

2011 DRAFTING REQUEST

Bill

Received: **08/22/2011**

Received By: **tdodge**

Wanted: **As time permits**

Companion to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Terry Tuschen**

May Contact:

Drafter: **tdodge**

Subject: **Mental Health - protect place**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Risser@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Changes to protective placement laws

Instructions:

Redraft 09-4515

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 10/12/2011	mduchek 12/09/2011		_____			
/P1	tdodge 02/24/2012	mduchek 03/06/2012	phenry 12/09/2011	_____	lparisi 12/09/2011		
/P2			jfrantze 03/06/2012	_____	lparisi 03/06/2012		S&L
/1	tdodge 03/13/2012	mduchek 03/14/2012	rschluet 03/14/2012	_____	sbasford 03/14/2012	mbarman 03/14/2012	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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MA
3/14/12
MA

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/P1			phenry 12/09/2011	_____	lparisi 12/09/2011		

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MD
3/6/12
11

JW
3/6

JW
3/6
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/?	tdodge						
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FE Sent For:

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CHAPTER 55 PRELIMINARY DRAFT LEGISLATION REVISIONS

(Note: All proposed changes by the committee to the drafter's language are underlined but the drafter's unaltered language is not underlined-that is I took out the drafter's underlining)

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

55.01(3) "Guardian" means any of the following:

(a) A guardian of the person who has been granted the authority to exercise the right or power on behalf of the ward.

(b) A guardian of the estate who has been granted the authority to exercise the right or power on behalf of the ward.

(c) A temporary guardian under ch. 54, or a temporary successor guardian under s.54.54(2m), who has been granted the authority to exercise the right or power on behalf of a proposed ward.

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

55.01(4p) "Most integrated setting" has the meaning given in s.46.279(1) (bm)

In conjunction with Section 5 create new section to amend s.46.279(1) (bm) to read:

46/279(1) (bm) "Most integrated setting" means a setting that enables the individual to interact with persons without ~~development~~ disabilities to the fullest extent possible.

3) **Section 6.** 55.01(6r) (intro.) and (k) of the statutes are consolidated renumbered 55.01(6r) (intro.) and amended to read:

55.01(6r) (intro.) "Protective services" includes 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 but not limited to any of the following:

4) **Section 10.** 55.055(1)(a) of the statutes is amended to read:

55.055(1)(a) The guardian of the person who has been adjudicated incompetent may consent to the individual's admission to a foster home, group home, or community-based residential facility, as defined under s.50.01(1g), without a protective placement order under s.55.12 if the home or facility is licensed for fewer than 16 beds. Prior to providing that consent, and annually thereafter, the guardian or temporary guardian shall review the ward's right to the least restrictive residential environment and may consent only to admission only to a home or facility that implements that right.

5) **Section 15.** 55.08(1)(b) of the statutes is amended to read:

55.08(1)(b) The individual is a minor age 14 or over who is alleged to have a developmental disability or is an adult who has been determined to be incompetent by a circuit court.

6) **Section 16.** 55.08(2)(a) of the statutes is amended to read:

55.08(2)(a) The individual has been determined to be incompetent by a circuit court or is a minor age 14 or over who is alleged to have a developmental disability.

7) **Section 17.** 55.08(2)(b) of the statutes is amended to read:

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

8) **Section 20.** 55.09(2)(bm) of the statutes is created to read:

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

9) **Section 31.** 55.13(1) of the statutes is amended to read:

55.13(1) Emergency protective services may be provided with ~~or~~ without the consent of the individual when there is a reason to believe that, if the emergency protective services are not provided, the individual entitled to the services or others will incur a substantial risk of serious harm. Emergency protective services may be provided initially for not more than 72 hours

unless a preliminary hearing is scheduled on a petition filed under sub. (2).

10) **Section 37.** 55.15(3) of the statutes is amended to read:

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

11) **Section 38.** 55.15(7)(b) of the statutes is amended to read:

55.15(7)(b) The court shall notify the petitioner, the individual under protective placement, the individual's guardian of the person, the individual's attorney, if any, the county department, and, if the individual is eligible for a family care benefit under s.46.286, the care management organization under s.46.284 that supports the individual of the time and place of the hearing.

12) **Section 44.** (Comment to note)

Yes, whatever the current phrase "a county department or agency with which it contracts under s.55.02" appears in chapter 55, it should be changed to and made consistent throughout the chapter to read "a county department or agency designated under s.55.02(2)."

13) **Section 45** 55.17(1m) of the statutes is created to read:

55.17(1m) DUTIES OF GUARDIAN AD LITEM. When a guardian ad litem files a petition under sub.(1) or when a guardian ad litem

receives notice of a petition filed under sub. (1), the guardian ad litem shall do all of the following:

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

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

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

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

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

(f) If relevant or if there is ambiguity about the ward's position on these matters, 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.

(g) Provide a summary written report to the court including in it a recommendation whether the protective placement order should be terminated or whether the individual should be placed in another facility with adequate support services that places fewer restrictions on the individual's personal freedom, is closer to the individual's home community, or more adequately meets the individual's needs, including any recommendation that

is made during the reporting period by the county department with respect to termination of the protective placement or placement of the individual in another facility.

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

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

14) **Section 54.** (Comment to note)

No, we did not want to repeal s.55.18(2)(f) 1 to 4.

15) **Section 57.** 55.195 of the statutes is renumbered 55.16(2m) and amended to read as follows:

55.16(2m) DUTIES OF GUARDIAN AD LITEM. (intro.) Upon receipt of notice under sub. 2 (a.) the guardian ad litem shall do all of the following:

(a) Interview the ward to explain the procedure, under this section and the ward's right under s.55.10(4).

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

(c) Request that the court order an additional medical, psychological, or other evaluation of the ward, if necessary.

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

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

(f) If relevant, report to the court that the ward objects to the finding of continuing incompetency, 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 or if there is ambiguity about the ward's position on these matters.

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

(h) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

(i) Attend the hearing under sub. (3).

Prepared December 20, 2010
Attorney Bruce A. Tammi



State of Wisconsin
2009 - 2010 LEGISLATURE

In 10/12/11

TJD

2698/P1

LRB 4515/P1

CMH/Trs

med

RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PWF

FRIDAY
EMH
ASAP

regen out

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., 55.055 (1) (a), 55.06, 55.075 (5) (a), 55.075 (5) (b), 55.075 (5) (bm),
5 55.08 (1) (b), 55.08 (2) (a), 55.08 (2) (b), 55.10 (3), 55.11 (3), 55.12 (1), 55.12 (2),
6 55.12 (3), 55.12 (5), 55.12 (6), 55.13 (1), 55.135 (4), 55.15 (1), 55.15 (3), 55.15 (7)
7 (b), 55.15 (7) (c), 55.15 (8) (b), 55.16 (4) (a) and (b), 55.17 (1), 55.17 (3) (c) 2., 55.17
8 (3) (c) 3., 55.18 (1) (a) 3., 55.18 (1) (ar), 55.18 (1) (c), 55.18 (2) (f) (intro.) and 55.18
9 (3) (e) 2.; and *to create* 55.01 (3), 55.01 (4) (d), 55.01 (4k), 55.01 (4p), 55.01 (6r)
10 (km), 55.09 (2) (am) 10., 55.09 (2) (bm), 55.10 (2) (d), 55.13 (6), 55.15 (2) (a), (b),

(- 2 -)
and protective placement

1 (c), (d) and (e), 55.15 (7) (d) 1., 2., 3., 4., 5. and 6., 55.17 (1m), 55.18 (1) (a) 1. h.,
2 55.18 (3) (e) 1m. and 55.18 (3) (f) 5. of the statutes; relating to: guardianship.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

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

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

5 55.01 (3) "Guardian" means any of the following:

6 (a) A guardian of the person.

7 (b) A guardian of the estate.

8 (c) A temporary guardian under ch. 54, or a temporary successor guardian
9 under s. 54.54 (2m), who has been granted the power to exercise the rights or act on
10 behalf of a ward or proposed ward.

Authority
are

Insert 2-11

***NOTE: 54.54 (2m) is created in LRB-4151. I included it here--OK?

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

12 55.01 (4) (d) If the proposed ward is receiving a family care benefit under s.
13 46.286, or other public benefit, using a case management organization or other
14 organization, the organization.

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

16 55.01 (4k) "Least restrictive" has the meaning given in s. 54.01 (18).

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

18 55.01 (4p) "Most integrated setting" has the meaning given in s. 46.279 (1)
19 (bm).

Insert 2-18

Note. Should this paragraph read "care management organization" or "case management organization"?

1 SECTION 6. 55.01⁴ (6r) (intro.) and (k) of the statutes are consolidated,
2 renumbered 55.01 (6r) (intro.) and amended to read:

3 55.01 (6r) (intro.) "Protective services" ^{strike} includes any of the following: ^{means} (k) Any
4 services that, when provided to an individual with developmental disabilities,
5 degenerative brain disorder, serious and persistent mental illness, or other like
6 incapacity, keep the individual safe from abuse, financial exploitation, neglect, or
7 self-neglect or prevent the individual from experiencing deterioration or from
8 inflicting harm on himself or herself or another person. including any of the
9 following:

Insert
3-10

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

11 55.01 (6r) (km) Any other service ordered by the court.

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

13 55.01 (6y) "Voluntary" means according to an individual's free choice, if
14 competent, ~~or~~ by choice of ~~a~~ an individual's guardian, if adjudicated incompetent or
15 by choice of a person having authority under a power of attorney for health care.

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

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

****NOTE: Please review this subdivision. I didn't use the language provided because s. 146.82 (2) (a) 7. does not permit the agency to release the information; instead the authorization seems to be to the health care provider.

19 SECTION 10. 55.055 (1) (a) of the statutes is amended to read:

20 55.055 (1) (a) The guardian, or notwithstanding s. 54.50 (2) the temporary
21 guardian, of an individual who has been adjudicated incompetent may consent to the
22 individual's admission to a foster home, group home, or community-based
23 residential facility, as defined under s. 50.01 (1g), without a protective placement

of the person

Insert
3-19

1 order under s. 55.12 if the home or facility is licensed for fewer than 16 beds. Prior
 2 to providing that consent, and annually thereafter, the guardian or temporary
 3 guardian shall review the ward's right to the least restrictive residential
 4 environment and may consent ~~only~~ to admission only to a home or facility that
 5 implements that right.

Insert 4-6

***NOTE: Please review this paragraph. Your instructions indicated to include a temporary guardian. I notwithstanding s. 54.50 (2) because that subsection limits the authority of the temporary guardian to the acts stated in the order of appointment.

6 SECTION 11. 55.06 of the statutes is amended to read:

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

Insert 4-21

21 SECTION 12. 55.075 (5) (a) of the statutes is amended to read:

22 55.075 (5) (a) A petition under sub. (1) shall be filed in the county of residence
 23 of the individual to be protected, ~~as determined under s. 51.40 or by the individual's~~

1 ~~guardian~~ or where the individual is physically present ~~due to extraordinary~~
2 ~~circumstances including those specified under s. 51.22 (4). If an individual has not~~
3 ~~received services under this chapter or ch. 46 or 51 or if an individual has received~~
4 ~~services under this chapter or ch. 46 or 51 that have been terminated and has~~
5 ~~established residence in a county other than that in which the individual resided~~
6 ~~when the services were received, the court may determine the individual's county of~~
7 ~~residence. The county of residence under this paragraph is the county of~~
8 ~~responsibility.~~

9 SECTION 13. 55.075 (5) (b) of the statutes is amended to read:

10 55.075 (5) (b) The If s. 51.40 applies, the county of responsibility under s. 51.40
11 is the county of residence. At the request of an interested party, the court in which
12 a petition is first filed under par. (a) shall determine venue residence under s. 51.40.
13 The court shall direct that proper written notice be given of the proceeding be sent
14 by certified mail to the county's clerk and corporation counsel of any potentially
15 responsible or affected county. Proper notice is given to a potentially responsible or
16 affected county if written notice of the proceeding is sent by certified mail to the
17 county's clerk and corporation counsel. After all potentially responsible or affected
18 counties and parties have been given an opportunity to be heard, the court shall
19 determine that venue lies in the county in which the petition is filed under par. (a)
20 or in another county, as appropriate. If the court determines that venue lies in
21 another the individual to be protected is a resident of a county other than the one in
22 which the petition is filed, the court shall may order the entire record certified to the
23 proper court. A court in which a subsequent petition is filed shall, upon being
24 satisfied of an earlier filing in another court, summarily dismiss the subsequent
25 petition.

1 SECTION 14. 55.075 (5) (bm) of the statutes is amended to read:

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

18 SECTION 15. 55.08 (1) (b) of the statutes is amended to read:

19 55.08 (1) (b) The individual is a minor over age 14 who is ~~not~~ alleged to have
20 a developmental disability ~~and on whose behalf a petition for guardianship has been~~
21 ~~submitted~~, or is an adult who has been determined to be incompetent by a circuit
22 court.

23 SECTION 16. 55.08 (2) (a) of the statutes is amended to read:

years of age
or older

7-
years of age or older

1 55.08 (2) (a) The individual has been determined to be incompetent by a circuit
2 court or is a minor over age 14 who is alleged to have a developmental disability and
3 ~~on whose behalf a petition for a guardianship has been submitted.~~

4 SECTION 17. 55.08 (2) (b) of the statutes is amended to read:

5 55.08 (2) (b) As a result of developmental disability, degenerative brain
6 disorder, serious and persistent mental illness, or other like incapacities, the
7 individual will incur a substantial risk of physical harm or deterioration or will
8 present a substantial risk of ~~physical~~ harm to others if protective services are not
9 provided.

10 SECTION 18. 55.09 (2) of the statutes is renumbered 55.09 (2) (am), and 55.09
11 (2) (am) (intro.) and 4., as renumbered, are amended to read:

12 55.09 (2) (am) (intro.) In addition to the notice required under sub. (1) and
13 ~~except as provided in par. (bm)~~, notice shall be served, personally or by mail, at least
14 10 days before the time set for a hearing, upon all of the following:

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

18 SECTION 19. 55.09 (2) (am) 10. of the statutes is created to read:

19 55.09 (2) (am) 10. If the individual sought to be protected is receiving a family
20 care benefit under s. 46.286, or other public benefit, using a case management
21 organization, care management organization, or other organization, the
22 organization.

23 SECTION 20. 55.09 (2) (bm) of the statutes is created to read:

24 55.09 (2) (bm) 1. The court may waive the notice requirement under par. (am)
25 for a person under par. (am) 2., 3., 4., or 6. if the identity of the person is unknown

ascertainable

1
2

and not reasonably ascertainable or the address of the person is unknown and not reasonably ascertainable.

3
4

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

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6

SECTION 21. 55.10 (2) of the statutes is renumbered 55.10 (2) (a) and amended to read:

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

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

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(c) If the individual is unable to attend a hearing on a petition under this section only because of residency in a nursing home or other facility, physical inaccessibility, or lack of a reasonable means of transportation, the court shall, if requested by the

↑ plain space

any

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individual, the individual's guardian ad litem, the individual's counsel, or ^{any} other interested person, hold the hearing in a place where the individual is able to attend.

23

SECTION 22. 55.10 (2) (d) of the statutes is created to read:

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

1 **SECTION 23.** 55.10 (3) of the statutes is amended to read:

2 **55.10 (3) HEARING TO BE OPEN CLOSED.** The hearing shall be ~~open closed~~, unless
3 the individual sought to be protected, or his or her attorney acting with the consent
4 of the individual sought to be protected, requests that it be ~~closed open~~. If the hearing
5 is closed, only persons in interest, including representatives of providers of service
6 and their attorneys and witnesses, may be present.

7 **SECTION 24.** 55.11 (3) of the statutes is amended to read:

8 **55.11 (3)** A copy of the comprehensive evaluation and any independent
9 comprehensive evaluation shall be provided to the individual sought to be protected,
10 the individual's guardian or proposed guardian, the individual's agent under any
11 activated health care power of attorney, ~~and the individual's guardian ad litem~~, and
12 ~~to the individual or the individual's attorney~~ at least 96 hours in advance of the
13 hearing to determine protective placement or protective services.

14 **SECTION 25.** 55.12 (1) of the statutes is amended to read:

15 **55.12 (1)** When ordering protective placement under the standards specified
16 in s. 55.08 (1) or protective services under the standards specified in s. 55.08 (2), the
17 court, on the basis of the evaluation and other relevant evidence, shall order the
18 resource center under s. 46.283, ^{the} county department or agency with which it contracts
19 designated under s. 55.02 (2), and, if the individual is eligible for a family care benefit
20 under s. 46.286, the care management organization under s. 46.284 that supports the
21 individual to provide protective placement or protective services to the individual.

***NOTE: See the note following SECTION 44 regarding "designated."

22 **SECTION 26.** 55.12 (2) of the statutes is amended to read:

23 **55.12 (2)** Subject to s. 46.279, protective placement may be made to nursing
24 homes, public medical institutions, centers for the developmentally disabled under

1 the requirements of s. 51.06 (3), foster care services or other home placements, or to
 2 other appropriate facilities, but may not be made to units for the acutely mentally
 3 ill. An individual who is subject to an order for protective placement or protective
 4 services may be detained on an emergency basis under s. 51.15 or involuntarily
 5 committed under s. 51.20 or may be voluntarily admitted to a treatment facility for
 6 inpatient care under s. 51.10 (8). No individual who is subject to an order for
 7 protective placement or services may be involuntarily transferred to, detained in, or
 8 committed to ~~a treatment facility~~ an inpatient facility, as defined in s. 51.01 (10), for
 9 care except under s. 51.15 ~~or~~, 51.20, or 51.45 (13). Protective placement in a locked
 10 unit shall require a specific finding of the court as to the need for the action.

****NOTE: Please review the change. Section 51.15 seems to permit detention in certain facilities; one such facility is a treatment facility. Other statutes indicate that a treatment facility under ch. 51 may have inpatient programs, but these statutes usually list "inpatient facilities" separate from "treatment facilities" (see ss. 51.06 (1r) (d) and 51.20 (13) (g) 2d. b., for instance). So it doesn't seem immediately clear that s. 51.15 authorizes detention in an inpatient facility. ~~Please review s. 51.45 (13) in the same manner.~~

SECTION 27. 55.12 (3) of the statutes is amended to read:

55.12 (3) Protective placement or protective services provided by a resource center under s. 46.283, a county department or an agency ~~with which it contracts~~ ^{Strike} under s. 55.02 (2), and, if the individual is eligible for a family care benefit under s. 46.286, the care management organization under s. 46.284 that supports the individual are subject to s. 46.279 and shall be provided in the least restrictive environment and in the least restrictive manner consistent with the needs of the individual to be protected and with the resources of the resource center, county department, and care management organization.

SECTION 28. 55.12 (4) of the statutes is renumbered 55.12 (4) (intro.) and amended to read:

designated
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14

designated

1 55.12 (4) (intro.) ~~Factors that a~~ A resource center under s. 46.283, a county
 2 department or an agency ~~(with which it contracts)~~ under s. 55.02 (2), and, if the
 3 individual is eligible for a family care benefit under s. 46.286, the care management
 4 organization under s. 46.284 that supports the individual shall ~~consider in~~, when
 5 providing protective placement or protective services ~~shall include~~, consider the
 6 following factors:

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

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

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

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

14 (e) The reasonableness of the protective placement or protective services given
 15 the number or projected number of individuals who will need protective placement
 16 or protective services and given the limited funds available.

17 SECTION 29. 55.12 (5) of the statutes is amended to read:

18 55.12 (5) Except as provided in s. 49.45 (30m), the county may not be required
 19 to provide funding, in addition to its funds that are required to be appropriated to
 20 match state funds, in order to provide protective placement or protective services to
 21 an individual. ~~Protective placement under this section does not replace commitment~~
 22 ~~of an individual in need of acute psychiatric treatment under s. 51.20 or 51.45 (13).~~

23 SECTION 30. 55.12 (6) of the statutes is amended to read:

24 55.12 (6) If the resource center under s. 46.283, the county department or
 25 agency ~~with which it contracts~~ under s. 55.02 (2) ~~proposes~~, and, if the individual is

Strike

designated

proposes

designated

1 eligible for a family care benefit under s. 46.286, the care management organization
 2 under s. 46.284 that supports the individual propose to provide protective placement
 3 to an individual who has a developmental disability in an intermediate facility or a
 4 nursing facility under an order under this section, the resource center, the county
 5 department or agency, or, if s. 46.279 (4m) applies to the individual, the department
 6 or the department's contractor, and, if applicable, the care management organization
 7 shall develop a plan under s. 46.279 (4) and furnish the plan to the county
 8 department or agency and to the individual's guardian. The resource center, the
 9 county department or agency with which it contracts under s. 55.02 (2), and, if
 10 applicable, the care management organization shall provide protective placement to
 11 the individual in a noninstitutional community setting in accord with the plan unless
 12 the court finds that protective placement in the intermediate facility or nursing
 13 facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that is
 14 appropriate to the needs of the individual, taking into account information presented
 15 by all affected parties.

***NOTE: Your additional entities were linked with "and" in your instructions. Please review to ensure that you intended that all of the entities do it (versus using "or," which would require any of the entities to perform the task).

***NOTE: You included s. 55.12 (7), (8), and (9) in your instructions. I read the provisions but found no changes. If you intended changes, please provide them to me so I can redraft.

SECTION 31. 55.13 (1) of the statutes is amended to read:

55.13 (1) Emergency protective services may be provided ~~for not more than 72~~
 hours with or without the consent of the individual 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 a substantial risk of serious ~~physical~~ harm.

1 Emergency protective services may be provided initially for not more than 72 hours
2 unless a preliminary hearing is scheduled on a petition filed under sub. (2).

****NOTE: Is it your intention to limit emergency protective services WITH the consent to only when there is reason to believe that, without the services, someone will incur a substantial risk of serious harm (and limit them to not more than 72 hours?)?. If not, then "with or" should be deleted from this provision.

Insert
13-3

3 SECTION 32. 55.13 (6) of the statutes is created to read:

4 55.13 (6) A person is not liable for any actions performed in good faith in
5 accordance with this section.

Insert
13-6

6 SECTION 33. 55.135 (4) of the statutes is amended to read:

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

Insert
B-19

19 SECTION 34. 55.15 (1) of the statutes is amended to read:

20 55.15 (1) TRANSFERS AUTHORIZED. An individual under a protective placement
21 order may be transferred between protective placement units, between protective
22 placement facilities, from an unlocked unit to a locked unit, or from a protective
23 placement unit to a medical facility. The individual may not be transferred, under

1 the protective placement order, to ~~any an inpatient facility for which commitment~~
2 ~~procedures are required under ch. 51, as defined in s. 51.01 (10).~~

3 SECTION 35. 55.15 (2) of the statutes is renumbered 55.15 (2) (intro.) and
4 amended to read:

5 55.15 (2) WHO MAY TRANSFER. (Intro.) ~~A guardian, a county department or~~
6 ~~agency with which it contracts under s. 55.02 (2) that provided protective placement~~
7 ~~to the individual pursuant to the order of the court, the department, or a protective~~
8 ~~placement facility~~ Any of the following persons may transfer an individual under a
9 protective placement order under the requirements of this section, notwithstanding
10 the fact that a court order has named a specific facility for the protective placement
11 of the individual;

12 SECTION 36. 55.15 (2) (a), (b), (c), (d) and (e) of the statutes are created to read:

13 55.15 (2) (a) The guardian of the individual.

14 (b) A county department or agency with which it contracts ^{designated} under s. 55.02 (2)
15 that provided protective placement to the individual under order of the court.

16 (c) The department.

17 (d) A protective placement facility.

18 (e) If the individual is eligible for a family care benefit under s. 46.286, the care
19 management organization under s. 46.284 that supports the individual.

20 SECTION 37. 55.15 (3) of the statutes is amended to read:

21 55.15 (3) CONSENT OF GUARDIAN REQUIRED. No individual may be transferred
22 under this section without the written consent of the individual's guardian, ^{of the person} except
23 in the case of an emergency transfer under sub. (5) (b) or as ordered under sub. (9).

****NOTE: I don't think sub. (5) needs to be amended to include the CMO, because
the cross-reference to sub. (2) will include that entity as SECTION 36 added it.

- 15 -
of the person

1 SECTION 38. 55.15 (7) (b) of the statutes is amended to read:

2 55.15 (7) (b) The court shall notify the petitioner, the individual under
3 protective placement, the individual's guardian, the individual's attorney, if any, and
4 the county department, and, if the individual is eligible for a family care benefit
5 under s. 46.286, the care management organization under s. 46.284 that supports the
6 individual of the time and place of the hearing.

7 SECTION 39. 55.15 (7) (c) of the statutes is amended to read:

8 55.15 (7) (c) A guardian ad litem shall be appointed to represent for the
9 individual under protective placement at the hearing. In addition to the duties
10 specified in s. 54.40 (3) and (4), the guardian ad litem shall meet with the individual and
11 advise the court whether the individual meets the standard for transfer under sub.
12 (8). If the individual is an adult who is indigent, the county in which the hearing is
13 held shall be liable for guardian ad litem fees. If the individual is a minor, the
14 individual's parents or the county in which the hearing is held shall be liable for
15 guardian ad litem fees as provided in s. 48.235 (8).

16 SECTION 40. 55.15 (7) (d) of the statutes is renumbered 55.15 (7) (d) (intro.) and
17 amended to read:

18 55.15 (7) (d) (intro.) The petitioner, individual under protective placement, the
19 individual's guardian, the individual's guardian ad litem, and the individual's
20 attorney, if any, following persons have the right to attend the hearing and to present
21 and cross-examine witnesses:

22 SECTION 41. 55.15 (7) (d) 1., 2., 3., 4., 5. and 6. of the statutes are created to read:

23 55.15 (7) (d) 1. The petitioner.

24 2. The individual under protective placement.

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

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

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

3 6. If the individual under protective placement is eligible for a family care
4 benefit under s. 46.286, the care management organization under s. 46.284 that
5 supports the individual.

6 SECTION 42. 55.15 (8) (b) of the statutes is amended to read:

7 55.15 (8) (b) Whether the protective placement is in the least restrictive
8 environment consistent with the requirements of s. 55.12 (3), (4), and (5) or, if the
9 transfer is to an intermediate facility or nursing facility, is in the most integrated
10 setting, ~~as defined in s. 46.279 (1) (bm).~~

11 SECTION 43. 55.16 (4) (a) and (b) of the statutes are amended to read:

12 55.16 (4) (a) If the court finds that the individual continues to meet the
13 standards under s. 55.08 (1) and the individual's protective placement is in the least
14 restrictive environment that is consistent with the requirements of s. 55.12 (3), (4),
15 ~~and (5), and (6).~~ the court shall order continuation of the protective placement in the
16 facility in which the individual resides at the time of the hearing.

17 (b) If the court finds that the individual continues to meet the standards under
18 s. 55.08 (1) and the protective placement of the individual is not in the least
19 restrictive environment that is consistent with the requirements of s. 55.12 (3), (4),
20 ~~and (5), and (6).~~ the court shall order transfer of the individual to a protective
21 placement that is in the least restrictive environment consistent with the
22 requirements of s. 55.12 (3), (4), ~~and (5), and (6).~~ In lieu of ordering transfer of the
23 individual to a specific facility, the court may order the county department of the
24 individual's residence or, if the individual is eligible for a family care benefit under
25 s. 46.286, the care management organization under s. 46.284 that supports the

Insert
16-11

1 individual to develop or recommend a protective placement that is in the least
2 restrictive environment consistent with the requirements of s. 55.12 (3), (4), ~~and~~ (5),
3 ~~and~~ (6), and arrange for the individual's transfer to that protective placement within
4 60 days after the court's order. The court may extend this time period to permit
5 development of a protective placement. The court may order protective services
6 along with transfer of protective placement.

7 SECTION 44. 55.17 (1) of the statutes is amended to read:

8 55.17 (1) PETITION. An individual, the individual's guardian or guardian ad
9 litem, the department, a county department or agency ~~with which it contracts~~
10 designated under s. 55.02 (2), or any other interested person may file a petition at
11 any time for termination of an order for protective placement or protective services.
12 The petition shall be served on the individual; the individual's guardian; the
13 individual's attorney and guardian ad litem, if any; ~~and~~ the county department; and
14 if the individual is receiving a family care benefit under s. 46.286, the care
15 management organization under s. 46.284 that supports the individual. The petition
16 shall allege that the individual no longer meets the standards under s. 55.08 (1) for
17 court-ordered protective placement or under s. 55.08 (2) for court-ordered protective
18 services.

****NOTE: Although "a county department or agency with which it contracts under s. 55.02" appears over ten times in chapter 55, the instructions change it to "designated" only two times (in this SECTION and in SECTION 25) and adds it several times. Should this be consistent or do you intend the difference?

19 SECTION 45. 55.17 (1m) of the statutes is created to read:

20 55.17 (1m) DUTIES OF GUARDIAN AD LITEM. When a guardian ad litem files a
21 petition under sub. (1) or when a guardian ad litem receives notice of a petition filed
22 under sub. (1), the guardian ad litem shall do all of the following:

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

****NOTE: Please review this provision to ensure that it encompasses all of the rights you intend to be explained. See also SECTION 57.

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.

Insert 18-14

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

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

18 SECTION 46. 55.17 (3) (c) 2. of the statutes is amended to read:

19 55.17 (3) (c) 2. If the court determines that the individual does not meet the
20 standards for protective services under s. 55.08 (2), and the individual is being
21 transferred or discharged from his or her current residential facility, the county
22 department or, if the individual is receiving a family care benefit under s. 46.286, the
23 care management organization under s. 46.284 that supports the individual shall

1 assist the residential facility with discharge planning for the individual, including
2 planning for a proper residential living arrangement and the necessary support
3 services for the individual.

4 SECTION 47. 55.17 (3) (c) 3. of the statutes is amended to read:

5 55.17 (3) (c) 3. Any Unless the court allows a greater period of continued
6 residence, any individual whose protective placement is terminated under this
7 paragraph may reside in his or her current protective placement facility for up to 60
8 days after a determination under subd. 1. or 2. in order to arrange for an alternative
9 living arrangement. If the protective placement facility has fewer than 16 beds, the
10 individual may remain in the protective placement facility as long as the
11 requirements of s. 55.055 are met. ~~Admission by the individual, if an adult, to~~
12 ~~another residential facility shall be made under s. 55.055.~~

13 SECTION 48. 55.175 of the statutes is repealed.

14 SECTION 49. 55.18 (1) (a) 1. h. of the statutes is created to read:

15 55.18 (1) (a) 1. h. If the individual is receiving a family care benefit under s.
16 46.286, information from the care management organization under s. 46.284 that
17 supports the individual.

18 SECTION 50. 55.18 (1) (a) 3. of the statutes is amended to read:

19 55.18 (1) (a) 3. Provide the report under subd. 1. to the individual and the
20 guardian of the individual, and to the individual's agent under an activated power
21 of attorney for health care, if any, and, if the individual is receiving a family care
22 benefit under s. 46.286, to the care management organization under s. 46.284 that
23 supports the individual.

24 SECTION 51. 55.18 (1) (ar) of the statutes is amended to read:

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

17 SECTION 52. 55.18 (1) (c) of the statutes is amended to read:

18 55.18 (1) (c) The review under par. (a) may not be conducted by a person who
19 is an employee of the facility in which the individual resides or, if the individual is
20 receiving a family care benefit under s. 46.286, by the care management organization
21 under s. 46.284 that supports the individual.

22 SECTION 53. 55.18 (2) (f) (intro.) of the statutes is amended to read:

23 55.18 (2) (f) (intro.) Within 30 days after appointment, file with the court a
24 written report based on information obtained under this subsection and any other
25 evaluations or records of the individual. The report shall discuss whether the

1 individual appears to continue to meet the standards for protective placement under
2 s. 55.08 (1) ~~and~~; whether the protective placement is in the least restrictive
3 environment that is consistent with the individual's needs; and, if the individual has
4 a developmental disability, whether the placement meets the requirements of s.
5 46.279. The report shall also state whether any of the following apply:

****NOTE: I was unsure whether you wanted to repeal s. 55.18 (2) (f) 1. to 4. The instructions cut off the last sentence of the introduction, but I wasn't sure if that indicated you wanted those provisions repealed or if you truncated the introduction because the changes were only in the beginning.

****NOTE: "Least restrictive" has been defined for the whole chapter so I did not include the definition here. See SECTION 4.

6 SECTION 54. 55.18 (3) (e) 1m. of the statutes is created to read:

7 55.18 (3) (e) 1m. If the individual has a developmental disability and is in an
8 intermediate facility or nursing facility, the court shall order the individual to be
9 transferred to the noninstitutional community setting in accordance with the plan
10 developed under sub. (1) (ar) unless the court finds that protective placement in the
11 intermediate facility or nursing facility is the most integrated setting that is
12 appropriate to the needs of the individual taking into account information presented
13 by all affected parties.

14 SECTION 55. 55.18 (3) (e) 2. of the statutes is amended to read:

15 55.18 (3) (e) 2. If the court finds that the individual continues to meet the
16 standards under s. 55.08 (1) and the protective placement of the individual is not in
17 the least restrictive environment that is consistent with the requirements of s. 55.12
18 (3), (4), and (5), the court shall order transfer of the individual to a protective
19 placement that is in the least restrictive environment consistent with the
20 requirements of s. 55.12 (3), (4), and (5). In lieu of ordering transfer of the individual
21 to a specific facility, the court may order the county department of residence or, if the

1 individual is receiving a family care benefit under s. 46.286. the care management
 2 organization under s. 46.284 that supports the individual. or both to develop or
 3 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 56. 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 that supports the individual.

14 SECTION 57. ⁽⁹⁾ 55.195 of the statutes is renumbered 55.16 (2m), and 55.16 (2m)
 15 (intro.), (a), (b) and (i), as renumbered, are amended to read:

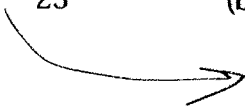
16 55.16 (2m) DUTIES OF GUARDIAN AD LITEM ~~FOR PROTECTIVE SERVICES REVIEWS.~~
 17 (intro.) ~~In any review of a protective services order made under s. 55.12, except as~~
 18 ~~provided in s. 55.19~~ Upon receipt of notice under sub. (2) (a), the guardian ad litem
 19 shall do all of the following:

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

****NOTE: Please review this provision to ensure that it encompasses all of the rights you intend to be explained. See also SECTION 45.

Insert
22-23

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



Insert material
from p. 8 of Plins

1

(i) Attend the hearing under sub. (3).

****NOTE: Please review this provision to ensure that you intend that all of these provisions be under this section.

****NOTE: Please ensure that moving this section and narrowing the application did not have greater consequences than you intended. Without the introduction, does s. 55.12 outline the duties of a GAL to the extent you intend?

2

(END)

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2698/P1ins
TJD:.....

1 INSERT 2-11

2 **SECTION 1.** 55.01 (3g) of the statutes is created to read:

3 55.01 (3g) "Guardian of the estate" has the meaning given in s. 54.01 (11).

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

5 55.01 (3m) "Guardian of the person" has the meaning given in s. 54.01 (12).

 ****NOTE: I did not add the language requested to the "guardian of the person" and "guardian of the estate" portions of the definition of guardian. I realized that neither guardian of the estate or guardian of the person were defined for this chapter, so this incorporates the idea from the language you sought to add and also eliminates the need to add a cross reference to the definition in ch. 54 every time either phrase is mentioned.

(END INSERT 2-11)

6 INSERT 2-18

7 means a setting that enables the individual to interact with persons without
8 disabilities to the fullest extent possible.

 ****NOTE: I did not change the definition in ch. 46 as requested, and instead I duplicated the requested definition here for ch. 55. A change to the definition in ch. 46 appears to call for changes to the entirety of s. 46.279. If you intend to make changes in s. 46.279, this should be done in a comprehensive fashion so please let me know. ✓

(END INSERT 2-18)

9 INSERT 3-10

 ****NOTE: I did not add the requested phrase because, according to our drafting conventions, "including" means "including but not limited to." ✓

(END INSERT 3-10)

10 INSERT 3-19

11 **SECTION 3.** 55.05 (2) (intro.) of the statutes is amended to read:

12 55.05 (2) CONDITIONS REQUIRED. (intro.) The department or a county
13 department or agency with which the county department contracts designated under

1 s. 55.02 (2) that provides protective services may provide the services under any of
2 the following conditions:

History: 1973 c. 284; 1975 c. 393; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 135 s. 83 (3); 1985 a. 176; 1987 a. 161 ss. 7, 13m; 1987 a. 366; 1989 a. 200; 1991 a. 316; 1993 a. 187, 316, 445; 2005 a. 264, 387.

(END INSERT 3-19)

3 INSERT 4-6

***NOTE: I am unsure that this provision makes sense now that "temporary guardian" is removed from the first sentence. Under the current language, before providing consent in the first sentence, a temporary guardian is required to review the ward's right to the least restrictive environment and allowed to consent to admission only to a home or facility that implements that right, but only a non-temporary guardian may consent to admission to certain facilities without a protective placement order. This seems to read as if the temporary guardian is both prohibited from consenting to and allowed to consent to such admissions. This should be clarified.

(END INSERT 4-6)

4 INSERT 4-21

5 SECTION 4. 55.075 (1) of the statutes is amended to read:

6 55.075 (1) WHO MAY PETITION. The department, the county department or an
7 agency ~~with which the county department contracts~~ designated under s. 55.02 (2),
8 a guardian, or an interested person may file a petition for appointment of a guardian
9 and for protective services or protective placement for an individual. The department
10 shall provide for a schedule of reimbursement for the cost of the proceedings based
11 upon the ability to pay of the proposed ward or individual to be protected.

History: 2005 a. 264 ss. 114, 115, 123 to 126, 157; 2005 a. 387 ss. 110, 112, 113, 114; 2007 a. 45; 2007 a. 96 s. 59; 2009 a. 319.

12 SECTION 5. 55.075 (4) (b) of the statutes is amended to read:

13 55.075 (4) (b) If a person seeking to be the guardian of a proposed ward requests
14 the assistance of a county department or an agency ~~with which it contracts~~
15 designated under s. 55.02 (2) in petitioning for guardianship or for protective

1 services or protective placement, the assistance may be considered a service and may
2 be charged for based upon the ability of the person to pay for the service.

History: 2005 a. 264 ss. 114, 115, 123 to 126, 157; 2005 a. 387 ss. 110, 112, 113, 114; 2007 a. 45; 2007 a. 96 s. 59; 2009 a. 319.

(END INSERT 4-21)

3 INSERT 9-7

4 **SECTION 6.** 55.11 (1) (intro.) of the statutes is amended to read:

5 55.11 (1) (intro.) Before ordering protective placement or protective services for
6 any individual, the court shall require a comprehensive evaluation of the individual
7 sought to be protected, if such an evaluation has not already been made. The court
8 may utilize available multidisciplinary resources in the community in determining
9 the need for protective placement or protective services. The county department or
10 an agency ~~with which it contracts~~ [✓] designated under s. 55.02 (2) shall cooperate with
11 the court in securing available resources. The court or the cooperating agency
12 obtaining the evaluation shall request appropriate information which shall include
13 at least the following:

History: 2005 a. 264 ss. 131 to 134, 161; 2005 a. 387 s. 117; 2007 a. 45.

(END INSERT 9-7)

14 INSERT 9-14

15 **SECTION 7.** 55.11 (4) [✓] of the statutes is amended to read:

16 55.11 (4) Where applicable by reason of the particular disability, the county
17 department or an agency ~~with which it contracts~~ [✓] designated under s. 55.02 (2) that
18 has responsibility where the individual has legal residence shall make a
19 recommendation for protective placement or protective services.

History: 2005 a. 264 ss. 131 to 134, 161; 2005 a. 387 s. 117; 2007 a. 45.

(END INSERT 9-14)

20 INSERT 13-3

1 **SECTION 8.** 55.13 (2) of the statutes is amended to read:

2 55.13 (2) If the county department or agency ~~with which the county~~
3 ~~department contracts~~ designated under s. 55.02 (2) that is providing emergency
4 protective services to an individual under sub. (1) has reason to believe that the
5 individual meets the criteria for protective services under s. 55.08 (2), the county
6 department or agency may file a petition under s. 55.075. If a petition is filed, a
7 preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays,
8 and legal holidays, to establish probable cause that the criteria under s. 55.08 (2) are
9 present. The county department or agency shall provide the individual with written
10 notice and orally inform the individual of the time and place of the preliminary
11 hearing. If the individual is not under guardianship, a petition for guardianship
12 shall accompany the petition under s. 55.08 (2), except in the case of a minor who is
13 alleged to have a developmental disability.

History: 2005 a. 264 ss. 98, 99, 100, 163; 2007 a. 45.

(END INSERT 13-3)

14 INSERT 13-6

15 **SECTION 9.** 55.135 (1) of the statutes is amended to read:

16 55.135 (1) If, from personal observation of, or a reliable report made by a person
17 who identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if
18 any, or authorized representative of a county department or an agency ~~with which~~
19 ~~it contracts~~ designated under s. 55.02 (2), it appears probable that an individual is
20 so totally incapable of providing for his or her own care or custody as to create a
21 substantial risk of serious physical harm to himself or herself or others as a result
22 of developmental disability, degenerative brain disorder, serious and persistent
23 mental illness, or other like incapacities if not immediately placed, the individual

1 who personally made the observation or to whom the report is made may take into
2 custody and transport the individual to an appropriate medical or protective
3 placement facility. The person making emergency protective placement shall
4 prepare a statement at the time of detention providing specific factual information
5 concerning the person's observations or reports made to the person and the basis for
6 emergency placement. The statement shall be filed with the director of the facility
7 and with any petition under s. 55.075. At the time of emergency protective placement
8 the individual shall be informed by the director of the facility or the director's
9 designee, orally and in writing, of his or her right to contact an attorney and a
10 member of his or her immediate family and the right to have an attorney provided
11 at public expense, as provided under s. 55.105. The director or designee shall also
12 provide the individual with a copy of the statement by the person making emergency
13 protective placement.

History: 2005 a. 264 ss. 144 to 149, 164; 2005 a. 388 s. 165; 2007 a. 20, 45; 2009 a. 180.

(END INSERT 13-6)

14 INSERT 13-19

15 SECTION 10. 55.135 (6) of the statutes is amended to read:

16 55.135 (6) A law enforcement agency, fire department, or county department
17 or agency ~~with which it contracts~~ designated under s. 55.02 (2) shall designate at
18 least one employee authorized to take an individual into custody under this section
19 who shall attend the in-service training on emergency detention and emergency
20 protective placement offered by a county department of community programs under
21 s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the
22 designated employee's jurisdiction offers an in-service training program.

History: 2005 a. 264 ss. 144 to 149, 164; 2005 a. 388 s. 165; 2007 a. 20, 45; 2009 a. 180.

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

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

14 **History:** 2005 a. 264 ss. 165, 195; 2005 a. 387 ss. 121, 302; 2007 a. 20; 2007 a. 45; 2009 a. 180.

14 **SECTION 12.** 55.14 (9) of the statutes is amended to read:

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

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

10 **History:** 2005 a. 264 ss. 165, 195; 2005 a. 387 ss. 121, 302; 2007 a. 20; 2007 a. 45; 2009 a. 180.

SECTION 13. 55.14 (11) of the statutes is amended to read:

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

History: 2005 a. 264 ss. 165, 195; 2005 a. 387 ss. 121, 302; 2007 a. 20; 2007 a. 45; 2009 a. 180.

(END INSERT 13-19)

15 INSERT 16-11

16 **SECTION 14.** 55.16 (2) (a) of the statutes is amended to read:

17 55.16 (2) (a) *Filing; services.* Subject to par. (d), an individual under protective
 18 placement or receiving protective services, the individual's guardian, the
 19 individual's legal counsel or guardian ad litem, if any, the department, the county
 20 department that placed the individual or provided the protective services under an
 21 order of the court, an agency ~~with which the county department contracts~~ designated
 22 under s. 55.02 (2), or any interested person may file a petition at any time for
 23 modification of an order for protective services or protective placement. The petition

1 shall be served on the individual, the individual's guardian, the individual's legal
2 counsel and guardian ad litem, if any, and the county department.

History: 2005 a. 264; 2007 a. 45; 2009 a. 28.

(END INSERT 16-11)

3 INSERT 18-14

4 including a recommendation^{on} whether the protective placement order should be
5 terminated or whether the individual should be placed in another facility with
6 adequate support services that places fewer restrictions on the individual's personal
7 freedom, is closer to the individual's home community, or more adequately meets the
8 individual's needs, including any recommendation that is made during the reporting
9 period by the county department with respect to termination of the protective
10 placement or placement of the individual in another facility

(END INSERT 18-14)

11 INSERT 22-23

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

History: 2005 a. 387 ss. 123, 124, 488 to 495; State, 2005 s. 55.195; 2007 a. 45

****NOTE: All of the other provisions of s. 55.195 that are not being amended here
are renumbered and incorporated into the new s. 55.16 (2m)

(END INSERT 22-23)

move to
p23 after
line 1

Dodge, Tamara

From: Tuschen, Terry
Sent: Wednesday, January 25, 2012 4:45 PM
To: 'Sandy Lonergan'; Dodge, Tamara
Cc: Vebber, Lucas
Subject: RE: LRB 11-2698/P1 Chapter 55 Changes to guardianship laws
 Great Sandy, thanks for forwarding these. Really appreciate it.
 Terry

From: Sandy Lonergan [mailto:slonergan@wisbar.org]
Sent: Wednesday, January 25, 2012 3:33 PM
To: Tuschen, Terry; Dodge, Tamara
Cc: Vebber, Lucas
Subject: LRB 11-2698/P1 Chapter 55 Changes to guardianship laws

Dear Terry & Tamara,

Below are the suggestions & responses from my Elder Law attorneys to your drafter's notes re: Chapter 55 (LRB 11-2698/P1). Please let me know if you have any questions. Thanks so much for all of your help!

Best regards – Sandy

1. **Sections 2, 3, & 4** 55.01(3)

We proposed to add definitions of guardian of the estate, person, and temporary guardianship clarifying that such guardian could act when referred to in Chapter 55 only when granted the authority/power to do so under Chapter 54. The philosophy of Chapter 54 is to give the guardian power to act only when the ward has insufficient capacity to make such decisions. Thus for example a guardian of the person may or may not have been given the power under 55.25 (2) (d) 2. n. to 'apply for protective placement'. The drafter's language merely references the definition of guardian of the person and estate in 54.01 (11) & (12) which is insufficient because those definitions refer to a guardian having "any f the powers" specified 54,20 (g. estate) and 54.25 (2) (g. person). Our proposed definitions were:

55.01(3) "Guardian" means any of the following:

(a) A guardian of the person who has been granted the authority to exercise the right or power on behalf of the ward. (b) A guardian of the estate who has been granted the authority to exercise the right or power on behalf of the ward As an additional comment perhaps our use of "authority" should be changed to "power". (Bruce)

An alternative to this language Roy proposes the following definition of guardian:

"Guardian," in the context of the exercise of a right or power, means a temporary or permanent guardian of person or estate who has been appointed under ch. 54 and who has authority to exercise the right or power on behalf of the ward. (Roy)

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

55.01 (4) (d) If the proposed ward is receiving a family care benefit under s. 46.286, or other public benefit, using a case management organization or other organization, the organization.

****NOTE: Should this paragraph read "care management organization" or "case management organization"?

The reference to "proposed ward" is inappropriate, and I think "case management" is not what we mean. Also, we should respond to the drafter's question. This could read:

If the individual sought to be protected is receiving a family care benefit under s. 46.286, or another Medicaid funded managed long term care program, the care management organization through which the benefit is received.

Alternative: add to par (4)(b) "including but not limited to a care management organization providing a family care benefit under s. 46.286 or another Medicaid funded managed long term care program benefit to the individual."

(Roy)

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

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

I don't remember the history behind this change, but if there is a reference to 146.82(2)(a)7. (which governs health care records), there should also be a reference to 51.30(4)(b)17. (which governs treatment records). (Roy)

3. Section 13 55.055(1) (a)

In concurrence with the drafter's note I believe 55.055 (1) (a) should instead read: The guardian or temporary guardian of the person of an individual who has been adjudicated incompetent may consent to admission to a foster home, group home, or community-based residential facility, as defined under s. 50.01 (1g) without a protective placement order under s. 55.12 if the home or facility is licensed for fewer than 16 beds. (Bruce)

If we take Roy's suggestion for the definition of guardian, the word guardian will always include a temporary guardian. In that case, we can take the word "temporary" out of 55.01(1)

4. SECTION 18. [55.075(5)(b)]

I think the second sentence of 55.075(5)(b) should read:

At the request of an interested party, the court in which a petition is first filed under par. (a) shall determine residence ~~under s. 51.40.~~ (Roy)

5. Section 32-39 55.12

We think that phrase and references to a "care management organization" should be deleted from the separate sections of 55.12 and replaced with a new subsection of 55.12 that deals specifically with CMOs.

To make our intent absolutely clear we think an additional paragraph that looks something like this should be added to the end of 55.12:

New section 55.12(11):

If the individual subject to a protective placement or protective services order is enrolled in Family Care or another Medicaid funded managed long term care program [note to drafter: this additional language would bring Partnership, PACE and eventually "Virtual PACE" organizations within the scope of this requirement], the ADRC, MCO/CMO and any agency responsible for administering or providing benefits or services to the individual under the managed care program shall comply with all court orders necessary to insure that the individual is placed in the least restrictive environment and receives services in the least restrictive manner consistent with the individual's needs. (Mitch as modified by Carol)

Sandy

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