

1981 Assembly Bill 1016

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CHAPTER 379 , Laws of 1981

AN ACT to repeal 55.06 (18); to amend 55.02, 55.05 (2) (b), 55.06 (1) (intro.), (10) (a) and (11) (b), 880.01 (4), 880.08 (1), 880.15 (1) and (3), 880.33 (2) (a) 1 and (c) 1, (5) and (6), 880.35 and 880.38 (1); to repeal and recreate 55.06 (17); and to create 55.05 (5), 55.06 (1) (d) and (11) (ar), 880.15 (1s), 880.33 (5m) and 880.38 (3) of the statutes, relating to protective placement and guardianship.

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

SECTION 1. 55.02 of the statutes is amended to read:

55.02 Protective service system; establishment. The department shall develop a state-wide system of protective service for mentally retarded and other developmentally disabled persons, for aged infirm persons, for chronically mentally ill persons and for persons with other like incapacities incurred at any age in accordance with rules established by the department. The protective service system shall be designed to encourage independent living and to avoid protective placement whenever possible. The system shall ~~utilize~~ use the planning and advice of agencies as defined in s. 55.01 (1), including the community boards under s. 51.42 or 51.437 or county boards of public welfare. The chairperson of each county board of supervisors shall designate the community board under s. 51.42 or 51.437, the county board of public welfare or a joint mechanism of these boards to have the responsibility for local planning for the protective service system. The department and these boards shall cooperate in developing a coordinated system of services. The department shall provide direct services and enter into contracts with any responsible

public or private agency for provision of protective services. The agency designated under this section in each county shall determine the reporting requirements applicable to the county under s. 880.38 (3).

SECTION 2. 55.05 (2) (b) of the statutes is amended to read:

55.05 (2) (b) Any interested person may request protective services on behalf of a person in need of services. A guardian may request and consent to protective services on behalf of the guardian's ward.

SECTION 3. 55.05 (5) of the statutes is created to read:

55.05 (5) ADMISSIONS WITHOUT COURT INVOLVEMENT. (a) A person who is legally and actually capable of consenting may consent to enter a group home, foster home or community-based residential facility, as defined under s. 50.01 (1), or nursing home without protective placement under s. 55.06.

(b) 1. Guardians of persons who have been found incompetent under s. 880.33 may consent to admission to a foster home, group home or community-based residential facility, as defined under s. 50.01 (1), without a protective placement under s. 55.06 if the home or facility is licensed for fewer than 16 beds. Prior to providing that consent, and annually thereafter, the guardian shall review the ward's right to the least restrictive residential environment and consent only to admission to a home or facility that implements those rights.

2. Guardians of persons who have been found incompetent under s. 880.33 may consent to admission to a nursing home if the person is admitted directly from a hospital inpatient unit for recuperative care for a period not to exceed 3 months, unless the hospital admission was for psychiatric care. Prior to providing that consent, the guardian shall review the ward's right to the least restrictive residential environment and consent only to admission to a nursing home that implements those rights. Following the 3-month period, a placement proceeding under s. 55.06 is required.

(c) If a person admitted under par. (b) verbally objects to or otherwise actively protests such an admission, the person in charge of the home or facility shall immediately notify the agency designated under s. 55.02 for the county in which the person is living. Representatives of that agency shall visit the person as soon as possible, but no later than 72 hours after notification, and do the following:

1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the person's guardian regarding the reasons for the admission.

2. Attempt to have the person released within 72 hours if the protest is not withdrawn and necessary elements of s. 55.06 (2) or (11) are not present and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.06 (11) if all elements are present and emergency placement in that facility or another facility is necessary or file a petition for protective placement under s. 55.06 (2). The court, with the permission of the facility, may order the person to remain in the facility pending the outcome of the protective placement proceedings.

SECTION 4. 55.06 (1) (intro.) of the statutes is amended to read:

55.06 (1) (intro.) A protective placement under this section is a placement of a ward for the primary purpose of providing care and custody. To be eligible for placement, an individual shall have attained the age of 18, but an individual who is alleged to be developmentally disabled may receive placement upon attaining the age of 14. No protective placement under this section may be ordered unless there is a determination of incompetency in accordance with ch. 880, except in the case of a minor who is alleged to be developmentally disabled, and there is a finding of a need for protective placement in accordance with sub. (2) except as provided in subs. (11) and (12). A procedure for adult protective placement may be initiated 6 months prior to an individual's birthday at which he or she first becomes eligible for placement.

SECTION 5. 55.06 (1) (d) of the statutes is created to read:

55.06 (1) (d) No guardian or temporary guardian may make a permanent protective placement of his or her ward unless ordered by a court under this section but may admit a ward to certain residential facilities under s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11).

SECTION 6. 55.06 (10) (a) and (11) (b) of the statutes are amended to read:

55.06 (10) (a) The department or any agency which is responsible for a protective placement shall review the status of each person placed at least once every 12 months from the date of admission. The court in its order of placement may, however, require that such review be conducted more frequently. The review shall include in writing an evaluation of the physical, mental and social condition of each such person, and shall be made a part of the permanent record of such person. The review shall include recommendations for discharge or placement in services which place less restrictions on personal freedom, where appropriate. The results of the review shall be furnished to the department in such form as the department may require and shall be furnished to the court that ordered the placement and to the person's guardian.

(11) (b) Upon detention, a petition shall be filed under sub. (2) by the person making such emergency placement and a preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, to establish probable cause to believe the grounds for protective placement under sub. (2). The sheriff or other person making placement under par. (a) shall provide the individual with written notice and orally inform him or her of the time and place of the preliminary hearing. If the detainee is not under guardianship, a petition for guardianship shall accompany the placement petition, except in the case of a minor who is alleged to be developmentally disabled. In the event that protective placement is not appropriate, the court may elect to treat a petition for placement as a petition for commitment under s. 51.20 or 51.45 (13).

SECTION 7. 55.06 (11) (ar) of the statutes is created to read:

55.06 (11) (ar) A person who acts in accordance with this subsection is not liable for any actions performed in good faith.

SECTION 8. 55.06 (17) of the statutes is repealed and recreated to read:

55.06 (17) (a) Any records of the court pertaining to protective services or placement proceedings, including evaluations, reviews and recommendations prepared under sub. (8) (c), are not open to public inspection but are available to:

1. The subject of the proceedings and the subject's guardian at all times.
2. The subject's attorney or guardian ad litem, without the subject's consent and without modification of the records, in order to prepare for any court proceedings relating to the subject's protective services or placement or relating to the subject's guardianship.
3. Other persons only with the informed written consent of the subject as provided in s. 51.30 (2) or under an order of the court that maintains the records.

(b) If the subject is an adult who has been adjudged incompetent under ch. 880 or is a minor, consent for release of information from and access to the court records may be given only as provided in s. 51.30 (5).

(c) All treatment and service records pertaining to a person who is protected under this chapter or for whom application has been made for protection under this chapter are confidential and privileged to the subject. Section 51.30 governs access to treatment and service records.

SECTION 9. 55.06 (18) of the statutes is repealed.

SECTION 10. 880.01 (4) of the statutes is amended to read:

880.01 (4) "Incompetent" means a person adjudged by a court of record to be substantially incapable of managing his property or caring for himself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.

SECTION 11. 880.08 (1) of the statutes is amended to read:

880.08 (1) INCOMPETENTS. ~~Notice~~ A petitioner shall have notice served of a petition for appointment or change of a guardian ~~shall be served~~ upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing, ~~or if.~~ If such proposed incompetent is in custody or confinement, such service shall be made a petitioner shall have notice served by registered or certified mail on the proposed incompetent's custodian, who shall ~~forthwith~~ immediately serve ~~the same~~ it on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian served and informed the proposed incompetent and returned the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship and specific allegations of the grounds of incompetency. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court ~~that~~ the specific reasons why the person is unable to attend. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompetent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. The court shall then proceed under s. 880.33.

SECTION 12. 880.15 (1) and (3) of the statutes are amended to read:

880.15 (1) APPOINTMENT. If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, spendthrift or an alleged incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it may, with or without notice, appoint a temporary guardian for a period not to exceed 60 days unless further extended for 60 days by order of the court. The court may extend the period only once. The authority of the temporary guardian ~~may~~ shall be limited to the performance of duties respecting specific property, or to the performance of particular acts, as stated in the order of appointment. All provisions of the statutes concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment. The temporary guardian shall make ~~such~~ the reports as the court directs, and shall account to the court upon termination of authority. The court assigned to exercise jurisdiction under ch. 48 has exclusive jurisdiction over the appointment of a temporary guardian of a minor for medical purposes but shall proceed in accordance with this section. ~~No appeal may be taken from the order of appointment of a temporary guardian.~~

(3) CESSATION OF POWERS. ~~If such~~ the temporary guardianship ~~shall~~ is not be sooner terminated the duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship to the guardian of ~~his~~ the ward, or, if the ward ~~be~~ is a minor, upon his becoming of age, or when it shall be judicially determined that any other disability of the temporary ward which was the cause of the temporary guardianship has terminated; ~~and such.~~ Upon termination of the temporary guardian's duties and powers, a temporary guardian of the person shall file with the court any report that the court

requires. A temporary guardian of the estate shall, upon termination of his duties and powers, account to the court and forthwith deliver to the person or persons entitled thereto, to them all the estate of the ward in his or her hands; and any. Any action which may have has been commenced by such the temporary guardian may be prosecuted to final judgment by his the successor or successors in interest, if any.

SECTION 13. 880.15 (1s) of the statutes is created to read:

880.15 (1s) NOTICE OF PETITION. The person petitioning for appointment of a temporary guardian shall cause notice to be given under s. 880.08 of that petition to the minor, spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of s. 880.08 do not apply to notice given under this subsection. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship under s. 880.34 within 30 days of receipt of the notice.

SECTION 14. 880.33 (2) (a) 1 and (c) 1, (5) and (6) of the statutes are amended to read:

880.33 (2) (a) 1. The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel if, at least 72 hours before the hearing, the guardian ad litem or the proposed alleged incompetent requests or if the interests of justice so require; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward ~~shall have~~ has the right to a trial by a jury if demanded by the ~~person proposed ward,~~ attorney or guardian ad litem. The number of jurors shall be determined under s. 756.096 (3) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

(c) 1. A personal interview with the proposed incompetent that shall include an explanation of the guardianship hearing procedure and information concerning the right to counsel.

(5) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest.

(6) All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 55.06 (17). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

SECTION 15. 880.33 (5m) of the statutes is created to read:

880.33 (5m) No person, except a nonprofit corporation approved by the department of health and social services under s. 880.35, who has guardianship of the person of 5 or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such

person may accept appointment as guardian of more than 10 such wards unrelated to the person.

SECTION 16. 880.35 of the statutes is amended to read:

880.35 Nonprofit corporation as guardian. A private nonprofit corporation organized under ch. 181, 187 or 188 ~~that is actively conducting a program for individuals in need of protective services~~ is qualified to act as guardian of the person or of the property or both, of an individual found to be in need of guardianship under s. 880.33, ~~provided that if the department of health and social services, under rules established pursuant to~~ under ch. 55, finds the corporation a suitable agency to perform such duties.

SECTION 17. 880.38 (1) of the statutes is amended to read:

880.38 (1) A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or the ward's property, or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the property. A guardian of the person of an incompetent or a temporary guardian of the person of an incompetent may not make a permanent protective placement of the ward unless ordered by a court under s. 55.06 but may admit a ward to certain residential facilities under s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11). The guardian of the person has the power to apply for placement under s. 55.06 and for commitment under s. 51.20 or 51.45 (13).

SECTION 18. 880.38 (3) of the statutes is created to read:

880.38 (3) A guardian of the person of an incompetent appointed under s. 880.33 shall make an annual report on the condition of the ward to the court that ordered the guardianship and to the county agency designated under s. 55.02. That county agency shall develop reporting requirements for the guardian of the person. The report shall include, but not be limited to, the location of the ward, the health condition of the ward, any recommendations regarding the ward and a statement of whether or not the ward is living in the least restrictive environment consistent with the needs of the ward. The guardian may fulfill the requirement under this subsection by submitting the report required under s. 56.06 (10).
