterans Home at
10 King or at the facilities operated by the department of veterans affairs under s.
11 ~~45.385~~ s. 45.50 at the time of the decedent's death.

12 **SECTION 29.** 54.10 (3) (a) 1. of the statutes is amended to read:

13 54.10 (3) (a) 1. The individual is aged at least 17 years and 9 6 months.

****NOTE: The age of the individual is changed to make it consistent with s. 55.06, stats., which permits filing of a petition for protective placement for an individual six months before his or her 18th birthday. Please review this carefully; although s. 55.06 permits filing at age 17 years and six months, it retains the eligibility for protective placement as age 18. Instead of this amendment, should s. 54.10 (3) (a) 1., stats., be amended to refer to 18 years?

14 **SECTION 30.** 54.10 (3) (d) of the statutes is amended to read:

15 54.10 (3) (d) Before appointing a guardian under this subsection, declaring
16 incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers
17 are appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2) (d), the
18 court shall determine if additional medical, psychological, social, vocational, or
19 educational evaluation is necessary for the court to make an informed decision
20 respecting the individual's competency to exercise legal rights and may obtain
21 assistance in the manner provided in ~~s. 55.06 (8)~~ s. 55.11 (1) whether or not protective
22 placement is made.

1 **SECTION 31.** 54.15 (intro.) of the statutes is amended to read:

2 **54.15 Selection of guardian; nominations; preferences; other criteria.**

3 (intro.) The court shall ~~do one of the following and shall~~ consider all of the following
4 ~~nominations, applicable preferences, and criteria~~ in determining who is appointed
5 as guardian:

****NOTE: This amendment deletes inconsistent and unnecessary wording.

6 **SECTION 32.** 54.15 (5) of the statutes is amended to read:

7 **54.15 (5) PARENT OF A PROPOSED WARD.** If one or both of the parents of a minor
8 or an individual with developmental disability or with serious and persistent mental
9 illness are suitable and willing, the court shall appoint one or both as guardian
10 unless the court finds that the appointment is not in the proposed ward,s ward's best
11 interest. The court shall consider a proposed ward's objection to the appointment of
12 his or her parent.

****NOTE: The amendment to this provision replaces a misplaced comma with an
apostrophe.

13 **SECTION 33.** 54.15 (6) of the statutes is amended to read:

14 **54.15 (6) TESTAMENTARY NOMINATION BY PROPOSED WARD'S PARENTS.** Subject to the
15 rights of a surviving parent, a parent may by will nominate a guardian and successor
16 guardian of the person or estate for any of his or her minor children who is in need
17 of guardianship, unless the court finds that appointment of the guardian or successor
18 guardian is not ~~i~~ in the minor's best interests. For an individual who is aged 18 or
19 older and is found to be in need of guardianship by reason of a developmental
20 disability or serious and persistent mental illness, a parent may by will nominate a
21 testamentary guardian. The parent may waive the requirement of a bond for such
22 an estate that is derived through a will.

23 **SECTION 34.** 54.19 (1) of the statutes is amended to read:

1 54.19 (1) Take possession of the ward's real and personal property, of any rents,
2 income, and benefits accruing from the property, and of any proceeds arising from the
3 sale, mortgage, lease, or exchange of the property, and prepare an inventory of these.
4 Subject to this possession, the title of all the income and assets of the ward and the
5 increment and proceeds of the income and assets of the ward remains vested in the
6 ward and is not vested in the guardian.

****NOTE: This amendment inserts missing language, for clarity.

7 **SECTION 35.** 54.19 (8) of the statutes is amended to read:

8 54.19 (8) File, with the register of deeds of any county in which the ward
9 possesses real property of which the guardian has actual knowledge, a sworn and
10 notarized statement that specifies the legal description of the property, the date that
11 the ward is determined to be an incompetent, and the name, address, and telephone
12 number of the ward's guardian and any surety on the guardian's bond.

****NOTE: This amendment deletes "an," so as to avoid potentially demeaning language.

13 **SECTION 36.** 54.25 (1) (a) of the statutes, as affected by 2005 Wisconsin Acts 264
14 and 387, is repealed and recreated to read:

15 54.25 (1) (a) Make an annual report on the condition of the ward to the court
16 that ordered the guardianship and to the county department designated under s.
17 55.02 (2). That county department shall develop reporting requirements for the
18 guardian of the person. The report shall include the location of the ward, the health
19 condition of the ward, any recommendations regarding the ward, and a statement
20 as to whether or not the ward is living in the least restrictive environment consistent
21 with the needs of the ward.

22 **SECTION 37.** 54.25 (1) (b) (intro.) of the statutes, as affected by 2005 Wisconsin
23 Acts 264 and 387, is repealed and recreated to read:

1 54.25 (1) (b) (intro.) Endeavor to secure any necessary care or services for the
2 ward that are in the ward's best interests, based on all of the following:

3 SECTION 38. 54.25 (2) (b) 4. of the statutes is amended to read:

4 54.25 (2) (b) 4. To protest a residential placement made under s. 55.05 (5) s.
5 55.055, and to be discharged from a residential placement unless the individual is
6 protectively placed under s. 55.06 ch. 55 or the elements requirements of s. 55.06 (11)
7 s. 55.135 (1) are present met.

8 SECTION 39. 54.25 (2) (c) 4. and 5. of the statutes are consolidated and
9 renumbered 54.25 (2) (c) 4.

10 SECTION 40. 54.25 (2) (d) 2. a. of the statutes is amended to read:

11 54.25 (2) (d) 2. a. Except as provided under subd. 2. b., c., and d., and except
12 for consent to psychiatric treatment and medication under ch. 51, and subject to any
13 limitation under s. 54.46 (3) (b) (2) (b), the power to give informed consent, if in the
14 ward's best interests, to voluntary or the involuntary administration of a medical
15 examination, medication other than psychotropic medication, and medical
16 treatment and to the voluntary receipt by the ward of medication, including any
17 appropriate psychotropic medication that is in the ward's best interest, if the
18 guardian has first made a good-faith attempt to discuss with the ward the ward's
19 voluntary receipt of the psychotropic medication and the ward does not protest. For
20 purposes of this subd. 2. a., "protest" means make more than one discernible negative
21 response, other than mere silence, to the offer of, recommendation for, or other
22 proffering of voluntary receipt of psychotropic medication. "Protest" does not mean
23 a discernible negative response to a proposed method of administration of the
24 psychotropic medication. A guardian may consent to the involuntary administration
25 of psychotropic medication only under a court order under s. 55.14. In determining

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renumbered 54.25 (2) (d)
2. ac. and

ac

1 whether involuntary administration of a medical examination, medication other
2 than psychotropic medication, or medical treatment, ~~other than psychotropic~~
3 ~~medication~~, is in the ward's best interest, the guardian shall consider the
4 invasiveness of the medical examination, medication, or treatment and the likely
5 benefits and side effects of the medical examination, medication, or treatment.

****NOTE: This provision, in accordance with Ellen Henningsen's e-mail of January 16, is part of a reconciliation between Acts 264 and 387 that also affects s. 54.25 (4), part of which is repealed and part of which is renumbered and amended in this draft. This provision requires an initial court determination that an individual lacks evaluative capacity before the court authorizes a guardian to give informed consent to involuntary administration of a medical examination, medication (other than psychotropic medication, which can only be ordered by a court under s. 55.14, stats.), and medical treatment.

6 **SECTION 41.** 54.25 (2) (d) 2. n. of the statutes is amended to read:

7 54.25 (2) (d) 2. n. The power to apply petition for protective placement under
8 s. ~~55.06~~ 55.075 or for commitment under s. 51.20 or 51.45 (13) for the ward.

9 **SECTION 42.** 54.25 (4) (a) of the statutes is repealed.

****NOTE: Because of the renumbering and amendment of s. 54.25 (4) (b), stats., below, this paragraph is no longer necessary.

10 **SECTION 43.** 54.25 (4) (b) of the statutes is renumbered 54.25 (2) (d) 2. ab. and
11 and amended to read:

12 54.25 (2) (d) 2. ab. ~~A guardian may, without court approval,~~ Except as provided
13 under subd. 2. b., c., and d., and except for consent to psychiatric treatment and
14 medication under ch. 51, and subject to any limitation under s. 54.46 (2) (b), the
15 power to give an informed consent to the voluntary receipt by the guardian's ward
16 of a medical examination, medication, and medical treatment that is in the ward's
17 best interest, including any appropriate psychotropic medication, if the guardian has
18 first made a good-faith attempt to discuss with the ward the voluntary receipt of the
19 examination, medication, or treatment and if the ward does not protest. For
20 purposes of this subd. 2. ab., "protest" means, with respect to the voluntary receipt

*a medical examination, medication, including appropriate
psychotropic medication, or medical treatment*

1 of psychotropic medication, make more than one discernible negative response, other
 2 than mere silence, to the offer of, recommendation for, or other proffering of
 3 voluntary receipt of psychotropic medication. "Protest" does not mean a discernible
 4 negative response to a proposed method of administration of the psychotropic
 5 medication. In determining whether a medical examination, medication, or medical
 6 treatment is in the ward's best interest, the guardian shall consider the invasiveness
 7 of the medical examination, medication, or treatment and the likely benefits and side
 8 effects of the medical examination, medication, or treatment.

****NOTE: This provision, in accordance with Ellen Henningsen's e-mail of January 16, 2007, is part of a reconciliation of 2005 Wisconsin Acts 264 and 387 that also affects s. 54.25(2)(d) 2. a., stats. This provision now requires an initial court determination that an individual lacks evaluative capacity before the court authorizes a guardian to give informed consent to voluntary administration of a medical examination, medication (including psychotropic medication), and medical treatment.

****NOTE: Should the definition of "protest" apply to voluntary receipt of everything (a medical examination, medication, and medical treatment), rather than just psychotropic medication?

The medical examination, medication, or medical treatment

9 **SECTION 44.** 54.36 (1) of the statutes, as affected by 2005 Wisconsin Acts 264
 10 and 387, is repealed and recreated to read:

11 54.36 (1) Whenever it is proposed to appoint a guardian on the ground that a
 12 proposed ward allegedly has incompetency or is a spendthrift, a physician or
 13 psychologist, or both, shall examine the proposed ward and furnish a written report
 14 stating the physician's or psychologist's professional opinion regarding the presence
 15 and likely duration of any medical or other condition causing the proposed ward to
 16 have incapacity or to be a spendthrift. The privilege under s. 905.04 does not apply
 17 to the report. The petitioner shall provide a copy of the report to the proposed ward
 18 or his or her counsel, the guardian ad litem, and the petitioner's attorney, if any.
 19 Prior to the examination on which the report is based, the guardian ad litem,
 20 physician, or psychologist shall inform the proposed ward that statements made by

1 the proposed ward may be used as a basis for a finding of incompetency or a finding
2 that he or she is a spendthrift, that he or she has a right to refuse to participate in
3 the examination, absent a court order, or speak to the physician or psychologist, and
4 that the physician or psychologist is required to report to the court even if the
5 proposed ward does not speak to the physician or psychologist. The issuance of such
6 a warning to the proposed ward prior to each examination establishes a presumption
7 that the proposed ward understands that he or she need not speak to the physician
8 or psychologist. Nothing in this section prohibits the use of a report by a physician
9 or psychologist that is based on an examination of the proposed ward by the
10 physician or psychologist before filing the petition for appointment of a guardian, but
11 the court will consider the recency of the report in determining whether the report
12 sufficiently describes the proposed ward's current state and in determining the
13 weight to be given to the report.

14 **SECTION 45.** 54.38 (2) (a) of the statutes, as affected by 2005 Wisconsin Acts 264
15 and 387, is repealed and recreated to read:

16 54.38 (2) (a) On the proposed ward or ward by personal service and an existing
17 guardian, if any, by personal service or by registered or certified mail at least 10 days
18 before the time set for hearing. If the proposed ward or ward is in custody or
19 confinement, the petitioner shall have notice served by registered or certified mail
20 on the proposed ward's or ward's custodian, who shall immediately serve it on the
21 proposed ward or ward. The process server or custodian shall inform the proposed
22 ward or ward of the complete contents of the notice and petition, motion, or other
23 required document; certify on the notice that the process server or custodian served
24 and informed the proposed ward or ward; and return the certificate and notice to the
25 court.

1 **SECTION 46.** 54.40 (1) of the statutes, as affected by 2005 Wisconsin Acts 264
2 and 387, is repealed and recreated to read:

3 **54.40 (1) APPOINTMENT.** The court shall appoint a guardian ad litem when a
4 petition for appointment of a guardian is brought under s. 54.34 (1), when a petition
5 for receipt and acceptance of a foreign guardianship is brought under s. 54.34 (3), to
6 review the scope of a guardianship, to provide protective placement to an individual
7 or order protective services under ch. 55, to review any protective placement under
8 s. 55.18, to terminate a protective placement under s. 55.17, to expand an order of
9 guardianship under s. 54.63, to review incompetency and terminate a guardianship
10 under s. 54.64, to review the conduct of a guardian under s. 54.68, or at any other time
11 that the court determines it is necessary.

12 **SECTION 47.** 54.40 (4) (am) of the statutes is repealed.

13 **SECTION 48.** 54.40 (4) (ar) of the statutes is repealed.

14 **SECTION 49.** 54.40 (4) (c) of the statutes is amended to read:

15 **54.40 (4) (c)** Interview the proposed guardian, the proposed standby guardian,
16 if any, and any other person seeking appointment as guardian and report to the court
17 concerning the suitability of each individual interviewed to serve as guardian and
18 concerning the ~~report~~ statement under s. 54.15 (8).

19 **SECTION 50.** 54.40 (4) (dm) of the statutes is repealed.

20 **SECTION 51.** 54.40 (4) (ds) of the statutes is amended to read:

21 **54.40 (4) (ds)** Notify the guardian of the right to be present at and participate
22 in the hearing, to present and cross-examine witnesses, to receive a copy of any
23 evaluation under s. 55.11 (1) (intro.) or (2), and to secure and present a report on an
24 independent evaluation under ~~s. 880.33 (2) (b)~~ s. 54.42 (3).

1 **SECTION 52.** 54.42 (1) (a) (intro.) of the statutes, as affected by 2005 Wisconsin
2 Acts 264 and 387, is repealed and recreated to read:

3 54.42 (1) (a) (intro.) The proposed ward or ward has the right to counsel, if any
4 of the following occurs:

5 **SECTION 53.** 54.42 (1) (c) of the statutes, as affected by 2005 Wisconsin Acts 264
6 and 387, is repealed and recreated to read:

7 54.42 (1) (c) If par. (a) 1., 2., or 3. applies but the proposed ward or ward is
8 unable to obtain legal counsel, the court shall appoint legal counsel. If the proposed
9 ward or ward is represented by counsel appointed under s. 977.08 in a proceeding
10 under a petition for protective placement brought under s. 55.075, the court shall
11 order the counsel appointed under s. 977.08 to represent the proposed ward or ward.

12 **SECTION 54.** 54.44 (1) (a) of the statutes is amended to read:

13 54.44 (1) (a) *Time of hearing for petition.* A petition for guardianship, other
14 than a petition under par. (b) or (c) or s. 54.50 (1), shall be heard within 90 days after
15 it is filed. The guardian ad litem and attorney for the proposed ward or ward shall
16 be provided with a copy of the report of the examining physician or psychologist
17 under s. 54.36 (1) at least 96 hours before the time of the hearing.

18 **SECTION 55.** 54.44 (2) of the statutes is amended to read:

19 54.44 (2) STANDARD OF PROOF. Any determination by the court as to whether the
20 proposed ward or ward is a minor, is incompetent, or is a spendthrift shall be by clear
21 and convincing evidence.

22 **SECTION 56.** 54.44 (4) (title) of the statutes is amended to read:

23 54.44 (4) (title) PRESENCE OF PROPOSED WARD OR WARD.

24 **SECTION 57.** 54.44 (4) (a) of the statutes is amended to read:

1 54.44 (4) (a) *Adult proposed ward or ward.* The petitioner shall ensure that
2 the proposed ward or ward attends the hearing unless the attendance is waived by
3 the guardian ad litem. In determining whether to waive attendance by the proposed
4 ward or ward, the guardian ad litem shall consider the ability of the proposed ward
5 or ward to understand and meaningfully participate, the effect of the proposed
6 ward's attendance of the proposed ward or ward on his or her physical or
7 psychological health in relation to the importance of the proceeding, and the
8 ~~proposed ward's~~ expressed desires of the proposed ward or ward. If the proposed
9 ward or ward is unable to attend the hearing because of residency in a nursing home
10 or other facility, physical inaccessibility, or a lack of transportation and if the
11 proposed ward or ward, guardian ad litem, advocate counsel, or other interested
12 person so requests, the court shall hold the hearing in a place where the proposed
13 ward or ward may attend.

14 **SECTION 58.** 54.44 (4) (b) of the statutes is amended to read:

15 54.44 (4) (b) *Minor proposed ward or ward.* A minor proposed ward or ward
16 is not required to attend the hearing.

17 **SECTION 59.** 54.44 (5) of the statutes is created to read:

18 54.44 (5) **PRIVACY OF HEARING.** Every hearing under this chapter shall be closed,
19 unless the proposed ward or ward or his or her attorney acting with the proposed
20 ward's or ward's consent or the attorney for a foreign ward moves that it be open. If
21 the hearing is closed, only interested persons, their attorneys, and witnesses may be
22 present.

23 **SECTION 60.** 54.44 (5m) (title) of the statutes is created to read:

24 54.44 (5m) (title) **PARTICIPATION BY INTERESTED PERSONS.**