

State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2698/P1
TJD:med:ph

P2

In: 2/24/12

Stays
RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

EA

regen cat

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 (3g), 55.01 (3m), 55.01 (4) (d), 55.01 (4k),
12 55.01 (4p), 55.01 (6r) (km), 55.09 (2) (am) 10., 55.09 (2) (bm), 55.10 (2) (d), 55.13
13 (6), 55.15 (2) (a), (b), (c), (d) and (e), 55.15 (7) (d) 1., 2., 3., 4., 5. and 6., 55.17 (1m),

1 55.18 (1) (a) 1. h., 55.18 (3) (e) 1m. and 55.18 (3) (f) 5. of the statutes; relating
2 to: guardianship and protective placement.

in the context of the exercise of a specific right or power,

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3 SECTION 1. 55.01 (2r) of the statutes is repealed.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 authority to exercise a right or power
10 on behalf of a ward or proposed ward.

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

12 55.01 (3g) "Guardian of the estate" has the meaning given in s. 54.01 (11).

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

14 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.

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

16 55.01 (4) (d) If the proposed ward is receiving a family care benefit under s.
17 46.286, or other public benefit, using a case management organization or other
18 organization, the organization

If the individual sought to be protected is receiving the family care benefit under s. 46.286, or a benefit under a managed long-term care program that is funded by the Medical Assistance program, the care management organization or other organization that administers the benefit.

temporary or permanent

temporary or permanent

as defined in s. 54.01(12) who has been granted the authority to exercise that right or power on behalf of the ward

as defined in s. 54.01(11) who has been granted the authority to exercise that right or power on behalf of the ward

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

1 **SECTION 6.** 55.01 (4k) of the statutes is created to read:

2 55.01 (4k) "Least restrictive" has the meaning given in s. 54.01 (18).

3 **SECTION 7.** 55.01 (4p) of the statutes is created to read:

4 55.01 (4p) "Most integrated setting" means a setting that enables the
5 individual to interact with persons without 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.

6 **SECTION 8.** 55.01 (6r) (intro.) and (k) of the statutes are consolidated,
7 renumbered 55.01 (6r) (intro.) and amended to read:

8 55.01 (6r) (intro.) "Protective services" ~~includes~~ means any of the following:

9 ~~(k) Any~~ services that, when provided to an individual with developmental
10 disabilities, degenerative brain disorder, serious and persistent mental illness, or
11 other like incapacity, keep the individual safe from abuse, financial exploitation,
12 neglect, or self-neglect or prevent the individual from experiencing deterioration or
13 from inflicting harm on himself or herself or another person. including any of the
14 following:

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

15 **SECTION 9.** 55.01 (6r) (km) of the statutes is created to read:

16 55.01 (6r) (km) Any other service ordered by the court.

17 **SECTION 10.** 55.01 (6y) of the statutes is amended to read:

18 55.01 (6y) "Voluntary" means according to an individual's free choice, if
19 competent, ~~or by choice of a~~ an individual's guardian, if adjudicated incompetent or
20 by choice of a person having authority under a power of attorney for health care.

4
51.30 (4)(b) 17.0r

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

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

4 SECTION 12. 55.05 (2) (intro.) of the statutes is amended to read:

5 55.05 (2) CONDITIONS REQUIRED. (intro.) The department or a county
6 department or agency ~~with which the county department contracts~~ designated under
7 s. 55.02 (2) that provides protective services may provide the services under any of
8 the following conditions:

9 SECTION 13. 55.055 (1) (a) of the statutes is amended to read:

10 55.055 (1) (a) The guardian of the person of an individual who has been
11 adjudicated incompetent may consent to the individual's admission to a foster home,
12 group home, or community-based residential facility, as defined under s. 50.01 (1g),
13 without a protective placement order under s. 55.12 if the home or facility is licensed
14 for fewer than 16 beds. Prior to providing that consent, and annually thereafter, the
15 guardian or temporary guardian shall review the ward's right to the least restrictive
16 residential environment and may consent only to admission only to a home or facility
17 that implements that right.

****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.

18 SECTION 14. 55.06 of the statutes is amended to read:

19 **55.06 Protective services and protective placement; eligibility.** To be
20 eligible for court-ordered protective placement or protective services, an individual
21 shall have filed a petition to transfer a foreign guardianship, whether present in the

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

12 **SECTION 15.** 55.075 (1) of the statutes is amended to read:

13 55.075 (1) WHO MAY PETITION. The department, the county department or an
14 agency ~~with which the county department contracts~~ designated under s. 55.02 (2),
15 a guardian, or an interested person may file a petition for appointment of a guardian
16 and for protective services or protective placement for an individual. The department
17 shall provide for a schedule of reimbursement for the cost of the proceedings based
18 upon the ability to pay of the proposed ward or individual to be protected.

19 **SECTION 16.** 55.075 (4) (b) of the statutes is amended to read:

20 55.075 (4) (b) If a person seeking to be the guardian of a proposed ward requests
21 the assistance of a county department or an agency ~~with which it contracts~~
22 designated under s. 55.02 (2) in petitioning for guardianship or for protective
23 services or protective placement, the assistance may be considered a service and may
24 be charged for based upon the ability of the person to pay for the service.

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

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

11 **SECTION 18.** 55.075 (5) (b) of the statutes is amended to read:

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

xxxxNOTE: I believe the cross-reference to s. 51.40 should be kept in the second sentence to clarify what standards the Court should use.

1 satisfied of an earlier filing in another court, summarily dismiss the subsequent
2 petition.

3 **SECTION 19.** 55.075 (5) (bm) of the statutes is amended to read:

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

20 **SECTION 20.** 55.08 (1) (b) of the statutes is amended to read:

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

25 **SECTION 21.** 55.08 (2) (a) of the statutes is amended to read:

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

4 **SECTION 22.** 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 23.** 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 24.** 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 25.** 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

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

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

5 **SECTION 26.** 55.10 (2) of the statutes is renumbered 55.10 (2) (a) and amended
6 to read:

7 55.10 (2) (a) The petitioner shall ~~ensure that~~ make reasonable arrangements
8 for the transportation of the individual sought to be protected attends to the hearing
9 on the petition.

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

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

23 **SECTION 27.** 55.10 (2) (d) of the statutes is created to read:

24 55.10 (2) (d) Notwithstanding par. (b), the court may order the individual
25 sought to be protected to attend the hearing on the petition under this section.

1 **SECTION 28.** 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 29.** 55.11 (1) (intro.) of the statutes is amended to read:

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

17 **SECTION 30.** 55.11 (3) of the statutes is amended to read:

18 **55.11 (3)** A copy of the comprehensive evaluation and any independent
19 comprehensive evaluation shall be provided to the individual sought to be protected,
20 the individual's guardian or proposed guardian, the individual's agent under any
21 activated health care power of attorney, ~~and~~ the individual's guardian ad litem, and
22 ~~to the individual or the individual's attorney~~ at least 96 hours in advance of the
23 hearing to determine protective placement or protective services.

24 **SECTION 31.** 55.11 (4) of the statutes is amended to read:

1 55.11 (4) Where applicable by reason of the particular disability, the county
2 department or an agency ~~with which it contracts~~ designated under s. 55.02 (2) that
3 has responsibility where the individual has legal residence shall make a
4 recommendation for protective placement or protective services.

5 **SECTION 32.** 55.12 (1) of the statutes is amended to read:

6 55.12 (1) ^{Strike} ~~When~~ ordering protective placement under the standards specified
7 in s. 55.08 (1) or protective services under the standards specified in s. 55.08 (2), the
8 court, on the basis of the evaluation and other relevant evidence, shall order the
9 resource center under s. 46.283, the county department or agency ~~with which it~~
10 contracts designated under s. 55.02 (2), and, if the individual is eligible for a family
11 care benefit under s. 46.286, the care management organization under s. 46.284 that
12 supports the individual to provide protective placement or protective services to the
13 individual.

14 **SECTION 33.** 55.12 (2) of the statutes is amended to read:

15 55.12 (2) Subject to s. 46.279, protective placement may be made to nursing
16 homes, public medical institutions, centers for the developmentally disabled under
17 the requirements of s. 51.06 (3), foster care services or other home placements, or to
18 other appropriate facilities, but may not be made to units for the acutely mentally
19 ill. An individual who is subject to an order for protective placement or protective
20 services may be detained on an emergency basis under s. 51.15 or involuntarily
21 committed under s. 51.20 or may be voluntarily admitted to a treatment facility for
22 inpatient care under s. 51.10 (8). No individual who is subject to an order for
23 protective placement or services may be involuntarily transferred to, detained in, or
24 committed to ~~a treatment facility~~ an inpatient facility, as defined in s. 51.01 (10), for

1 care except under s. 51.15 ~~or~~, 51.20, or 51.45 (13). Protective placement in a locked
2 unit shall require a specific finding of the court as to the need for the action.

3 SECTION 34. 55.12 (3) of the statutes is amended to read:

4 55.12 (3) Protective placement or protective services provided by a resource
5 center under s. 46.283, a county department or an agency ~~with which it contracts~~
6 designated under s. 55.02 (2), and, if the individual is eligible for a family care benefit
7 under s. 46.286, the care management organization under s. 46.284 that supports the
8 individual are subject to s. 46.279 and shall be provided in the least restrictive
9 environment and in the least restrictive manner consistent with the needs of the
10 individual to be protected and with the resources of the resource center, county
11 department, and care management organization.

12 SECTION 35. 55.12 (4) of the statutes is renumbered 55.12 (4) (intro.) and
13 amended to read:

14 55.12 (4) (intro.) Factors that a A resource center under s. 46.283, a county
15 department or an agency designated under s. 55.02 (2), and, if the individual is
16 eligible for a family care benefit under s. 46.286, the care management organization
17 under s. 46.284 that supports the individual shall ~~consider in~~, when providing
18 protective placement or protective services ~~shall include~~, consider the following
19 factors:

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

22 (b) The level of supervision needed; ~~the~~.

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

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

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

6 **SECTION 36.** 55.12 (5) of the statutes is amended to read:

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

12 **SECTION 37.** 55.12 (6) of the statutes is amended to read: ^{plain}

13 55.12 (6) If the resource center under s. 46.283, the county department or
14 agency with which it contracts designated under s. 55.02 (2) proposes, ~~and, if the~~
15 ~~individual is eligible for a family care benefit under s. 46.286, the care management~~
16 ~~organization under s. 46.284 that supports the individual proposes,~~ to provide
17 protective placement to an individual who has a developmental disability in an
18 intermediate facility or a nursing facility under an order under this section, the
19 resource center, the county department or agency, or, if s. 46.279 (4m) applies to the
20 individual, the department or the department's contractor, and, if applicable, the
21 care management organization, shall develop a plan under s. 46.279 (4) and furnish
22 the plan to the county department or agency and to the individual's guardian. The
23 resource center, the county department or agency with which it contracts designated
24 under s. 55.02 (2), and, if applicable, the care management organization, shall
25 provide protective placement to the individual in a noninstitutional community

Insert 14-5

1 setting in accord with the plan unless the court finds that protective placement in
2 the intermediate facility or nursing facility is the most integrated setting, as defined
3 in s. 46.279 (1) (bm), that is appropriate to the needs of the individual, taking into
4 account information presented by all affected parties.

5 SECTION 38. 55.13 (1) of the statutes is amended to read:

6 55.13 (1) Emergency protective services may be provided ~~for not more than 72~~
7 ~~hours~~ without the consent of the individual when there is reason to believe that, if
8 the emergency protective services are not provided, the individual entitled to the
9 services or others will incur a substantial risk of serious ~~physical~~ harm. Emergency
10 protective services may be provided initially for not more than 72 hours unless a
11 preliminary hearing is scheduled on a petition filed under sub. (2).

12 SECTION 39. 55.13 (2) of the statutes is amended to read:

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

25 SECTION 40. 55.13 (6) of the statutes is created to read:

1 55.13 (6) A person is not liable for any actions performed in good faith in
2 accordance with this section.

3 **SECTION 41.** 55.135 (1) of the statutes is amended to read:

4 55.135 (1) If, from personal observation of, or a reliable report made by a person
5 who identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if
6 any, or authorized representative of a county department or an agency ~~with which~~
7 ~~it contracts~~ designated under s. 55.02 (2), it appears probable that an individual is
8 so totally incapable of providing for his or her own care or custody as to create a
9 substantial risk of serious physical harm to himself or herself or others as a result
10 of developmental disability, degenerative brain disorder, serious and persistent
11 mental illness, or other like incapacities if not immediately placed, the individual
12 who personally made the observation or to whom the report is made may take into
13 custody and transport the individual to an appropriate medical or protective
14 placement facility. The person making emergency protective placement shall
15 prepare a statement at the time of detention providing specific factual information
16 concerning the person's observations or reports made to the person and the basis for
17 emergency placement. The statement shall be filed with the director of the facility
18 and with any petition under s. 55.075. At the time of emergency protective placement
19 the individual shall be informed by the director of the facility or the director's
20 designee, orally and in writing, of his or her right to contact an attorney and a
21 member of his or her immediate family and the right to have an attorney provided
22 at public expense, as provided under s. 55.105. The director or designee shall also
23 provide the individual with a copy of the statement by the person making emergency
24 protective placement.

25 **SECTION 42.** 55.135 (4) of the statutes is amended to read:

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

13 **SECTION 43.** 55.135 (6) of the statutes is amended to read:

14 55.135 (6) A law enforcement agency, fire department, or county department
15 or agency ~~with which it contracts~~ designated under s. 55.02 (2) shall designate at
16 least one employee authorized to take an individual into custody under this section
17 who shall attend the in-service training on emergency detention and emergency
18 protective placement offered by a county department of community programs under
19 s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the
20 designated employee's jurisdiction offers an in-service training program.

21 **SECTION 44.** 55.14 (8) (a) of the statutes is amended to read:

22 55.14 (8) (a) Direct the development of a treatment plan for the individual
23 specifying the protective services, including psychotropic medication as ordered by
24 the treating physician, that the individual should receive. If the individual resides
25 in a nursing home or hospital, the nursing home or hospital shall develop the

1 treatment plan. If the individual resides elsewhere, the county department or an
2 agency ~~with which it contracts~~ designated under s. 55.02 (2) shall develop the
3 treatment plan. The treatment plan shall include a plan for the involuntary
4 administration of psychotropic medication to the individual. The treatment plan is
5 subject to the approval of the guardian and to review and approval by the court. If
6 the court approves the plan, the court shall order the county department or an agency
7 with which it contracts under s. 55.02 (2) to ensure that psychotropic medication is
8 administered in accordance with the treatment plan.

9 **SECTION 45.** 55.14 (9) of the statutes is amended to read:

10 55.14 (9) If an individual who is subject to an order under this section is not
11 in compliance with the order because he or she refuses to take psychotropic
12 medication as ordered under the treatment plan, and it is necessary for the
13 individual to be transported to an appropriate facility for forcible restraint for
14 administration of psychotropic medication, the corporation counsel may file with the
15 court a statement of the facts that constitute the basis of the noncompliance of the
16 individual. The statement shall be sworn to be true and shall be based upon the
17 information and belief of the person filing the statement. The statement shall be
18 signed by the individual's guardian and by the director or designee of the county
19 department or an agency ~~with which it contracts~~ designated under s. 55.02 (2) to
20 develop and administer the treatment plan. Upon receipt of the statement of
21 noncompliance, if the court finds by clear and convincing evidence that the
22 individual has substantially failed to comply with the administration of psychotropic
23 medication as ordered under the treatment plan, the court may issue an order
24 authorizing the sheriff or any other law enforcement agency in the county in which
25 the individual is found or in which it is believed that the individual may be present

1 to take the individual into custody and transport him or her to an appropriate facility
2 for administration of psychotropic medication using forcible restraint, with consent
3 of the guardian.

4 **SECTION 46.** 55.14 (11) of the statutes is amended to read:

5 55.14 (11) The county department or an agency ~~with which it contracts~~
6 designated under s. 55.02 (2) shall provide to the department a copy of any order
7 issued under this section that applies to any protectively placed individual in the
8 county.

9 **SECTION 47.** 55.15 (1) of the statutes is amended to read:

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

16 **SECTION 48.** 55.15 (2) of the statutes is renumbered 55.15 (2) (intro.) and
17 amended to read:

18 55.15 (2) WHO MAY TRANSFER. (intro.) ~~A guardian, a county department or~~
19 ~~agency with which it contracts under s. 55.02 (2) that provided protective placement~~
20 ~~to the individual pursuant to the order of the court, the department, or a protective~~
21 ~~placement facility~~ Any of the following persons may transfer an individual under a
22 protective placement order under the requirements of this section, notwithstanding
23 the fact that a court order has named a specific facility for the protective placement
24 of the individual.:

25 **SECTION 49.** 55.15 (2) (a), (b), (c), (d) and (e) of the statutes are created to read:

**** This draft substitutes "in which the individual is enrolled" for "that supports the individual" as it is more consistent with the way the relationship between the individual and the*

1 55.15 (2) (a) The guardian of the individual. *Care management organization is described in ch. 46.*

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

4 (c) The department.

5 (d) A protective placement facility.

6 (e) If the individual is eligible for a family care benefit under s. 46.286, the care
7 management organization under s. 46.284 *in which* that supports the individual. *is enrolled*

8 **SECTION 50.** 55.15 (3) of the statutes is amended to read:

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

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

14 55.15 (7) (b) The court shall notify the petitioner, the individual under
15 protective placement, the individual's guardian of the person, the individual's
16 attorney, if any, and the county department, and, if the individual is eligible for a
17 family care benefit under s. 46.286, the care management organization under s.
18 46.284 *in which* (that supports) the individual *is enrolled* of the time and place of the hearing.

19 **SECTION 52.** 55.15 (7) (c) of the statutes is amended to read:

20 55.15 (7) (c) A guardian ad litem shall be appointed to represent for the
21 individual under protective placement at the hearing. In addition to the duties
22 specified in s. 54.40 (3) and (4), the guardian ad litem shall meet with the individual
23 and advise the court whether the individual meets the standard for transfer under
24 sub. (8). If the individual is an adult who is indigent, the county in which the hearing
25 is held shall be liable for guardian ad litem fees. If the individual is a minor, the

1 individual's parents or the county in which the hearing is held shall be liable for
2 guardian ad litem fees as provided in s. 48.235 (8).

3 SECTION 53. 55.15 (7) (d) of the statutes is renumbered 55.15 (7) (d) (intro.) and
4 amended to read:

5 55.15 (7) (d) (intro.) The ~~petitioner, individual under protective placement, the~~
6 ~~individual's guardian, the individual's guardian ad litem, and the individual's~~
7 ~~attorney, if any, following persons~~ have the right to attend the hearing and to present
8 and cross-examine witnesses.:

9 SECTION 54. 55.15 (7) (d) 1., 2., 3., 4., 5. and 6. of the statutes are created to read:

- 10 55.15 (7) (d) 1. The petitioner.
- 11 2. The individual under protective placement.
- 12 3. The guardian of the individual under protective placement.
- 13 4. The guardian ad litem of the individual under protective placement.
- 14 5. The attorney of the individual under protective placement.

15 *in which* 6. If the individual under protective placement is eligible for a family care
 16 benefit under s. 46.286, the care management organization under s. 46.284 *that*
 17 *supports* the individual. *is enrolled*

18 SECTION 55. 55.15 (8) (b) of the statutes is amended to read:

19 55.15 (8) (b) Whether the protective placement is in the least restrictive
20 environment consistent with the requirements of s. 55.12 (3), (4), and (5) or, if the
21 transfer is to an intermediate facility or nursing facility, is in the most integrated
22 setting, as defined in s. 46.279 (1) (bm).

23 SECTION 56. 55.16 (2) (a) of the statutes is amended to read:

24 55.16 (2) (a) *Filing; services.* Subject to par. (d), an individual under protective
25 placement or receiving protective services, the individual's guardian, the

1 individual's legal counsel or guardian ad litem, if any, the department, the county
2 department that placed the individual or provided the protective services under an
3 order of the court, an agency ~~with which the county department contracts~~ designated
4 under s. 55.02 (2), or any interested person may file a petition at any time for
5 modification of an order for protective services or protective placement. The petition
6 shall be served on the individual, the individual's guardian, the individual's legal
7 counsel and guardian ad litem, if any, and the county department.

8 **SECTION 57.** 55.16 (4) (a) and (b) of the statutes are amended to read:

9 55.16 (4) (a) If the court finds that the individual continues to meet the
10 standards under s. 55.08 (1) and the individual's protective placement is in the least
11 restrictive environment that is consistent with the requirements of s. 55.12 (3), (4),
12 ~~and (5), and (6)~~, the court shall order continuation of the protective placement in the
13 facility in which the individual resides at the time of the hearing.

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

is enrolled

in which

1 60 days after the court's order. The court may extend this time period to permit
2 development of a protective placement. The court may order protective services
3 along with transfer of protective placement.

4 **SECTION 58.** 55.17 (1) of the statutes is amended to read:

5 55.17 (1) PETITION. An individual, the individual's guardian or guardian ad
6 litem, the department, a county department or agency ~~with which it contracts~~
7 designated under s. 55.02 (2), or any other interested person may file a petition at
8 any time for termination of an order for protective placement or protective services.
9 The petition shall be served on the individual; the individual's guardian; the
10 individual's attorney and guardian ad litem, if any; ~~and the county department; and,~~
11 if the individual is receiving a family care benefit under s. 46.286, the care
12 management organization under s. 46.284 that supports the individual. The petition
13 shall allege that the individual no longer meets the standards under s. 55.08 (1) for
14 court-ordered protective placement or under s. 55.08 (2) for court-ordered protective
15 services.

*Individual
is enrolled*

16 **SECTION 59.** 55.17 (1m) of the statutes is created to read:

17 55.17 (1m) DUTIES OF GUARDIAN AD LITEM. When a guardian ad litem files a
18 petition under sub. (1) or when a guardian ad litem receives notice of a petition filed
19 under sub. (1), the guardian ad litem shall do all of the following:

- 20 (a) Interview the ward to explain to the ward the procedure under this section
- 21 and the rights of the ward under s. 55.10 (4).
- 22 (b) Provide the information under par. (a) to the ward in writing.
- 23 (c) If necessary, request that the court order an additional medical,
- 24 psychological, or other evaluation of the ward.

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

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

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

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

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

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

20 **SECTION 60.** 55.17 (3) (c) 2. of the statutes is amended to read:

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

in which

is enrolled

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 61.** 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 62.** 55.175 of the statutes is repealed.

14 **SECTION 63.** 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. is enrolled

18 **SECTION 64.** 55.18 (1) (a) 3. of the statutes is amended to read:

19 in which 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. is enrolled

24 **SECTION 65.** 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
 s. 46.279 (4), consulting with the care management organization under s. 46.284 that

in which

is enrolled

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.~~

SECTION 66. 55.18 (1) (c) of the statutes is amended to read:

in which

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. *is enrolled*

SECTION 67. 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:

6 SECTION 68. 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 69. 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
22 individual is receiving a family care benefit under s. 46.286, the care management
23 organization under s. 46.284 that supports the individual, or both to develop or
24 recommend a protective placement that is in the least restrictive environment
25 consistent with the requirements of s. 55.12 (3), (4), and (5) and arrange for the

in which

is enrolled

1 individual's transfer to that protective placement within 60 days after the court's
2 order. The court may extend this period to permit development of a protective
3 placement. The court may order protective services as well as a transfer of protective
4 placement. The court shall include in the order the information relied upon as a basis
5 for the order and shall make findings based on the standards under s. 55.08 (1) in
6 support of the need for continued protective placement. *in which is enrolled*

7 **SECTION 70.** 55.18 (3) (f) 5. of the statutes is created to read:

8 55.18 (3) (f) 5. If the individual is receiving a family care benefit under s. 46.286,
9 the care management organization under s. 46.284 that supports the individual.

10 **SECTION 71.** 55.195 of the statutes is renumbered 55.16 (2m), and 55.16 (2m)
11 (intro.), (a), (b), (g) and (i), as renumbered, are amended to read:

12 **55.16 (2m) DUTIES OF GUARDIAN AD LITEM FOR ~~PROTECTIVE SERVICES~~ REVIEWS.**
13 (intro.) ~~In any review of a protective services order made under s. 55.12, except as~~
14 ~~provided in s. 55.19~~ Upon receipt of notice under sub. (2) (a), the guardian ad litem
15 shall do all of the following:

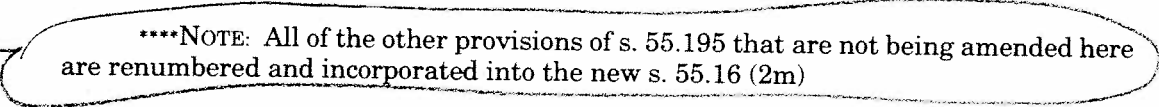
16 (a) Interview the ward to explain the review procedure, under this section and
17 ~~the right to an independent evaluation, the right to counsel, and the right to a~~
18 ~~hearing~~ ward's rights under s. 55.10 (4).

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

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

1 county department with respect to termination of the protective placement or
2 placement of the individual in another facility.

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

4  ******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)