



State of Wisconsin
2011 – 2012 LEGISLATURE



LRB-2698/1
TJD:med:rs

2011 SENATE BILL 577

March 15, 2012 – Introduced by Senator RISSER. Referred to Committee on Senate Organization.

1 **AN ACT** *to repeal* 55.01 (2r) and 55.175; *to renumber and amend* 55.09 (2),
2 55.10 (2), 55.12 (4), 55.15 (2), 55.15 (7) (d) and 55.195; *to consolidate,*
3 *renumber and amend* 55.01 (6r) (intro.) and (k); *to amend* 55.01 (6y), 55.043
4 (1r) (b) 5., 55.05 (2) (intro.), 55.055 (1) (a), 55.06, 55.075 (1), 55.075 (4) (b), 55.075
5 (5) (a), 55.075 (5) (b), 55.075 (5) (bm), 55.08 (1) (b), 55.08 (2) (a), 55.08 (2) (b),
6 55.10 (3), 55.11 (1) (intro.), 55.11 (3), 55.11 (4), 55.12 (1), 55.12 (2), 55.12 (3),
7 55.12 (5), 55.12 (6), 55.13 (1), 55.13 (2), 55.135 (1), 55.135 (4), 55.135 (6), 55.14
8 (8) (a), 55.14 (9), 55.14 (11), 55.15 (1), 55.15 (3), 55.15 (7) (b), 55.15 (7) (c), 55.15
9 (8) (b), 55.16 (2) (a), 55.16 (4) (a) and (b), 55.17 (1), 55.17 (3) (c) 2., 55.17 (3) (c)
10 3., 55.18 (1) (a) 3., 55.18 (1) (ar), 55.18 (1) (c), 55.18 (2) (f) (intro.) and 55.18 (3)
11 (e) 2.; and *to create* 55.01 (3), 55.01 (4) (d), 55.01 (4k), 55.01 (4p), 55.01 (6r)
12 (km), 55.09 (2) (am) 10., 55.09 (2) (bm), 55.10 (2) (d), 55.12 (11), 55.13 (6), 55.15
13 (2) (a), (b), (c), (d) and (e), 55.15 (7) (d) 1., 2., 3., 4., 5. and 6., 55.17 (1m), 55.18

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- 1 (1) (a) 1. h., 55.18 (3) (e) 1m. and 55.18 (3) (f) 5. of the statutes; **relating to:**
2 protective placement.
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Analysis by the Legislative Reference Bureau

This bill makes various changes to the laws of protective placement and protective services, including all of the following:

1. The bill defines for purposes of protective placement and protective services a guardian, in the context of the exercise of a specific right or power, as a temporary or permanent guardian of the person, or a temporary or permanent guardian of the estate, who has been granted the authority to exercise that right or power on behalf of the ward.

2. Under current law, protective services are defined as a list of services. The bill specifies that protective services are 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, financial exploitation, neglect, or self-neglect or prevent the individual from experiencing deterioration or from inflicting harm on himself or herself or another person, including services such as outreach, counseling, and referral for services, case management, and diagnostic evaluation.

3. The bill makes various changes to the determination of venue and county of responsibility for a petition for protective services or protective placement.

4. The bill includes, for an individual receiving the family care benefit, the care management organization in which the individual is enrolled to receive the family care benefit as an interested person and for other purposes such as receiving notice of a petition for protective services or placement and notice of the time and place of a hearing about protective placement or protective services and having the right to attend a transfer of placement hearing and present and examine witnesses at that hearing. An aging and disability resource center and a care management organization administering the family care benefit, or an organization responsible for administering or providing benefits or services under a long-term care program, is required to comply with all court orders regarding an individual to whom the center or organization provides services to ensure that the individual is placed in the least restrictive environment and receives services in the least restrictive manner consistent with the individual's needs.

5. Under current law, a hearing on protective services or protective placement is required to be open, unless the individual sought to be protected, or his or her attorney, requests the hearing be closed. In a closed hearing, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present. The bill requires that the hearing be closed, unless the individual sought to be protected, or his or her attorney, requests the hearing be open.

6. Under current law, emergency protective services may be provided for not more than 72 hours when there is reason to believe that, if the emergency protective services are not provided, the individual entitled to the services or others will incur

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a substantial risk of serious physical harm. Under current law, if it is necessary to enter a premises forcibly to provide or investigate the need for emergency protective services, the county department must obtain a court order for the entry except when it appears probable that substantial physical harm, irreparable injury, or death may occur to the individual and the time required to obtain an order would result in greater risk of physical harm to the individual. The bill specifies that the emergency protective services may be provided without the individual's consent. Under the bill, the emergency protective services may be provided even if the risk of serious harm is not a risk of serious physical harm and may be provided for not more than 72 hours unless a preliminary hearing is scheduled on a petition for protective services. Under the bill, a person is not liable for any actions performed in good faith related to emergency protective services.

7. Under current law, an individual under a protective placement may be transferred between protective placement units, between protective placement facilities, or from a protective placement unit to a medical facility. In a hearing, under current law, to contest a transfer of an individual under a protective placement, a guardian ad litem must be appointed for the individual. The bill allows an individual to be transferred from an unlocked unit to a locked unit. Under the bill, in a hearing to contest a transfer, the guardian ad litem is required, among other duties, to meet with the individual to be transferred and advise the court whether the individual meets the standard for transfer.

8. Under current law, an individual, the individual's guardian or guardian ad litem, the Department of Health Services, a certain county department or agency, or any other interested person may petition to terminate an order for protective placement or protective services and a hearing is held to determine termination. Under the bill, when a guardian ad litem files the petition for termination or receives notice of a petition for termination, the guardian ad litem is required to do all of the following: interview the ward to explain the procedures for termination and the rights of the ward and provide that information to the ward in writing; request that the court order additional medical, psychological, or other evaluation of the ward, if necessary; review the annual report and relevant reports on the ward's condition and protective services; review the ward's condition, protective services, and rights with the guardian; if relevant or if there is ambiguity about the ward's position, report to the court the present or proposed protective services, the position of the guardian, or the recommendation of the guardian ad litem as to the best interests of the ward; provide a summary written report to the court on certain aspects of the individual's placement and needs; and, if relevant, report to the court that the ward requests the appointment of counsel.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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1 **SECTION 1.** 55.01 (2r) of the statutes is repealed.

2 **SECTION 2.** 55.01 (3) of the statutes is created to read:

3 55.01 **(3)** “Guardian” means, in the context of the exercise of a specific right or
4 power, any of the following:

5 (a) A temporary or permanent guardian of the person, as defined in s. 54.01
6 (12), who has been granted the authority to exercise that right or power on behalf of
7 the ward.

8 (b) A temporary or permanent guardian of the estate, as defined in s. 54.01 (11),
9 who has been granted the authority to exercise that right or power on behalf of the
10 ward.

11 **SECTION 3.** 55.01 (4) (d) of the statutes is created to read:

12 55.01 **(4)** (d) If the individual sought to be protected is receiving the family care
13 benefit under s. 46.286, or a benefit under a managed long-term care program that
14 is funded by the Medical Assistance program, the care management organization or
15 other organization that administers the benefit.

16 **SECTION 4.** 55.01 (4k) of the statutes is created to read:

17 55.01 **(4k)** “Least restrictive” has the meaning given in s. 54.01 (18).

18 **SECTION 5.** 55.01 (4p) of the statutes is created to read:

19 55.01 **(4p)** “Most integrated setting” means a setting that enables the
20 individual to interact with persons without disabilities to the fullest extent possible.

21 **SECTION 6.** 55.01 (6r) (intro.) and (k) of the statutes are consolidated,
22 renumbered 55.01 (6r) (intro.) and amended to read:

23 55.01 **(6r)** (intro.) “Protective services” ~~includes~~ means ~~any of the following:~~
24 ~~(k)~~—Any services that, when provided to an individual with developmental
25 disabilities, degenerative brain disorder, serious and persistent mental illness, or

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1 other like incapacity, keep the individual safe from abuse, financial exploitation,
2 neglect, or self-neglect or prevent the individual from experiencing deterioration or
3 from inflicting harm on himself or herself or another person. including any of the
4 following:

5 **SECTION 7.** 55.01 (6r) (km) of the statutes is created to read:

6 55.01 **(6r)** (km) Any other service ordered by the court.

7 **SECTION 8.** 55.01 (6y) of the statutes is amended to read:

8 55.01 **(6y)** “Voluntary” means according to an individual’s free choice, if
9 competent, ~~or by choice of a~~ an individual’s guardian, if adjudicated incompetent or
10 by choice of a person having authority under a power of attorney for health care.

11 **SECTION 9.** 55.043 (1r) (b) 5. of the statutes is amended to read:

12 55.043 **(1r)** (b) 5. A review of the treatment and patient health care records of
13 the adult at risk if provided under s. 51.30 (4) (b) 17. or 146.82 (2) (a) 7.

14 **SECTION 10.** 55.05 (2) (intro.) of the statutes is amended to read:

15 55.05 **(2)** CONDITIONS REQUIRED. (intro.) The department or a county
16 department or agency ~~with which the county department contracts~~ designated under
17 s. 55.02 (2) that provides protective services may provide the services under any of
18 the following conditions:

19 **SECTION 11.** 55.055 (1) (a) of the statutes is amended to read:

20 55.055 **(1)** (a) The guardian of an individual who has been adjudicated
21 incompetent may consent to the individual’s admission to a foster home, group home,
22 or community-based residential facility, as defined under s. 50.01 (1g), without a
23 protective placement order under s. 55.12 if the home or facility is licensed for fewer
24 than 16 beds. Prior to providing that consent, and annually thereafter, the guardian

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1 shall review the ward's right to the least restrictive residential environment and may
2 consent ~~only~~ to admission only to a home or facility that implements that right.

3 **SECTION 12.** 55.06 of the statutes is amended to read:

4 **55.06 Protective services and protective placement; eligibility.** To be
5 eligible for court-ordered protective placement or protective services, an individual
6 shall have filed a petition to transfer a foreign guardianship, whether present in the
7 state or not, or shall be a resident of the state; and shall have a need for protective
8 placement or protective services. The individual shall have attained the age of 18,
9 but an individual who is alleged to have a developmental disability may receive
10 protective placement or protective services upon attaining the age of 14. Protective
11 placement or protective services may be ordered under this chapter only for an
12 individual who is adjudicated incompetent in this state or for a minor who is alleged
13 to have a developmental disability, and only if there is a finding of a need for
14 protective placement under s. 55.08 (1) or for protective services under s. 55.08 (2),
15 and ss. s. 55.055 (5), 55.13, and 55.135 are is inappropriate or ~~do~~ does not apply. A
16 procedure for court-ordered protective placement or protective services may be
17 initiated 6 months before a minor attains age 18.

18 **SECTION 13.** 55.075 (1) of the statutes is amended to read:

19 55.075 (1) WHO MAY PETITION. The department, the county department or an
20 agency ~~with which the county department contracts~~ designated under s. 55.02 (2),
21 a guardian, or an interested person may file a petition for appointment of a guardian
22 and for protective services or protective placement for an individual. The department
23 shall provide for a schedule of reimbursement for the cost of the proceedings based
24 upon the ability to pay of the proposed ward or individual to be protected.

25 **SECTION 14.** 55.075 (4) (b) of the statutes is amended to read:

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1 55.075 (4) (b) If a person seeking to be the guardian of a proposed ward requests
2 the assistance of a county department or an agency with which it contracts
3 designated under s. 55.02 (2) in petitioning for guardianship or for protective
4 services or protective placement, the assistance may be considered a service and may
5 be charged for based upon the ability of the person to pay for the service.

6 **SECTION 15.** 55.075 (5) (a) of the statutes is amended to read:

7 55.075 (5) (a) A petition under sub. (1) shall be filed in the county of residence
8 of the individual to be protected, ~~as determined under s. 51.40 or by the individual's~~
9 ~~guardian or where the individual is physically present due to extraordinary~~
10 ~~circumstances including those specified under s. 51.22 (4). If an individual has not~~
11 ~~received services under this chapter or ch. 46 or 51 or if an individual has received~~
12 ~~services under this chapter or ch. 46 or 51 that have been terminated and has~~
13 ~~established residence in a county other than that in which the individual resided~~
14 ~~when the services were received, the court may determine the individual's county of~~
15 ~~residence. The county of residence under this paragraph is the county of~~
16 ~~responsibility.~~

17 **SECTION 16.** 55.075 (5) (b) of the statutes is amended to read:

18 55.075 (5) (b) The If s. 51.40 applies, the county of responsibility under s. 51.40
19 is the county of residence. At the request of an interested party, the court in which
20 a petition is first filed under par. (a) shall determine venue residence under s. 51.40.
21 The court shall direct that proper written notice be given of the proceeding be sent
22 by certified mail to the county's clerk and corporation counsel of any potentially
23 responsible or affected county. Proper notice is given to a potentially responsible or
24 affected county if written notice of the proceeding is sent by certified mail to the
25 county's clerk and corporation counsel. After all potentially responsible or affected

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1 ~~counties and parties have been given an opportunity to be heard, the court shall~~
2 ~~determine that venue lies in the county in which the petition is filed under par. (a)~~
3 ~~or in another county, as appropriate. If the court determines that venue lies in~~
4 ~~another~~ the individual to be protected is a resident of a county other than the one in
5 which the petition is filed, the court shall may order the entire record certified to the
6 proper court. A court in which a subsequent petition is filed shall, upon being
7 satisfied of an earlier filing in another court, summarily dismiss the subsequent
8 petition.

9 **SECTION 17.** 55.075 (5) (bm) of the statutes is amended to read:

10 55.075 (5) (bm) The court in which a petition is first filed under par. (a) shall
11 determine venue. The court shall direct that ~~proper~~ written notice ~~be given of the~~
12 proceeding be sent by certified mail to the county clerk and corporation counsel of any
13 potentially responsible or affected county. Proper notice is given to a potentially
14 responsible or affected county if written notice of the proceeding is sent by certified
15 mail to the county's clerk and corporation counsel. After all potentially responsible
16 or affected counties and parties have been given an opportunity to be heard, the court
17 shall determine that venue lies in the county in which the petition is filed under par.
18 (a) or in another county, as appropriate. If the court determines that venue lies in
19 another county, the court shall order the entire record certified to the proper court.
20 A court in which a subsequent petition is filed shall, upon being satisfied of an earlier
21 filing in another court, summarily dismiss the subsequent petition. If any
22 potentially responsible or affected county or party objects to the court's finding of
23 venue, the court may refer the issue to the department for a determination of the
24 county of residence under s. 51.40 (2) (g) and may suspend ruling on the motion for
25 change of venue until the determination under s. 51.40 (2) (g) is final.

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1 **SECTION 18.** 55.08 (1) (b) of the statutes is amended to read:

2 55.08 (1) (b) The individual is a minor 14 years of age or older who is not alleged
3 to have a developmental disability and ~~on whose behalf a petition for guardianship~~
4 ~~has been submitted~~, or is an adult who has been determined to be incompetent by a
5 circuit court.

6 **SECTION 19.** 55.08 (2) (a) of the statutes is amended to read:

7 55.08 (2) (a) The individual has been determined to be incompetent by a circuit
8 court or is a minor 14 years of age or older who is alleged to have a developmental
9 disability and ~~on whose behalf a petition for a guardianship has been submitted~~.

10 **SECTION 20.** 55.08 (2) (b) of the statutes is amended to read:

11 55.08 (2) (b) As a result of developmental disability, degenerative brain
12 disorder, serious and persistent mental illness, or other like incapacities, the
13 individual will incur a substantial risk of physical harm or deterioration or will
14 present a substantial risk of ~~physical~~ harm to others if protective services are not
15 provided.

16 **SECTION 21.** 55.09 (2) of the statutes is renumbered 55.09 (2) (am), and 55.09
17 (2) (am) (intro.) and 4., as renumbered, are amended to read:

18 55.09 (2) (am) (intro.) In addition to the notice required under sub. (1) and
19 except as provided in par. (bm), notice shall be served, personally or by mail, at least
20 10 days before the time set for a hearing, upon all of the following:

21 4. Other persons who have physical custody of the individual sought to be
22 protected ~~whose names and addresses are known to the petitioner or can with~~
23 ~~reasonable diligence be ascertained~~.

24 **SECTION 22.** 55.09 (2) (am) 10. of the statutes is created to read:

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1 55.09 (2) (am) 10. If the individual sought to be protected is receiving a family
2 care benefit under s. 46.286, or other public benefit, using a case management
3 organization, care management organization, or other organization, the
4 organization.

5 **SECTION 23.** 55.09 (2) (bm) of the statutes is created to read:

6 55.09 (2) (bm) 1. The court may waive the notice requirement under par. (am)
7 for a person under par. (am) 2., 3., 4., or 6. if the identity of the person is unknown
8 and not reasonably ascertainable or the address of the person is unknown and not
9 reasonably ascertainable.

10 2. Any person under par. (am) may waive the requirement under par. (am) to
11 receive notice.

12 **SECTION 24.** 55.10 (2) of the statutes is renumbered 55.10 (2) (a) and amended
13 to read:

14 55.10 (2) (a) The petitioner shall ~~ensure that~~ make reasonable arrangements
15 for the transportation of the individual sought to be protected attends to the hearing
16 on the petition.

17 (b) The individual sought to be protected shall attend the hearing under this
18 section unless, after a personal interview, the guardian ad litem waives the
19 attendance and so certifies in writing to the court the specific reasons why the
20 individual is unable to attend. In determining whether to waive attendance by the
21 individual, the guardian ad litem shall consider the ability of the individual to
22 understand and meaningfully participate, the effect of the individual's attendance
23 on his or her physical or psychological health in relation to the importance of the
24 proceeding, and the individual's expressed desires.

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1 (c) If the individual is unable to attend a hearing on a petition under this section
2 only because of residency in a nursing home or other facility, physical inaccessibility,
3 or lack of a reasonable means of transportation, the court shall, if requested by the
4 individual, the individual's guardian ad litem, the individual's counsel, or any other
5 interested person, hold the hearing in a place where the individual is able to attend.

6 **SECTION 25.** 55.10 (2) (d) of the statutes is created to read:

7 55.10 (2) (d) Notwithstanding par. (b), the court may order the individual
8 sought to be protected to attend the hearing on the petition under this section.

9 **SECTION 26.** 55.10 (3) of the statutes is amended to read:

10 55.10 (3) HEARING TO BE ~~OPEN~~ CLOSED. The hearing shall be ~~open~~ closed, unless
11 the individual sought to be protected, or his or her attorney acting with the consent
12 of the individual sought to be protected, requests that it be ~~closed~~ open. If the hearing
13 is closed, only persons in interest, including representatives of providers of service
14 and their attorneys and witnesses, may be present.

15 **SECTION 27.** 55.11 (1) (intro.) of the statutes is amended to read:

16 55.11 (1) (intro.) Before ordering protective placement or protective services for
17 any individual, the court shall require a comprehensive evaluation of the individual
18 sought to be protected, if such an evaluation has not already been made. The court
19 may utilize available multidisciplinary resources in the community in determining
20 the need for protective placement or protective services. The county department or
21 an agency ~~with which it contracts~~ designated under s. 55.02 (2) shall cooperate with
22 the court in securing available resources. The court or the cooperating agency
23 obtaining the evaluation shall request appropriate information which shall include
24 at least the following:

25 **SECTION 28.** 55.11 (3) of the statutes is amended to read:

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1 55.11 (3) A copy of the comprehensive evaluation and any independent
2 comprehensive evaluation shall be provided to the individual sought to be protected,
3 the individual's guardian or proposed guardian, the individual's agent under any
4 activated health care power of attorney, and the individual's guardian ad litem, and
5 ~~to the individual or the individual's attorney~~ at least 96 hours in advance of the
6 hearing to determine protective placement or protective services.

7 **SECTION 29.** 55.11 (4) of the statutes is amended to read:

8 55.11 (4) Where applicable by reason of the particular disability, the county
9 department or an agency ~~with which it contracts~~ designated under s. 55.02 (2) that
10 has responsibility where the individual has legal residence shall make a
11 recommendation for protective placement or protective services.

12 **SECTION 30.** 55.12 (1) of the statutes is amended to read:

13 55.12 (1) ~~When~~ Subject to sub. (11), when ordering protective placement under
14 the standards specified in s. 55.08 (1) or protective services under the standards
15 specified in s. 55.08 (2), the court, on the basis of the evaluation and other relevant
16 evidence, shall order the county department or agency ~~with which it contracts~~
17 designated under s. 55.02 (2) to provide protective placement or protective services
18 to the individual.

19 **SECTION 31.** 55.12 (2) of the statutes is amended to read:

20 55.12 (2) Subject to s. 46.279, protective placement may be made to nursing
21 homes, public medical institutions, centers for the developmentally disabled under
22 the requirements of s. 51.06 (3), foster care services or other home placements, or to
23 other appropriate facilities, but may not be made to units for the acutely mentally
24 ill. An individual who is subject to an order for protective placement or protective
25 services may be detained on an emergency basis under s. 51.15 or involuntarily

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1 committed under s. 51.20 or may be voluntarily admitted to a treatment facility for
2 inpatient care under s. 51.10 (8). No individual who is subject to an order for
3 protective placement or services may be involuntarily transferred to, detained in, or
4 committed to ~~a treatment facility~~ an inpatient facility, as defined in s. 51.01 (10), for
5 care except under s. 51.15 ~~or~~, 51.20, or 51.45 (13). Protective placement in a locked
6 unit shall require a specific finding of the court as to the need for the action.

7 **SECTION 32.** 55.12 (3) of the statutes is amended to read:

8 55.12 (3) Protective placement or protective services provided by a county
9 department or an agency ~~with which it contracts~~ designated under s. 55.02 (2) are
10 subject to s. 46.279 and shall be provided in the least restrictive environment and in
11 the least restrictive manner consistent with the needs of the individual to be
12 protected and with the resources of the county department.

13 **SECTION 33.** 55.12 (4) of the statutes is renumbered 55.12 (4) (intro.) and
14 amended to read:

15 55.12 (4) (intro.) ~~Factors that a~~ A county department or an agency designated
16 under s. 55.02 (2) shall consider in, when providing protective placement or
17 protective services ~~shall include, consider~~ the following factors:

18 (a) The needs of the individual to be protected for health, social, or
19 rehabilitative services; ~~the,~~

20 (b) The level of supervision needed; ~~the,~~

21 (c) The reasonableness of the placement or services given the cost and the
22 actual benefits in the level of functioning to be realized by the individual; ~~the,~~

23 (d) The limits of available state and federal funds and of county funds required
24 to be appropriated to match state funds; ~~and the,~~

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1 (e) The reasonableness of the protective placement or protective services given
2 the number or projected number of individuals who will need protective placement
3 or protective services and given the limited funds available.

4 **SECTION 34.** 55.12 (5) of the statutes is amended to read:

5 55.12 (5) Except as provided in s. 49.45 (30m), the county may not be required
6 to provide funding, in addition to its funds that are required to be appropriated to
7 match state funds, in order to provide protective placement or protective services to
8 an individual. ~~Protective placement under this section does not replace commitment~~
9 ~~of an individual in need of acute psychiatric treatment under s. 51.20 or 51.45 (13).~~

10 **SECTION 35.** 55.12 (6) of the statutes is amended to read:

11 55.12 (6) If the county department or agency ~~with which it contracts~~ designated
12 under s. 55.02 (2) proposes to provide protective placement to an individual who has
13 a developmental disability in an intermediate facility or a nursing facility under an
14 order under this section, the county department or agency, or, if s. 46.279 (4m) applies
15 to the individual, the department or the department's contractor shall develop a plan
16 under s. 46.279 (4) and furnish the plan to the county department or agency and to
17 the individual's guardian. The county department or agency ~~with which it contracts~~
18 designated under s. 55.02 (2) shall provide protective placement to the individual in
19 a noninstitutional community setting in accord with the plan unless the court finds
20 that protective placement in the intermediate facility or nursing facility is the most
21 integrated setting, ~~as defined in s. 46.279 (1) (bm)~~, that is appropriate to the needs
22 of the individual, taking into account information presented by all affected parties.

23 **SECTION 36.** 55.12 (11) of the statutes is created to read:

24 55.12 (11) If the individual subject to a protective placement or protective
25 services order receives the family care benefit under s. 46.286, or a benefit under

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1 another managed long-term care program that is funded by the Medical Assistance
2 program, the aging and disability resource center and care management
3 organization responsible for administering or providing benefits or services to the
4 individual under the family care program, or the organization responsible for
5 administering or providing benefits or services to the individual under the managed
6 long-term care program, shall comply with all court orders to ensure that the
7 individual is placed in the least restrictive environment and receives services in the
8 least restrictive manner consistent with the individual's needs.

9 **SECTION 37.** 55.13 (1) of the statutes is amended to read:

10 55.13 (1) Emergency protective services may be provided ~~for not more than 72~~
11 ~~hours~~ without the consent of the individual when there is reason to believe that, if
12 the emergency protective services are not provided, the individual entitled to the
13 services or others will incur a substantial risk of serious physical harm. Emergency
14 protective services may be provided initially for not more than 72 hours unless a
15 preliminary hearing is scheduled on a petition filed under sub. (2).

16 **SECTION 38.** 55.13 (2) of the statutes is amended to read:

17 55.13 (2) If the county department or agency ~~with which the county~~
18 ~~department contracts~~ designated under s. 55.02 (2) that is providing emergency
19 protective services to an individual under sub. (1) has reason to believe that the
20 individual meets the criteria for protective services under s. 55.08 (2), the county
21 department or agency may file a petition under s. 55.075. If a petition is filed, a
22 preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays,
23 and legal holidays, to establish probable cause that the criteria under s. 55.08 (2) are
24 present. The county department or agency shall provide the individual with written
25 notice and orally inform the individual of the time and place of the preliminary

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1 hearing. If the individual is not under guardianship, a petition for guardianship
2 shall accompany the petition under s. 55.08 (2), except in the case of a minor who is
3 alleged to have a developmental disability.

4 **SECTION 39.** 55.13 (6) of the statutes is created to read:

5 55.13 (6) A person is not liable for any actions performed in good faith in
6 accordance with this section.

7 **SECTION 40.** 55.135 (1) of the statutes is amended to read:

8 55.135 (1) If, from personal observation of, or a reliable report made by a person
9 who identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if
10 any, or authorized representative of a county department or an agency ~~with which~~
11 ~~it contracts~~ designated under s. 55.02 (2), it appears probable that an individual is
12 so totally incapable of providing for his or her own care or custody as to create a
13 substantial risk of serious physical harm to himself or herself or others as a result
14 of developmental disability, degenerative brain disorder, serious and persistent
15 mental illness, or other like incapacities if not immediately placed, the individual
16 who personally made the observation or to whom the report is made may take into
17 custody and transport the individual to an appropriate medical or protective
18 placement facility. The person making emergency protective placement shall
19 prepare a statement at the time of detention providing specific factual information
20 concerning the person's observations or reports made to the person and the basis for
21 emergency placement. The statement shall be filed with the director of the facility
22 and with any petition under s. 55.075. At the time of emergency protective placement
23 the individual shall be informed by the director of the facility or the director's
24 designee, orally and in writing, of his or her right to contact an attorney and a
25 member of his or her immediate family and the right to have an attorney provided

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1 at public expense, as provided under s. 55.105. The director or designee shall also
2 provide the individual with a copy of the statement by the person making emergency
3 protective placement.

4 **SECTION 41.** 55.135 (4) of the statutes is amended to read:

5 55.135 (4) When an individual is detained under this section, a petition shall
6 be filed under s. 55.075 by the person making the emergency protective placement
7 and a preliminary hearing shall be held within 72 hours of detention, excluding
8 Saturdays, Sundays and legal holidays, to establish probable cause to believe the
9 grounds for protective placement under s. 55.08 (1). The sheriff or other person
10 making emergency protective placement under sub. (1) shall provide the individual
11 with written notice and orally inform him or her of the time and place of the
12 preliminary hearing. If the detainee is not under guardianship, a petition for
13 guardianship shall accompany the protective placement petition, except in the case
14 of a minor who is alleged to have a developmental disability. In the event that
15 protective placement is not appropriate, the court may elect to treat a petition for
16 protective placement as a petition for commitment under s. 51.20 or 51.45 (13).

17 **SECTION 42.** 55.135 (6) of the statutes is amended to read:

18 55.135 (6) A law enforcement agency, fire department, or county department
19 or agency ~~with which it contracts~~ designated under s. 55.02 (2) shall designate at
20 least one employee authorized to take an individual into custody under this section
21 who shall attend the in-service training on emergency detention and emergency
22 protective placement offered by a county department of community programs under
23 s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the
24 designated employee's jurisdiction offers an in-service training program.

25 **SECTION 43.** 55.14 (8) (a) of the statutes is amended to read:

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1 55.14 **(8)** (a) Direct the development of a treatment plan for the individual
2 specifying the protective services, including psychotropic medication as ordered by
3 the treating physician, that the individual should receive. If the individual resides
4 in a nursing home or hospital, the nursing home or hospital shall develop the
5 treatment plan. If the individual resides elsewhere, the county department or an
6 agency ~~with which it contracts~~ designated under s. 55.02 (2) shall develop the
7 treatment plan. The treatment plan shall include a plan for the involuntary
8 administration of psychotropic medication to the individual. The treatment plan is
9 subject to the approval of the guardian and to review and approval by the court. If
10 the court approves the plan, the court shall order the county department or an agency
11 with which it contracts under s. 55.02 (2) to ensure that psychotropic medication is
12 administered in accordance with the treatment plan.

13 **SECTION 44.** 55.14 (9) of the statutes is amended to read:

14 55.14 **(9)** If an individual who is subject to an order under this section is not
15 in compliance with the order because he or she refuses to take psychotropic
16 medication as ordered under the treatment plan, and it is necessary for the
17 individual to be transported to an appropriate facility for forcible restraint for
18 administration of psychotropic medication, the corporation counsel may file with the
19 court a statement of the facts that constitute the basis of the noncompliance of the
20 individual. The statement shall be sworn to be true and shall be based upon the
21 information and belief of the person filing the statement. The statement shall be
22 signed by the individual's guardian and by the director or designee of the county
23 department or an agency ~~with which it contracts~~ designated under s. 55.02 (2) to
24 develop and administer the treatment plan. Upon receipt of the statement of
25 noncompliance, if the court finds by clear and convincing evidence that the

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1 individual has substantially failed to comply with the administration of psychotropic
2 medication as ordered under the treatment plan, the court may issue an order
3 authorizing the sheriff or any other law enforcement agency in the county in which
4 the individual is found or in which it is believed that the individual may be present
5 to take the individual into custody and transport him or her to an appropriate facility
6 for administration of psychotropic medication using forcible restraint, with consent
7 of the guardian.

8 **SECTION 45.** 55.14 (11) of the statutes is amended to read:

9 55.14 (11) The county department or an agency ~~with which it contracts~~
10 designated under s. 55.02 (2) shall provide to the department a copy of any order
11 issued under this section that applies to any protectively placed individual in the
12 county.

13 **SECTION 46.** 55.15 (1) of the statutes is amended to read:

14 55.15 (1) TRANSFERS AUTHORIZED. An individual under a protective placement
15 order may be transferred between protective placement units, between protective
16 placement facilities, from an unlocked unit to a locked unit, or from a protective
17 placement unit to a medical facility. The individual may not be transferred, under
18 the protective placement order, to any an inpatient facility ~~for which commitment~~
19 ~~procedures are required under ch. 51, as defined in s. 51.01 (10).~~

20 **SECTION 47.** 55.15 (2) of the statutes is renumbered 55.15 (2) (intro.) and
21 amended to read:

22 55.15 (2) WHO MAY TRANSFER. (intro.) ~~A guardian, a county department or~~
23 ~~agency with which it contracts under s. 55.02 (2) that provided protective placement~~
24 ~~to the individual pursuant to the order of the court, the department, or a protective~~
25 ~~placement facility~~ Any of the following persons may transfer an individual under a

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1 protective placement order under the requirements of this section, notwithstanding
2 the fact that a court order has named a specific facility for the protective placement
3 of the individual.:

4 **SECTION 48.** 55.15 (2) (a), (b), (c), (d) and (e) of the statutes are created to read:

5 55.15 **(2)** (a) The guardian of the individual.

6 (b) A county department or agency designated under s. 55.02 (2) that provided
7 protective placement to the individual under order of the court.

8 (c) The department.

9 (d) A protective placement facility.

10 (e) If the individual is eligible for a family care benefit under s. 46.286, the care
11 management organization under s. 46.284 in which the individual is enrolled.

12 **SECTION 49.** 55.15 (3) of the statutes is amended to read:

13 55.15 **(3)** CONSENT OF GUARDIAN REQUIRED. No individual may be transferred
14 under this section without the written consent of the individual's guardian of the
15 person, except in the case of an emergency transfer under sub. (5) (b) or as ordered
16 under sub. (9).

17 **SECTION 50.** 55.15 (7) (b) of the statutes is amended to read:

18 55.15 **(7)** (b) The court shall notify the petitioner, the individual under
19 protective placement, the individual's guardian of the person, the individual's
20 attorney, if any, ~~and~~ the county department, and, if the individual is eligible for a
21 family care benefit under s. 46.286, the care management organization under s.
22 46.284 in which the individual is enrolled of the time and place of the hearing.

23 **SECTION 51.** 55.15 (7) (c) of the statutes is amended to read:

24 55.15 **(7)** (c) A guardian ad litem shall be appointed ~~to represent~~ for the
25 individual ~~under protective placement at the hearing.~~ In addition to the duties

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1 specified in s. 54.40 (3) and (4), the guardian ad litem shall meet with the individual
2 and advise the court whether the individual meets the standard for transfer under
3 sub. (8). If the individual is an adult who is indigent, the county in which the hearing
4 is held shall be liable for guardian ad litem fees. If the individual is a minor, the
5 individual's parents or the county in which the hearing is held shall be liable for
6 guardian ad litem fees as provided in s. 48.235 (8).

7 **SECTION 52.** 55.15 (7) (d) of the statutes is renumbered 55.15 (7) (d) (intro.) and
8 amended to read:

9 55.15 (7) (d) (intro.) ~~The petitioner, individual under protective placement, the~~
10 ~~individual's guardian, the individual's guardian ad litem, and the individual's~~
11 ~~attorney, if any,~~ following persons have the right to attend the hearing and to present
12 and cross-examine witnesses.:

13 **SECTION 53.** 55.15 (7) (d) 1., 2., 3., 4., 5. and 6. of the statutes are created to read:

14 55.15 (7) (d) 1. The petitioner.

15 2. The individual under protective placement.

16 3. The guardian of the individual under protective placement.

17 4. The guardian ad litem of the individual under protective placement.

18 5. The attorney of the individual under protective placement.

19 6. If the individual under protective placement is eligible for a family care
20 benefit under s. 46.286, the care management organization under s. 46.284 in which
21 the individual is enrolled.

22 **SECTION 54.** 55.15 (8) (b) of the statutes is amended to read:

23 55.15 (8) (b) Whether the protective placement is in the least restrictive
24 environment consistent with the requirements of s. 55.12 (3), (4), and (5) or, if the

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1 transfer is to an intermediate facility or nursing facility, is in the most integrated
2 setting, ~~as defined in s. 46.279 (1) (bm).~~

3 **SECTION 55.** 55.16 (2) (a) of the statutes is amended to read:

4 55.16 **(2)** (a) *Filing; services.* Subject to par. (d), an individual under protective
5 placement or receiving protective services, the individual's guardian, the
6 individual's legal counsel or guardian ad litem, if any, the department, the county
7 department that placed the individual or provided the protective services under an
8 order of the court, an agency ~~with which the county department contracts~~ designated
9 under s. 55.02 (2), or any interested person may file a petition at any time for
10 modification of an order for protective services or protective placement. The petition
11 shall be served on the individual, the individual's guardian, the individual's legal
12 counsel and guardian ad litem, if any, and the county department.

13 **SECTION 56.** 55.16 (4) (a) and (b) of the statutes are amended to read:

14 55.16 **(4)** (a) If the court finds that the individual continues to meet the
15 standards under s. 55.08 (1) and the individual's protective placement is in the least
16 restrictive environment that is consistent with the requirements of s. 55.12 (3), (4),
17 ~~and (5), and (6),~~ and (6), the court shall order continuation of the protective placement in the
18 facility in which the individual resides at the time of the hearing.

19 (b) If the court finds that the individual continues to meet the standards under
20 s. 55.08 (1) and the protective placement of the individual is not in the least
21 restrictive environment that is consistent with the requirements of s. 55.12 (3), (4),
22 ~~and (5), and (6),~~ and (6), the court shall order transfer of the individual to a protective
23 placement that is in the least restrictive environment consistent with the
24 requirements of s. 55.12 (3), (4), ~~and (5), and (6).~~ In lieu of ordering transfer of the
25 individual to a specific facility, the court may order the county department of the

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1 individual's residence or, if the individual is eligible for a family care benefit under
2 s. 46.286, the care management organization under s. 46.284 in which the individual
3 is enrolled to develop or recommend a protective placement that is in the least
4 restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5),
5 and (6), and arrange for the individual's transfer to that protective placement within
6 60 days after the court's order. The court may extend this time period to permit
7 development of a protective placement. The court may order protective services
8 along with transfer of protective placement.

9 **SECTION 57.** 55.17 (1) of the statutes is amended to read:

10 55.17 (1) PETITION. An individual, the individual's guardian or guardian ad
11 litem, the department, a county department or agency ~~with which it contracts~~
12 designated under s. 55.02 (2), or any other interested person may file a petition at
13 any time for termination of an order for protective placement or protective services.
14 The petition shall be served on the individual; the individual's guardian; the
15 individual's attorney and guardian ad litem, if any; ~~and the county department; and,~~
16 if the individual is receiving a family care benefit under s. 46.286, the care
17 management organization under s. 46.284 in which the individual is enrolled. The
18 petition shall allege that the individual no longer meets the standards under s. 55.08
19 (1) for court-ordered protective placement or under s. 55.08 (2) for court-ordered
20 protective services.

21 **SECTION 58.** 55.17 (1m) of the statutes is created to read:

22 55.17 (1m) DUTIES OF GUARDIAN AD LITEM. When a guardian ad litem files a
23 petition under sub. (1) or when a guardian ad litem receives notice of a petition filed
24 under sub. (1), the guardian ad litem shall do all of the following:

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1 (a) Interview the ward to explain to the ward the procedure under this section
2 and the rights of the ward under s. 55.10 (4).

3 (b) Provide the information under par. (a) to the ward in writing.

4 (c) If necessary, request that the court order an additional medical,
5 psychological, or other evaluation of the ward.

6 (d) Review the annual report and relevant reports on the ward's condition and
7 protective services.

8 (e) Review the ward's condition, protective services, and rights with the
9 guardian.

10 (f) If relevant or if there is ambiguity about the ward's position on these
11 matters, report to the court the present or proposed protective services, the position
12 of the guardian, or the recommendation of the guardian ad litem as to the best
13 interests of the ward.

14 (g) Provide a summary written report to the court, including a recommendation
15 on whether the protective placement order should be terminated or whether the
16 individual should be placed in another facility with adequate support services that
17 places fewer restrictions on the individual's personal freedom, is closer to the
18 individual's home community, or more adequately meets the individual's needs,
19 including any recommendation that is made during the reporting period by the
20 county department with respect to termination of the protective placement or
21 placement of the individual in another facility.

22 (h) If relevant, report to the court that the ward requests the appointment of
23 counsel.

24 (i) Attend the hearing under sub. (2).

25 **SECTION 59.** 55.17 (3) (c) 2. of the statutes is amended to read:

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1 55.17 (3) (c) 2. If the court determines that the individual does not meet the
2 standards for protective services under s. 55.08 (2), and the individual is being
3 transferred or discharged from his or her current residential facility, the county
4 department or, if the individual is receiving a family care benefit under s. 46.286, the
5 care management organization under s. 46.284 in which the individual is enrolled
6 shall assist the residential facility with discharge planning for the individual,
7 including planning for a proper residential living arrangement and the necessary
8 support services for the individual.

9 **SECTION 60.** 55.17 (3) (c) 3. of the statutes is amended to read:

10 55.17 (3) (c) 3. Any Unless the court allows a greater period of continued
11 residence, any individual whose protective placement is terminated under this
12 paragraph may reside in his or her current protective placement facility for up to 60
13 days after a determination under subd. 1. or 2. in order to arrange for an alternative
14 living arrangement. If the protective placement facility has fewer than 16 beds, the
15 individual may remain in the protective placement facility as long as the
16 requirements of s. 55.055 are met. ~~Admission by the individual, if an adult, to~~
17 ~~another residential facility shall be made under s. 55.055.~~

18 **SECTION 61.** 55.175 of the statutes is repealed.

19 **SECTION 62.** 55.18 (1) (a) 1. h. of the statutes is created to read:

20 55.18 (1) (a) 1. h. If the individual is receiving a family care benefit under s.
21 46.286, information from the care management organization under s. 46.284 in
22 which the individual is enrolled.

23 **SECTION 63.** 55.18 (1) (a) 3. of the statutes is amended to read:

24 55.18 (1) (a) 3. Provide the report under subd. 1. to the individual and the
25 guardian of the individual, ~~and~~ to the individual's agent under an activated power

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1 of attorney for health care, if any, and, if the individual is receiving a family care
2 benefit under s. 46.286, to the care management organization under s. 46.284 in
3 which the individual is enrolled.

4 **SECTION 64.** 55.18 (1) (ar) of the statutes is amended to read:

5 55.18 (1) (ar) If the individual has a developmental disability and is
6 protectively placed in an intermediate facility or a nursing facility, the agency that
7 is responsible for the protective placement shall notify in writing the county
8 department of the county of residence of the individual that is participating in the
9 program under s. 46.278 or, if s. 46.279 (4m) applies to the individual, the
10 department, at least 120 days before the review. The county department so notified
11 or, if s. 46.279 (4m) applies, the department's contractor, shall develop a plan under
12 s. 46.279 (4), consulting with the care management organization under s. 46.284 in
13 which the individual is enrolled if the individual is receiving a family care benefit
14 under s. 46.286, and furnish the plan to the court that ordered the protective
15 placement and to the individual's guardian. ~~The court shall order that the individual~~
16 ~~be transferred to the noninstitutional community setting in accordance with the plan~~
17 ~~unless the court finds that protective placement in the intermediate facility or~~
18 ~~nursing facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that~~
19 ~~is appropriate to the needs of the individual taking into account information~~
20 ~~presented by all affected parties.~~

21 **SECTION 65.** 55.18 (1) (c) of the statutes is amended to read:

22 55.18 (1) (c) The review under par. (a) may not be conducted by a person who
23 is an employee of the facility in which the individual resides or, if the individual is
24 receiving a family care benefit under s. 46.286, by the care management organization
25 under s. 46.284 in which the individual is enrolled.

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1 **SECTION 66.** 55.18 (2) (f) (intro.) of the statutes is amended to read:

2 55.18 **(2)** (f) (intro.) Within 30 days after appointment, file with the court a
3 written report based on information obtained under this subsection and any other
4 evaluations or records of the individual. The report shall discuss whether the
5 individual appears to continue to meet the standards for protective placement under
6 s. 55.08 (1) ~~and~~; whether the protective placement is in the least restrictive
7 environment that is consistent with the individual's needs; and, if the individual has
8 a developmental disability, whether the placement meets the requirements of s.
9 46.279. The report shall also state whether any of the following apply:

10 **SECTION 67.** 55.18 (3) (e) 1m. of the statutes is created to read:

11 55.18 **(3)** (e) 1m. If the individual has a developmental disability and is in an
12 intermediate facility or nursing facility, the court shall order the individual to be
13 transferred to the noninstitutional community setting in accordance with the plan
14 developed under sub. (1) (ar) unless the court finds that protective placement in the
15 intermediate facility or nursing facility is the most integrated setting that is
16 appropriate to the needs of the individual taking into account information presented
17 by all affected parties.

18 **SECTION 68.** 55.18 (3) (e) 2. of the statutes is amended to read:

19 55.18 **(3)** (e) 2. If the court finds that the individual continues to meet the
20 standards under s. 55.08 (1) and the protective placement of the individual is not in
21 the least restrictive environment that is consistent with the requirements of s. 55.12
22 (3), (4), and (5), the court shall order transfer of the individual to a protective
23 placement that is in the least restrictive environment consistent with the
24 requirements of s. 55.12 (3), (4), and (5). In lieu of ordering transfer of the individual
25 to a specific facility, the court may order the county department of residence or, if the

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1 individual is receiving a family care benefit under s. 46.286, the care management
2 organization under s. 46.284 in which the individual is enrolled, or both to develop
3 or recommend a protective placement that is in the least restrictive environment
4 consistent with the requirements of s. 55.12 (3), (4), and (5) and arrange for the
5 individual's transfer to that protective placement within 60 days after the court's
6 order. The court may extend this period to permit development of a protective
7 placement. The court may order protective services as well as a transfer of protective
8 placement. The court shall include in the order the information relied upon as a basis
9 for the order and shall make findings based on the standards under s. 55.08 (1) in
10 support of the need for continued protective placement.

11 **SECTION 69.** 55.18 (3) (f) 5. of the statutes is created to read:

12 55.18 (3) (f) 5. If the individual is receiving a family care benefit under s. 46.286,
13 the care management organization under s. 46.284 in which the individual is
14 enrolled.

15 **SECTION 70.** 55.195 of the statutes is renumbered 55.16 (2m), and 55.16 (2m)
16 (intro.), (a), (b), (g) and (i), as renumbered, are amended to read:

17 55.16 (2m) DUTIES OF GUARDIAN AD LITEM FOR ~~PROTECTIVE SERVICES REVIEWS.~~
18 (intro.) ~~In any review of a protective services order made under s. 55.12, except as~~
19 ~~provided in s. 55.19~~ Upon receipt of notice under sub. (2) (a), the guardian ad litem
20 shall do all of the following:

21 (a) Interview the ward to explain the review procedure, under this section and
22 ~~the right to an independent evaluation, the right to counsel, and the right to a~~
23 ~~hearing~~ ward's rights under s. 55.10 (4).

24 (b) Provide the information under ~~sub. (1) par. (a)~~ par. (a) to the ward in writing.

