



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0026/1

DAK:cjs:ch

2005 ASSEMBLY BILL 785

October 25, 2005 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Aging and Long-Term Care.

1 **AN ACT** *to repeal* 55.01 (3), 55.04 (title) and (1) to (3), 55.05 (2) (c), 55.05 (2) (d),
2 55.05 (5) (a), 55.06 (2) (intro.), 55.06 (9) (b), 55.06 (9) (c), 55.06 (9) (d), 55.06 (9)
3 (e), 55.06 (10) (c), 55.06 (15), 880.07 (1m), 880.33 (2) (d), 880.33 (2) (e), 880.33
4 (4m), 880.33 (4r) and 880.34 (6); *to renumber* 940.285 (1) (a); *to renumber*
5 **and amend** 46.90 (1) (d), 51.01 (3g), 55.01 (4), 55.03, 55.04 (4), 55.05 (4) (title)
6 and (a), 55.05 (4) (b), 55.05 (4) (c), 55.05 (5) (title), 55.05 (5) (b) 1., 55.05 (5) (b)
7 2., 55.05 (5) (c) (intro.), 55.05 (5) (c) 1., 55.05 (5) (c) 2., 55.05 (5) (c) 3., 55.05 (5)
8 (d), 55.06 (1) (intro.), 55.06 (1) (a), 55.06 (1) (b), 55.06 (1) (c), 55.06 (1) (d), 55.06
9 (2) (a), 55.06 (2) (b), 55.06 (2) (c), 55.06 (2) (d), 55.06 (3) (a), 55.06 (3) (b), 55.06
10 (3) (c), 55.06 (4), 55.06 (5), 55.06 (5m), 55.06 (6), 55.06 (7), 55.06 (8) (intro.), 55.06
11 (8) (a), 55.06 (8) (b), 55.06 (8) (c), 55.06 (9) (a), 55.06 (10) (a) 1., 55.06 (10) (a) 2.,
12 55.06 (10) (b), 55.06 (11) (a), 55.06 (11) (am), 55.06 (11) (ar), 55.06 (11) (b), 55.06
13 (11) (c), 55.06 (11) (d), 55.06 (12), 55.06 (14), 55.06 (16), 55.06 (17), 55.06 (18),
14 55.07, 880.01 (5), 880.01 (7m), 880.24 (3) (a), 880.24 (3) (b), 940.285 (1) (b) and

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1 940.295 (1) (hm); **to amend** 20.435 (2) (gk), 46.011 (2), 46.10 (2), 46.21 (2m) (c),
2 46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.27 (6r) (b) 2., 46.275 (4) (b) 1., 46.279
3 (2), 46.279 (3), 46.279 (4) (c), 46.279 (4) (d), 46.279 (4) (e), 46.279 (5), 46.283 (7)
4 (b), 46.284 (7) (b), 46.286 (1) (intro.), 46.286 (3) (a) (intro.), 46.286 (3) (a) 3.,
5 46.2895 (10), 46.90 (1) (c), 49.001 (5m), 49.001 (8), 49.45 (6m) (i) 2., 49.45 (25)
6 (am) 2., 49.45 (30m) (b), 49.45 (30m) (c) 2., 50.03 (5m) (c), 50.06 (2) (c), 51.01 (2g)
7 (b), 51.01 (3s), 51.01 (5) (a), 51.03 (3) (a) 6., 51.10 (4m) (a) (intro.), 51.10 (8), 51.15
8 (1) (a) 4., 51.15 (5), 51.20 (1) (a) 2. c., 51.20 (1) (a) 2. d., 51.20 (1) (a) 2. e., 51.20
9 (1) (am), 51.20 (1m), 51.20 (7) (d) 1. (intro.), 51.20 (7) (d) 1. b., 51.35 (4m) (intro.),
10 51.39, 51.40 (2) (intro.), 51.40 (2) (a) 1., 51.40 (2) (a) 2., 51.42 (1) (b), 51.42 (3)
11 (ar) 4. d., 51.42 (3) (e), 51.421 (1), 51.421 (2), 51.421 (3) (c), 51.437 (4) (c), 51.437
12 (4r) (b), 51.67 (intro.), 51.67 (2), 55.001, 55.01 (2), 55.01 (4g), 55.01 (4t), 55.043
13 (1) (a) (intro.), 55.043 (1) (a) 1. and 3., 55.043 (1) (b) 1., 55.043 (1) (b) 2. a. and
14 b., 55.043 (4) (a), 55.043 (4) (b), 55.045, 55.05 (title), 55.05 (2) (intro.), 55.05 (2)
15 (a), 55.05 (2) (b), 55.05 (3), 165.85 (4) (b) 1d. b., 165.86 (2) (b), 301.01 (2) (intro.),
16 560.9811 (1), 560.9811 (2), 609.65 (1) (intro.), 757.69 (1) (h), 767.24 (7) (b),
17 808.075 (4) (c) 1., 808.075 (4) (c) 2., 808.075 (4) (c) 3., 809.30 (1) (b) 5., 809.30 (3),
18 813.123 (4) (a) (intro.), 813.123 (4) (a) 2., 813.123 (5) (a) (intro.), 813.123 (5) (a)
19 3. b., 813.123 (6) (c), 813.123 (7), 813.123 (11), 880.01 (2), 880.01 (4), 880.08 (1),
20 880.33 (1), 880.33 (2) (a) 1., 880.33 (2) (a) 2., 880.33 (3), 880.33 (6), 880.33 (7),
21 880.331 (1), 880.331 (5) (intro.), 880.38 (1), 880.38 (2), 880.38 (3), 940.285 (1) (e)
22 (intro.), 940.295 (1) (t) (intro.) and 971.14 (6) (b); **to repeal and recreate** 55.02;
23 and **to create** 49.43 (10v), 50.02 (2) (ad), 50.06 (2) (d), 55.01 (1d), 55.01 (1v),
24 55.01 (4) (c), 55.01 (6), (6m), (6p) and (6r), 55.01 (6t), 55.01 (6v), 55.01 (6x), 55.01
25 (6y), 55.055 (1) (c), 55.055 (1) (d), 55.055 (2), 55.075, 55.08, 55.09, 55.10, 55.11,

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1 55.12, 55.13 (2) and (3), 55.135 (title), 55.14, 55.15, 55.16, 55.17, 55.18, 55.19,
2 851.72 (11), 880.01 (8m), 880.07 (2m), 880.33 (2) (f), 880.331 (4) (am) and (ar),
3 880.331 (4) (dm), (dr) and (ds), 880.38 (4) and 977.05 (4) (i) 8. of the statutes;
4 **relating to:** protective placements and protective services, involuntary
5 administration of psychotropic medication, and requiring the exercise of
6 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Recodification of Chapter 55.

Voluntary Admission of an Incompetent Person to an Inpatient Treatment Facility

Under current law, an evaluation that a person is mentally ill, developmentally disabled, alcoholic, or drug dependent and has the potential to benefit from inpatient care, treatment, or therapy is a criterion for voluntary admission to an inpatient treatment facility. An adult who desires admission to an inpatient treatment facility and whose admission is made through the DHFS or through a county department of community programs or developmental disabilities services may be admitted after applying, if the treatment director of the facility (or, if appropriate, the director of a center for the developmentally disabled) and the county department approve. An adult who desires admission to a state inpatient treatment facility may be admitted with the approval of the treatment facility director and the director of the appropriate county department. If the admission is approved in either of these ways, an adult may also be admitted to an inpatient treatment facility if he or she applies in writing or if the facility physician advises the person of certain rights, responsibilities, benefits, and risks of admission. If an admitted person does not sign a voluntary admission application within 7 days after admission, a hearing is held to determine whether the patient must remain as a voluntary patient.

Under current law, an adult for whom a guardian of the person has been appointed after an adjudication of incompetence may be voluntarily admitted to an inpatient treatment facility only if the guardian and the ward consent.

This bill authorizes the voluntary admission to an inpatient treatment facility of an adult who has been adjudicated incompetent if his or her guardian consents to the admission and if the procedures requiring an explanation by a physician of the rights, responsibilities, risks, and benefits of admission and requiring a hearing after 7 days are followed. Further, the bill authorizes voluntary admission of any adult under the

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procedures described above without also requiring admission through DHFS or a county department or approval of the county department or the treatment facility director.

Involuntary Transfer of a Protectively Placed Individual to an Acute Psychiatric Treatment Facility

Under current mental health laws, an individual who meets one of a number of standards may be detained on an emergency basis and transported for detention of up to 72 hours in a detention facility, an approved public treatment facility, a center for the developmentally disabled, a state treatment facility, or an approved private treatment facility.

If a petition is brought before a court, an individual who is found to meet one of several standards may be involuntarily committed for up to 6 months and may be subject to subsequent successive orders of commitment of up to one year each. For the involuntary commitment, a detained individual may automatically be appointed an attorney; receives notice of hearings and a copy of the petition and detention order; receives a written statement of his or her right to an attorney, and, if requested more than 48 hours prior to the final hearing, a jury trial; receives written notice of the standard under which he or she may be committed; and receives written notice of the right to a probable cause hearing within 72 hours after arrival at the detaining facility. An individual who is not detained receives written service of the documents and an oral explanation of his or her rights.

Involuntary commitment may not be made unless the court finds, after a hearing, that there is clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous. Procedures under the hearing must include the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, and the right to remain silent.

By contrast, under the current protective placement laws, an individual who has been adjudicated incompetent and has been protectively placed may be involuntarily transferred for up to 10 days, by his or her guardian or by court order, to a facility that provides acute psychiatric treatment for the purpose of psychiatric diagnostic procedures under s. 55.06 (9) (d) or may be temporarily transferred for up to 15 days to such a facility for emergency acute psychiatric inpatient treatment under s. 55.06 (9) (e). If the individual's guardian is not notified in advance of this transfer, the facility must provide written notice to the guardian immediately upon transfer and to the court, a county department, or a designated agency within 48 hours. If the guardian, ward, ward's attorney, or another interested person files a petition objecting to this emergency transfer, the court must order a hearing within 96 hours after the filing. The court must notify the ward, guardian, and petitioner of the time and place of the hearing, and a guardian ad litem must be appointed to represent the ward; the petitioner, ward, and guardian have the right to attend and to present and cross-examine witnesses. For both the involuntary and the temporary transfers, any hearing held must consider, among other factors, the best interests of the individual.

Under *State ex rel. Watts v. Combined Community Services*, 122 Wis. 2d 65 (1985), the court found that no rational basis existed for the difference between procedural protections that are afforded to persons who are involuntarily committed for mental health treatment under the mental health laws and the lack of any procedural protections (other than those that are self-requested) for involuntary transfers for psychiatric diagnostic procedures or acute psychiatric inpatient treatment under the protective placement laws. The court held that the constitutional guarantee of equal protection requires that the procedural requirements for emergency detention and involuntary commitment under the mental health laws must be provided to a protectively placed individual for involuntary transfer of that individual to a mental health facility for treatment.

This bill amends ch. 55 to comply with the court's ruling. The bill eliminates provisions in ch. 55 concerning transfer or temporary transfer of an individual who is

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protectively placed to a facility providing acute psychiatric treatment and specifies that procedures currently applied to such a transfer are inapplicable. Instead, the bill authorizes applying the mental health laws concerning emergency detention and involuntary commitment to protectively placed persons in appropriate cases. The bill prohibits the involuntary transfer of protectively placed persons to a mental health treatment facility unless standards and procedures under the mental health laws concerning emergency detention or involuntary commitment are applied.

Definition and Terminology Changes

Current law, under s. 55.01 (3), defines “infirmities of aging” as “organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her care or custody”. This bill replaces the definition of “infirmities of aging” with a definition of “degenerative brain disorder”. This definition is considered to be a more accurate reference to types of organic brain disorders, such as Alzheimer’s disease and Parkinson’s disease, which are not necessarily caused by the aging process.

Current law does not define “protective services” or “protective placement”. This bill creates definitions of “protective services” and “protective placement”.

Under current law, certain persons with chronic mental illness may be eligible for protective placement or services under ch. 55. The term “chronic mental illness” is defined in s. 51.01 (3g) as a mental illness which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, which may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support and which may be of lifelong duration. Under current law, “chronic mental illness” includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include infirmities of aging or a primary diagnosis of mental retardation or of alcohol or drug dependence. The term is not defined in ch. 55, although it is used in that chapter.

This bill changes the term “chronic mental illness” in ch. 51 to “serious and persistent mental illness” to reflect updated terminology. It also creates a definition of the term in ch. 55 by cross-referencing the definition in s. 51.01 (3g).

Under current law, s. 55.001, the declaration of policy to ch. 55, refers to persons with “infirmities of aging, chronic mental illness, mental retardation, other developmental disabilities, or like incapacities incurred at any age” who are in need of protective services.

This bill revises some of the terminology in s. 55.001 by doing the following:

1. Deleting the term “infirmities of aging” and replacing it with the newly created term “degenerative brain disorders”.
2. Deleting the outdated term “mental retardation”. Persons who have cognitive disabilities are encompassed in the term “developmental disabilities”.
3. Inserting references to protective placement, in addition to the current references to protective services.
4. Deleting the term “chronic mental illness” and replacing it with “serious and persistent mental illness”.

DHFS and County Responsibilities in Ch. 55 System

Current law (s. 55.02) requires the DHFS to establish a statewide system of protective services, in accordance with rules promulgated by the department. This statutory section refers to the department cooperating with the various types of county departments to develop a coordinated system of services.

Current law (s. 55.04) also requires the DHFS to administer specifically enumerated protective services, as well as evaluate, monitor, and provide protective placements.

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This bill repeals and recreates s. 55.02 and repeals most of s. 55.04. The newly created s. 55.02 revises and combines the 2 statutes, ss. 55.02 and 55.04, to more accurately portray the department's role in cooperating with county departments in operating the protective services and placement system and the department's role in monitoring and supervising the system. This new section also more accurately portrays the county departments' primary role in providing protective services and protective placement in Wisconsin. The bill also repeals the specific listing of types of protective services and creates a new definition of "protective services".

Admissions Without Court Involvement

Current law provides for certain admissions of persons who are under guardianship to certain facilities without court involvement. One type of admission without court involvement that is currently permitted is the admission of a person 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 consent to the admission, the guardian of the person to be admitted must 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.

This bill does the following:

1. Amends current law to permit a guardian to consent to a ward's admission to a nursing home, or other facility for which protective placement is required, for a period not to exceed 60 days. This change permits a ward to be admitted for a short-term nursing home stay without having to be admitted from a hospital setting. However, the person must be in need of recuperative care or be unable to provide for his or her own care or safety so as to create a serious risk of substantial harm to himself or herself or others. The placement may be extended for an additional 60 days if a placement proceeding under ch. 55 has been commenced, or for an additional 30 days for the purpose of allowing the initiation of discharge planning for the person if no placement proceeding under ch. 55 has been commenced. Placement under this amended provision is not permitted for a person with a primary diagnosis of mental illness or developmental disability.

2. Creates a new provision that allows a guardian of a person under a guardianship that was imposed in another state to consent to admissions under current s. 55.05 (5) (b) (which is renumbered to s. 55.055 (1) in the bill) if the ward is currently a resident of Wisconsin, and if a petition for guardianship and protective placement is filed in Wisconsin within 60 days of the person's admission.

3. Creates a new provision that allows a Wisconsin resident guardian of a person who has been found incompetent in, and resides in, another state to consent to admissions under current s. 55.05 (5) (b) (which is renumbered to s. 55.055 (1) in the bill) if the guardian intends to move the ward to Wisconsin within 30 days of the consent to the admission. A petition for guardianship and protective placement must be filed in Wisconsin within 60 days of the person's admission to the Wisconsin facility.

Under current law, s. 50.06 of the statutes creates a procedure for a short-term admission of an incapacitated person to a nursing home from a hospital without having a guardianship or protective placement in place. Admissions are authorized based on the consent of a statutorily specified person, for a time period not to exceed 60 days. The admission may be extended once for up to 30 days for the purpose of allowing discharge planning for the person to take place.

This bill creates a new provision in s. 50.06 that addresses a situation where the incapacitated person admitted to the nursing home protests the admission. In that situation, the person in charge of the facility must immediately notify the designated protective placement agency for the county in which the person is living. Representatives of that agency must visit the person as soon as possible, but not later than 72 hours after notification, and do the following:

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1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the individual who consented to the admission 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) (renumbered, respectively, to s. 55.08 and s. 55.135 in the bill) are not present and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.06 (11) (renumbered to s. 55.135), relating to emergency protective placement, 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 (1) (a) (renumbered to s. 55.075 (1)). 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.

Protective Placement Petition Required When Guardianship Petition Filed for Resident of a Nursing Home

The bill codifies the decision of the Wisconsin Supreme Court in *Agnes T. v. Milwaukee County*, 189 Wis. 2d 520, 525 N.W.2d 268 (1995). In that case, the court stated that a guardian may not consent to the continued residence of a person in a nursing home licensed for 16 or more beds without a protective placement order and that upon appointing a guardian for an incompetent person in a nursing home licensed for 16 or more beds, the court must hold a protective placement hearing. The court specified that, when making a placement determination for such a person, a court may consider whether moving the person would create a serious risk of harm to that person.

This bill codifies the *Agnes T.* decision as follows:

1. Requiring, in newly created s. 880.07 (2m), that whenever a petition for guardianship on the ground of incompetency is filed with respect to a person residing in a facility licensed for 16 or more beds, a petition for protective placement of the person must also be filed.

2. Specifying that the person may continue to reside in the facility until the court issues a decision on the petition for protective placement of the person.

3. Authorizing a court, when protectively placing a person residing in a facility licensed for 16 or more beds, to consider whether moving the person would create a serious risk of harm to that person.

Fees and Costs of Petition Under Ch. 55

Chapter 55 does not currently specify who is responsible for the attorney fees and costs of a person who files a petition for protective services or placement under s. 55.06 (2). However, s. 880.24 (3) specifies that under certain circumstances, the court must award payment of reasonable attorney fees and costs to a person who petitions for appointment of a guardian and protective placement of the ward if a guardian is appointed.

The bill adds to ch. 55 similar provisions requiring the court to award payment of reasonable attorney fees and costs to a person who petitions for protective services or placement. These provisions apply when a petition for protective placement or services is brought independently of or at the same time as a petition for guardianship.

The bill creates a new provision which specifies that the court must award, from the estate of the person sought to be placed, the reasonable attorney fees and costs of a person who petitions for protective placement of the person unless the court finds it would be inequitable to do so. In determining whether it would be inequitable to award payment of costs and fees, the court must consider all of the following:

1. The petitioner's interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship or protective placement.

2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and costs.

3. Whether the petition was contested and, if so, the nature of the contest.

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4. Whether the person sought to be protectively placed had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had provided advance consent to nursing home placement or engaged in other advance planning to avoid protective placement.

5. Any other factors that the court considers to be relevant.

With respect to guardianships under ch. 880, current law provides that if the court finds that a ward had executed a durable power of attorney or a power of attorney for health care or engaged in other advance planning to avoid guardianship, the court may not award payment of the petitioner's attorney fees and costs from the ward's estate. The bill provides, instead, that the court may consider these items as factors in determining whether to award the payment.

Time Limit for Protective Placement Hearing

The bill specifies that a court must hold a hearing on any petition for protective placement within 60 days after it is filed. The bill provides that the court may extend the date for the hearing by up to 45 days if an extension of time is requested by the petitioner, individual sought to be placed or his or her guardian ad litem, or the county department.

Attendance at Hearing of Person Sought to be Protected

Under current s. 55.06 (5), a person sought to be protectively placed is presumed able to attend the hearing on protective placement unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend. Chapter 55 does not require the court to hold the hearing in the presence of the person sought to be placed if that person is unable to attend the hearing, as is required in ch. 880 for hearings on guardianship.

The bill deletes language stating that the person sought to be protectively placed is presumed to be able to attend the hearing. The bill provides that the person sought to be protected shall be present at the hearing unless, after a personal interview, the guardian ad litem certifies in writing to the court specific reasons why the person is unable to attend or certifies in writing that the person is unwilling to participate or is unable to participate in a meaningful way. The bill also provides that, if the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court must hold the hearing in a place where the person may attend, if requested by the person sought to be placed, guardian ad litem, or adversary counsel. This provision is similar to provisions which currently exist in ch. 880, relating to appointment of a guardian for a person alleged to be incompetent. The bill specifies, however, that the court is *not* required to hold the hearing in the presence of the person sought to be placed if the guardian ad litem, after a personal interview with the person, certifies in writing to the court that the person is unwilling to participate or unable to participate in a meaningful way.

The bill also amends s. 880.08 (1) relating to the appointment of a guardian in the same way.

Procedural Rights in Ch. 55 Proceedings

Currently, s. 55.06 (6) requires the appointment of a guardian ad litem for a person sought to be protectively placed and states that s. 880.33 (2), which sets forth certain procedural rights and the right to counsel in a guardianship hearing, applies to all hearings under ch. 55 except hearings regarding certain transfers of placement. This bill deletes that cross-reference and instead inserts the language to which it refers to into appropriate sections of ch. 55. The bill makes minor changes to that language necessary to reflect that the rights apply to ch. 55 proceedings rather than guardianship hearings. The bill also replaces the term "county of legal settlement" with the term "county in which the hearing is held", as recommended by the committee.

The provisions in current s. 880.33 (2) that are inserted into ch. 55 by the bill are the following:

1. The right to counsel.

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2. The right to a jury trial.
3. The right of the person sought to be placed, his or her attorney and guardian ad litem to present and cross-examine witnesses.
4. The right to a copy of any medical, psychological, social, vocational, or educational evaluation of the person sought to be placed.
5. Provisions requiring the county in which the hearing is held to pay guardian ad litem and attorney fees of the person sought to be placed if the person is indigent.
6. The right of the person sought to be protected to request that the hearing be closed.

The bill retains the requirements in current s. 55.06 (6), relating to the appointment of a guardian ad litem for a person sought to be placed.

Right to an Independent Evaluation in Ch. 55 Proceedings

Under current law, s. 880.33 (2) (b) provides that the individual who is the subject of a guardianship petition, or anyone on the individual's behalf, has the right, at the individual's own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved at the hearing on the petition, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

This bill provides the same right to an independent evaluation to an individual who is the subject of a protective placement proceeding, if such an evaluation has not already been made.

Duties of Guardian ad Litem in Ch. 55 Proceedings

Under current law, protective placement hearings are held as provided under s. 55.06. Under s. 55.06 (5), notice of a petition for protective placement must be served on the individual who is the subject of the petition, as well as several other persons, including the guardian, if one has been appointed. Current law also requires a guardian to be provided a copy of the comprehensive evaluation of the individual who is the subject of the protective placement petition. However, current law does not specify that the guardian must be provided notice of the protective placement hearing. Also, current law does not specify the guardian's rights to participation at the hearing on protective placement.

Current law, under s. 880.331, specifies duties of a guardian ad litem in guardianship proceedings.

This bill specifies that the duties of a guardian ad litem in a guardianship proceeding in s. 880.331 also apply to a guardian ad litem in a protective placement proceeding. This bill also creates additional duties of a guardian ad litem in guardianship and protective placement proceedings. The new duties are: to interview the proposed guardian; to make a recommendation to the court regarding the fitness of the proposed guardian; to interview the guardian, if one has already been appointed, of a subject of a petition for protective placement or court-ordered protective services; to inform the court and the petitioner or the petitioner's counsel, if any, if the proposed ward requests representation by counsel; to attend all court proceedings related to the guardianship; and to notify any guardian of an individual who is the subject of a protective placement proceeding about the hearing on the petition, as well as the right to be present at the hearing, the right to present and cross-examine witnesses, and the right to receive a copy of the evaluations.

Role of Power of Attorney for Health Care in Ch. 55 Proceedings

Under current law, in an incompetency proceeding, if the proposed incompetent has executed a power of attorney for health care under ch. 155, the court must make a finding as to whether the power of attorney for health care instrument should remain in effect. If the court so finds, the court shall so order and shall limit the power of the guardian to make those health care decisions for the ward that are to be made by the

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health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.

Currently, when reference is made to a guardian in ch. 55, no reference is made to a power of attorney for health care, where a court, in an incompetency proceeding, has found that the power of attorney should remain in effect for certain health care decisions.

This bill clarifies the role of the power of attorney for health care in ch. 55 proceedings. It provides that, if a court has made a determination under s. 880.33 (8) (b) that a power of attorney for health care under ch. 155 should remain in effect, and the court limits the power of the guardian to make health care decisions, the provisions of ch. 55 that confer upon the guardian the rights to notice and participation, and the authority to act, in a proceeding under ch. 55 shall also apply to the health care agent.

Rights of “Interested Persons” in Ch. 55 Proceedings

Under current law, under s. 55.01 (4), an “interested person” is defined as “any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the person’s welfare”.

An interested person is given the opportunity, in guardianship and protective placement proceedings, to participate in many ways, including: requesting a different location for the hearing if the proposed ward is unable to attend due to physical inaccessibility or lack of transportation; complaining to the court if they suspect fraudulent activity by the guardian; and requesting an independent medical or psychological examination of the proposed ward.

This bill codifies the Wisconsin Court of Appeals’ decision in *Coston v. Joseph P.*, 586 N.W.2d 52 (Ct. App. 1998), by providing that an interested person may participate in the hearing on the guardianship and protective placement petition at the court’s discretion. In that case, 2 interested persons, who were relatives of the subject of the petition, asserted that they had a right to participate in the hearing. The court disagreed, saying that the rights of interested persons to participate in guardianship and protective placement hearings are specific and limited. However, the court also stated that a circuit court is not foreclosed from allowing for the participation of interested persons, if the court decides to exercise its discretion to allow interested persons to participate to the extent it deems appropriate.

Procedures for Protective Services Order

Current law provides that the court may order protective services for an individual for whom a determination of incompetency is made if the individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. However, no procedures are specified in statute for obtaining a court order for protective services.

This bill includes court-ordered protective services under the revised procedural provisions for protective placement.

Procedures for Emergency Protective Services

Under current law, s. 55.05 (4) provides that emergency protective services may be provided for not more than 72 hours when there is reason to believe that if the services are not provided, the person entitled to the services or others will incur a substantial risk of serious physical harm. No procedures are specified in the statute for obtaining a court order for emergency protective services.

This bill establishes procedures for obtaining emergency protective services. Under the bill, if the provider of the emergency protective services has reason to believe that protective services must continue to be provided beyond the 72-hour period, a petition for court-ordered protective services may be filed. If a petition is filed, a preliminary hearing must be held within 72 hours, excluding Saturdays, Sundays, and holidays, to establish probable cause to believe that the grounds for court-ordered protective services are present. If probable cause is found, the court may order protective

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services for up to 60 days, pending a hearing on the petition for court-ordered protective services.

Emergency Protective Placements

This bill makes several changes to the law governing emergency protective placements.

Current law provides that a sheriff, police officer, fire fighter, guardian, or authorized representative of a county board or an agency designated by a county board may make an emergency protective placement of an individual if, *based on their personal observation*, it appears probable that the individual meets the criteria for emergency placement. The bill provides that emergency placement may be made by the persons listed above *based on a reliable report made to them* as well as based on their personal observation.

Current law provides that an individual may be protectively placed on an emergency basis if it appears probable that the individual *will suffer irreparable injury or death or will present a substantial risk of serious physical harm to others* as a result of developmental disabilities, infirmities of aging, chronic mental illness, or other like incapacities. The bill amends this language to provide that an individual described above may be protectively placed on an emergency basis if it appears probable that the individual *is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious physical harm to himself or herself or others* as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities if not immediately placed. This new language is the same as current s. 55.06 (2) (c), which sets forth one of the standards which must be met for protective placement on a non-emergency basis.

Current law provides that a person may be protectively placed on an emergency basis in an appropriate medical or protective placement facility.

The bill requires each county department to designate at least one appropriate medical facility or protective placement facility as an intake facility for the purpose of emergency protective placements.

Voluntary Administration of Medication, Including Psychotropic Medication, to an Incompetent Person

Under current laws relating to guardianship, a petition for guardianship of a person who is alleged to be incompetent may further allege that the person is not competent to refuse psychotropic medication and that the psychotropic medication is, under several criteria, necessary. If the petition contains these allegations, and if, at hearing, the court finds that the person is not competent to refuse psychotropic medication and that the medication is necessary, the court must appoint a guardian to consent to or refuse the medication on behalf of the person and order development of a treatment plan, including psychotropic medication, for the person. If the person substantially fails to comply with the treatment plan and if certain conditions are met, the court may authorize the person's guardian to consent to the forcible administration of psychotropic medication to the person.

This bill defines "psychotropic medication" and authorizes the guardian of a nonprotesting ward with whom the guardian has discussed the receipt of medication, including psychotropic medication, to give an informed consent to the voluntary receipt by the ward of the medication, without the necessity of court procedures for approval.

Involuntary Administration of Psychotropic Medication

This bill provides that a guardian may be authorized to consent to involuntary administration of psychotropic medication to a ward and involuntary administration of psychotropic medication as a protective service if certain requirements are met. The bill also specifies that psychotropic medication may not be involuntarily administered to a person who has been protectively placed except by the procedure created in the bill.

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In the bill, “psychotropic medication” is defined as a prescription drug that is used to treat or manage a psychiatric symptom or challenging behavior. “Involuntary administration of psychotropic medication” is defined to include all of the following: placing psychotropic medication in a person’s food or drink with knowledge that the person protests receipt of the psychotropic medication; forcibly restraining a person to enable administration of psychotropic medication; and requiring a person to take psychotropic medication as a condition to receiving privileges or benefits.

Petition

The bill requires a petition for involuntary administration of psychotropic medication as a protective service to meet all requirements for a protective services petition under ch. 55 and in addition requires the petition to allege all of the following:

1. A physician has prescribed psychotropic medication for the person.
2. The person is not competent to refuse psychotropic medication. “Not competent to refuse psychotropic medication” means that as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment or the individual is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to treatment to his or her medical or psychiatric condition in order to make an informed choice as to whether to accept or refuse psychotropic medication.
3. The person has refused to take psychotropic medication voluntarily or attempting to administer psychotropic medications to the person voluntarily is not feasible or is not in the person’s best interests. If the petition alleges that the person has refused to take psychotropic medication voluntarily, the petition must identify the reasons for the person’s refusal. The petition must also contain evidence showing that a reasonable number of documented attempts to administer psychotropic medication voluntarily using appropriate interventions that could reasonably be expected to increase the person’s willingness to take the medication voluntarily, have been made and have been unsuccessful. If the petition alleges that attempting to administer psychotropic medications to the person voluntarily is not feasible or is not in the best interests of the person, the petition must identify specific reasons supporting that allegation.
4. The person’s condition for which psychotropic medication has been prescribed is likely to be improved by psychotropic medication and the person is likely to respond positively to psychotropic medication.
5. That unless psychotropic medication is administered involuntarily, the person will incur an immediate or imminent substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury, or debilitation may be shown either by evidence that the person has a history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act, or omissions that resulted from the person’s failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13), or by evidence that the subject individual meets one of the dangerousness criteria set forth in the mental health law, in s. 51.20 (1) (a) 2. a. through e.

The bill requires a petition for involuntary administration of psychotropic medication to include a written statement signed by a physician who has personal knowledge of the person that provides general clinical information regarding the appropriate use of psychotropic medication for the person’s condition and specific data

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that indicates the person's current symptoms necessitate the use of the psychotropic medication.

The bill specifies that the corporation counsel shall be provided notice of any petition for involuntary administration of psychotropic medication and may assist in the proceedings on any such petition.

Guardian ad Litem Report

The bill requires the guardian ad litem appointed for a person who is the subject of a petition for involuntary administration of psychotropic medication as a protective service to report to the court his or her conclusion as to whether the person is competent to refuse psychotropic medication, whether the allegations in the petition pertaining to the person's dangerousness are true, whether the person refuses to take the psychotropic medication voluntarily, and whether the involuntary administration of the psychotropic medication is in the best interest of the person.

Appointment of Legal Counsel

The bill requires the court to appoint legal counsel on behalf of a person who is the subject of a petition for involuntary administration of psychotropic medication as a protective service.

Independent Evaluation

The bill provides that if requested by the person who is the subject of the petition, or anyone on his or her behalf, the person has the right to an independent medical or psychological evaluation relevant to the issues of whether the allegations in the petition are true and whether involuntary administration of psychotropic medication is in the best interest of the person. The person has the right to present a report of the independent evaluation or the evaluator's personal testimony as evidence at the hearing. The evaluation shall be performed at the expense of the person who is the subject of the petition unless the person is indigent. If the person is indigent, the evaluation shall be performed at the expense of the county where the petition is filed.

Court Order

The bill provides that the court may authorize a guardian to consent to involuntary administration of psychotropic medication to a ward and may order involuntary administration of psychotropic medication to the person as a protective service, with the guardian's consent, if the court or jury finds by clear and convincing evidence that the requirements for involuntary administration of psychotropic medication established in the bill have been met, psychotropic medication is necessary for treating the specific condition outlined in the physician's statement and all other requirements for ordering protective services under ch. 55 have been met.

The bill specifies that if the court issues an order authorizing a guardian to consent to involuntary administration of psychotropic medications, the order must specify the methods of involuntary administration of psychotropic medication to which the guardian may consent. An order authorizing the forcible restraint of a person must require a registered nurse, a licensed practical nurse, a physician or a physician's assistant to be present at all times that psychotropic medication is administered in this manner. An order must require the person or facility administering psychotropic medication to maintain records noting each instance of involuntary administration of psychotropic medication that identify the methods of administration utilized.

The court must also order development of a treatment plan that includes a plan for involuntary administration of psychotropic medication to the person with consent of the guardian. If the person resides in a hospital or nursing home, the hospital or nursing home must develop the plan; otherwise the county department or an agency designated by it must develop the plan. The court must review the plan and approve or disapprove the plan. The court must order the county department or an agency designated by it to

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ensure that psychotropic medication is administered in accordance with the treatment plan.

Enforcement

The bill specifies that if a person who is subject to an order for involuntary administration of psychotropic medication refuses to take the medication and it is necessary for the person to be transported to an appropriate facility so that the person may be forcibly restrained for administration, the corporation counsel may file a statement of noncompliance with the court. The statement must be signed by the guardian and the director (or designee) of the county department or the agency designated by it to develop and administer the treatment plan. Upon receipt of the statement, the court may issue an order authorizing the sheriff or other law enforcement agency to take the person into custody and transport the person to an appropriate facility for administration of psychotropic medication using forcible restraint, with consent of the guardian.

Annual Review of Order Authorizing Involuntary Administration of Psychotropic Medication

The bill specifies an order authorizing a guardian to consent to involuntary administration of psychotropic medication as a protective service must be reviewed by the court annually under generally the same procedure that protective placements are reviewed (“Watts” reviews).

County Department Review and Report

The bill requires the county department of the county of residence of any individual who is subject to an order authorizing involuntary administration of psychotropic medication as a protective service to annually review the status of the individual. If, in an annual review, the individual or his or her guardian or guardian ad litem request termination of the order and the court provides a full due process hearing or a full due process hearing is provided pursuant to a petition for termination of the order, the county is not required to review the status of the individual until one year after the court issues a final order after the full due process hearing.

If the individual is, or subsequently becomes, subject to an order for protective placement, the annual review shall be conducted simultaneously with the annual review of the individual’s protective placement.

The county of residence of an individual who is subject to an order authorizing involuntary administration of psychotropic medication and whose placement is in a different county may enter into an agreement under which the county of placement performs all or a part of the county duties specified in the bill.

The county review must include a written evaluation of the physical, mental, and social condition of the individual that are relevant to the continued need for the order for involuntary administration of psychotropic medication. The review must be made part of the individual’s permanent record. The county department must inform the individual’s guardian of the review and invite the individual and his or her guardian to submit comments concerning the individual’s need for protective placement or protective services. In performing the review, the county department or contractual agency staff member performing the review must visit the individual and must contact the individual’s guardian. The review may not be conducted by a person who is an employee of a facility in which the individual resides or from which the individual receives services.

By the first day of the 11th month after the initial order is made, and annually thereafter, the county must do all of the following:

1. File a report of the review with the court that issued the order.
2. File with the court a petition for annual review of the order.
3. Provide the report to the individual and the individual’s guardian.

The report must contain information on all of the following:

1. Whether the individual continues to meet the standards for protective services.

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2. Whether the individual is not competent to refuse psychotropic medication as set forth in s. 55.14 (1) (b).

3. Whether the individual continues to refuse to take psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not in the best interests of the individual as set forth in s. 55.14 (3) (c).

4. Whether the individual's condition for which psychotropic medication has been prescribed has been improved by psychotropic medication and the person has responded positively to psychotropic medication.

5. Whether the individual continues to meet the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e.

6. A summary of the comments of the individual and the individual's guardian and the county's response to those comments.

7. The comments, if any, of any staff member at any facility at which the individual is placed or receives services or at which psychotropic medication is administered to the individual which are relevant to the continued need for the order.

Responsibilities of the Guardian Ad Litem

The court is required to appoint a guardian ad litem after it receives the report from the county described above. The guardian ad litem is required to do all of the following:

1. Review the report filed by the county, the annual report of the guardian, and any other reports on the individual's condition that are relevant to the continued need for involuntary administration of psychotropic medication.

2. Meet with the individual and contact the individual's guardian and orally explain to the individual and guardian all of the following:

a. The procedure for review of the order for involuntary administration of psychotropic medication.

b. The right to appointment of legal counsel.

c. The right to request performance of an independent evaluation.

d. The contents of the report submitted to the court by the county.

e. That a termination or modification of the order may be ordered by the court.

f. The right to a hearing and an explanation that the individual or the individual's guardian may request a full due process hearing.

The guardian ad litem must provide all of the information described above to the individual and the individual's guardian in writing.

3. Review the individual's condition and rights with the individual's guardian.

4. Ascertain whether the individual wishes to exercise any of his or her rights (the right to appointment of legal counsel, to request an independent evaluation, and to a full due process hearing).

5. File a written report with the court within 30 days after appointment that includes a discussion of whether the individual appears to continue to meet the standards for the order. The report must also state whether any of the following applies:

a. The guardian ad litem, the individual, or the individual's guardian request an independent evaluation.

b. The individual or the individual's guardian requests termination of the order.

c. The individual or the individual's guardian requests, or the guardian ad litem recommends, that legal counsel be appointed for the individual.

d. The individual or his or her guardian or guardian ad litem requests a full due process hearing.

6. Certify to the court that he or she has complied with the requirements described under items 1., 2., 3., and 4., above.

Court Review of Reports, Hearing, and Order

The bill requires the court that issues an order for involuntary administration of psychotropic medication to review, not more than 12 months after the initial order and annually thereafter, the reports of the county and the guardian ad litem, described above,

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and the annual report filed by the guardian under s. 880.38 (3), stats. In its review, the court must determine whether any of the following is necessary:

1. Performance of an independent evaluation of the physical, mental, and social condition of the individual that are relevant to the issue of the continued need for the order. If the court determines that an independent evaluation is necessary, the evaluation shall be performed at the expense of the individual unless the individual is indigent. If the individual is indigent, the evaluation is performed at the expense of the responsible county department. The court must order the performance of an independent evaluation if any of the following applies:

a. The report submitted by the county is not timely filed or the court determines that the report fails to meet the statutory requirements.

b. Following review of the guardian ad litem's report, the court determines that independent evaluation is necessary.

c. The individual or the individual's guardian or guardian ad litem requests an independent evaluation.

2. Obtaining any other information with respect to the individual.

3. Appointment of legal counsel. If the court appoints legal counsel and it appears that the individual is indigent, the court shall refer the individual to the authority for indigency determinations under s. 977.07 (1). The court must order legal counsel for an individual if any of the following applies:

a. Following review of the guardian ad litem's report, the court determines that legal counsel for the individual is necessary.

b. The individual or the individual's guardian or guardian ad litem requests appointment of legal counsel.

4. Holding of a full due process hearing.

Upon completion of its review, the court must order either a summary hearing or a full due process hearing. A summary hearing may be held in court or may be held by other means such as by telephone or by a videoconference. The court must hold a full due process hearing if any of the following applies:

a. The individual or the individual's guardian or guardian ad litem requests a full due process hearing.

b. The report of the guardian ad litem indicates that the individual no longer meets standards for the order.

c. The report of the guardian ad litem indicates that the individual objects to the order.

Following the summary hearing or the full due process hearing, the court must do one of the following:

1. Order the continuation of the order. The court shall make this order if it finds that the individual continues to meet the standards for involuntary administration of psychotropic medication. The court must include the information relied upon as a basis for the order and make findings based on the factors set forth in s. 55.14 (3) in support of the need for continuation of the order.

2. Terminate the order. The court shall make this order if it determines that the individual no longer meets the standards for involuntary administration of psychotropic medication. If the court terminates an order, it must review the needs of the individual with respect to protective services and order protective services if it determines the individual meets the standards for protective services that are not currently being provided.

The bill requires the court to provide a copy of its order to the individual, the individual's guardian, guardian ad litem and legal counsel, the residential facility in which the individual is protectively placed, if any, and the county department.

Other Provisions

The bill repeals the following statutory provisions in ch. 880, relating to a guardian's authority to consent to administration, including forcible administration, of

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psychotropic medication to a ward: (1) s. 880.01 (7m), which defines “not competent to refuse psychotropic medication” for purposes of ch. 880; (2) s. 880.07 (1m), which sets forth required contents of a petition alleging that a person for whom guardianship is sought is not competent to refuse psychotropic medication; and (3) s. 880.33 (4m) and (4r), which set forth procedures under which the guardian may consent to or refuse psychotropic medication on behalf of the ward, including consent to forcible administration of psychotropic medication.

The bill specifies that any orders issued under those provisions remain in effect until modified or terminated by the court. The bill also specifies that orders authorizing involuntary administration of psychotropic medication originally issued under s. 880.33 (4r), which is repealed by the bill, are subject to annual review as described above.

These provisions are replaced by the procedures created by the bill.

The bill specifies that involuntary administration of psychotropic medication may be ordered as an emergency protective service.

The bill requires counties to provide to the department a copy of any order for involuntary administration of psychotropic medications to any protectively placed person in the county.

The bill requires the DHFS to annually submit to the legislature a report regarding orders for involuntary administration of psychotropic medication.

Involuntary Administration of Medication and Involuntary Medical Treatment Other Than Psychotropic Medication

The bill authorizes a guardian to consent, without further court involvement, to involuntary administration of medication, other than psychotropic medication, and involuntary medical treatment that is in the ward’s best interest. In determining whether medication or medical treatment is in the ward’s best interest, the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment. A guardian may not consent to involuntary administration of psychotropic medication unless the guardian has been authorized to do so under s. 55.14.

Transfers of Protectively Placed Persons

Under current law, a person who is protectively placed in a facility may be transferred between placement units or from a placement unit to a medical facility (other than a locked unit or a facility providing acute psychiatric treatment) by a guardian or placement facility without approval by a court. When a transfer is made by a placement facility, 24 hours’ prior written notice of the transfer shall be provided to the guardian, when feasible. If it is not feasible to notify the guardian in advance, written notice must be provided immediately upon transfer, and notice must also be provided to the court and the board under s. 55.02, or the board’s designated agency, within a reasonable period of time not to exceed 48 hours from the time of transfer.

Currently, if a guardian, ward or attorney, or other interested person objects to the transfer by petition, the court must order a hearing within 96 hours after filing of the petition, to determine whether the transfer is consistent with the requirements in s. 55.06 (9) (a) and is necessary for the best interests of the ward.

This bill creates definitions of “protective placement facility” and “protective placement unit”. A “protective placement facility” is defined as a facility to which a court may order a person to be protectively placed under s. 55.12 for the primary purpose of residential care and custody. A “protective placement unit” is defined as a ward, wing, or other designated part of a placement facility.

This bill provides that transfers between placement units, between placement facilities, or from a placement facility to a medical facility (provided that the medical facility is not a psychiatric facility), may be made by a county department that placed the individual or the DHFS, in addition to a guardian or placement facility. However, if such a transfer is made, 10 days’ prior written notice must be given by the transferring entity to the guardian, the county department, the department, and the placement facility.

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Further, this bill requires that the county department, the department, or a placement facility making such a transfer must obtain the prior written consent of the guardian. If an emergency precludes providing the required prior written notice, or precludes obtaining the guardian's prior written consent, written notice must be provided immediately upon transfer.

Also, the bill requires an entity who seeks a transfer of a protective placement to obtain the prior written consent of the county department if the transfer is to a facility that is more costly to the county. This requirement does not apply in the case of an emergency transfer.

Under the bill, if an individual under protective placement, the individual's guardian or attorney, or other interested person files a petition specifying objections to a transfer, the court must order a hearing within 10 days after filing the petition.

For transfers, the purpose of the hearing is to determine whether the proposed placement meets the standards of s. 55.12; is in the least restrictive environment consistent with the person's needs and with the factors in s. 55.12 (3), (4), and (5) or, if the transfer is to an intermediate facility or nursing facility, is in the most integrated setting; and is in the best interests of the ward.

The bill also sets forth the options for a court order on a transfer petition.

Modification and Termination of Protective Placements

Current law, under s. 55.06 (10) (b), sets forth limited procedures for modification and termination of a protective placement. That statute allows the department, an agency, a guardian or ward, or any other interested person to petition the court for modification or termination of a protective placement at any time. The petition must be heard if a hearing has not been held within the previous 6 months but a hearing may be held at any time in the discretion of the court. The petition must be heard within 21 days of its receipt by the court.

This bill provides more detailed procedures for modification or termination of a protective placement or an order for protective services.

The bill requires the following:

Modification of Protective Placement

1. A petition for modification of an order for protective placement may be filed by an individual subject to a protective placement; the individual's guardian or guardian ad litem; the DHFS; the county department that placed the individual; a contractual agency; or any interested person.

2. The petition must be served on the individual; the individual's guardian; the individual's legal counsel and guardian ad litem, if any; and the county department.

3. The petition must contain specific allegations, depending on whether the individual is under a protective placement order or court-ordered protective services.

4. A hearing on the petition must be held within 21 days after the filing of the petition, if a hearing on a protective placement petition or transfer has not been held within the previous 6 months.

5. The hearing must comply with the requirements of s. 55.10 (4), which sets forth rights in a protective placement proceeding.

6. The order must contain specific findings regarding whether the person currently meets the standard for protective placement or court-ordered protective services.

7. If the person continues to meet the standard for protective placement or court-ordered protective services, the court must either continue the order or modify the order so that the placement or services are consistent with the person's needs if the person's needs have changed.

8. Orders for continuation or modification of protective services must be consistent with the factors in s. 55.12 (3), (4), and (5).

9. If the person does not meet the standard for protective placement or protective services, the order must require termination of the protective placement or court-ordered protective services.

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10. Notice of the order must be provided to the individual; the individual's guardian, guardian ad litem, and legal counsel, if any; and the residential facility, if the person receives services in such a facility.

11. The transfer provisions may be used if the modification sought is a transfer of an individual between placement units, between placement facilities, or from a placement unit to a medical facility, and if the petitioner is an entity authorized to initiate such a transfer under s. 55.15.

Termination of Protective Placement or Court-Ordered Protective Services

The provisions described above pertaining to who may petition, the contents of the petition, service of the petition, and requirement for conducting the hearing for modification of protective placement or court-ordered protective services apply to petitions for termination of placement or services.

The court may make one of the following orders after a hearing on a petition for termination of protective placement or services:

1. If the individual continues to meet the standards under s. 55.08 (1) and the placement is in the least restrictive environment consistent with the person's needs and with the factors under s. 55.12 (3), (4), and (5), order continuation of the person's protective placement in the same facility.

2. If the individual continues to meet the standards under s. 55.08 (1) but the placement is not in an environment consistent with the person's needs and with the factors under s. 55.12 (3), (4), and (5), the court shall transfer the person to a facility that is in the least restrictive environment consistent with the person's needs and with the factors in current s. 55.12 (3), (4), and (5). In addition to this option, the court may also order protective services.

3. If the individual no longer meets the standard in current s. 55.06 (2), the court shall terminate the protective placement. If the placement is terminated, the court must either order protective services or ensure the development of a proper living arrangement for the person if the individual is being transferred or discharged from his or her current residential facility.

If the person who is the subject of the petition is under an order for protective services, the court may order continuation of the protective services order if the person continues to meet the standard under s. 55.08 (2); order that the protective services be provided in a manner more consistent with the person's needs; or terminate the order for protective services if the person no longer meets the standard under s. 55.08 (2).

Annual Reviews of Protective Placements

This bill establishes the requirements and procedures for annual reviews of protective placements as required by *State ex rel. Watts v. Combined Community Services*, 122 Wis. 2d 65, 365 N.W.2d 104 (1985) and *County of Dunn v. Goldie H.*, 245 Wis. 2d 538, 629 N.W.2d 189 (2001).

County Department Review and Report

The bill requires the county department of the county of residence of any individual who is protectively placed to annually review the status of the individual. If, in an annual review, the individual or his or her guardian or guardian ad litem request modification or termination of the placement and the court provides a full due process hearing, or a full due process hearing is provided pursuant to a petition for modification or termination of the protective placement, the county is not required to review the status of the individual until one year after the court issues a final order after the full due process hearing.

The county of residence of an individual whose placement is in a different county may enter into an agreement under which the county of placement performs all or a part of the county duties specified in the bill.

The county review must include a written evaluation of the physical, mental, and social condition of the individual and the service needs of the individual. The review must

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be made part of the individual's permanent record. The county department must inform the individual's guardian of the review and invite the individual and his or her guardian to submit comments concerning the individual's need for protective placement or protective services. In performing the review, the county department or contractual agency staff member performing the review must visit the individual and must contact the individual's guardian. The review may not be conducted by a person who is an employee of the facility in which the individual resides.

By the first day of the 11th month after the initial order is made for protective placement for an individual, and annually thereafter, the county must do all of the following:

1. File a report of the review with the court that ordered the protective placement.
2. File with the court a petition for annual review of the protective placement.
3. Provide the report to the individual and the individual's guardian.

The report must contain information on all of the following:

1. The functional abilities and disabilities of the individual at the time the review is made including the needs of the individual for health, social, or rehabilitation services, and the level of supervision needed.
2. The ability of community services to provide adequate support for the individual's needs.
3. The ability of the individual to live in a less restrictive setting.
4. Whether sufficient services are available to support the individual and meet the individual's needs in the community and if so, an estimate of the cost of such services, including the use of county funds.
5. Whether the protective placement order should be terminated or the individual should be placed in another residential 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 department with respect to termination of the protective placement or placement of the individual in another residential facility.
6. A summary of the comments of the individual and the individual's guardian and the county's response to those comments.
7. The comments, if any, of any staff member at the facility in which the individual is placed which are relevant to the review of the individual's placement.

Responsibilities of the Guardian Ad Litem

The court is required to appoint a guardian ad litem after it receives the report from the county described above. The guardian ad litem is required to do all of the following:

1. Review the report filed by the county, the annual report of the guardian, and any other relevant reports on the individual's condition and placement.
2. Meet with the individual and contact the individual's guardian and orally explain to the individual and guardian all of the following:
 - a. The procedure for review of protective placement.
 - b. The right to appointment of legal counsel.
 - c. The right to request performance of an independent evaluation.
 - d. The contents of the report submitted to the court by the county.
 - e. That a change in or termination of protective placement may be ordered by the court.
 - f. The right to a hearing and an explanation that the individual or the individual's guardian may request a full due process hearing.

The guardian ad litem must provide all of the information described above to the individual and the individual's guardian in writing.

3. Review the individual's condition, placement, and rights with the individual's guardian.

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4. Ascertain whether the individual wishes to exercise any of his or her rights (the right to appointment of legal counsel, to request an independent evaluation, and to a full due process hearing).

5. File a written report with the court within 30 days after appointment that includes a discussion of whether the individual appears to continue to meet the standards for protective placement and whether the protective placement is in the least restrictive environment that is consistent with the individual's needs. The report must also state whether any of the following applies:

a. The guardian ad litem, the individual, or the individual's guardian request an independent evaluation.

b. The individual or the individual's guardian requests modification or termination of the protective placement.

c. The individual or the individual's guardian requests, or the guardian ad litem recommends, that legal counsel be appointed for the individual.

d. The individual or his or her guardian or guardian ad litem requests a full due process hearing.

6. Certify to the court that he or she has complied with the requirements described under items 1., 2., 3., and 4., above.

Court Review of Reports, Hearing, and Order

The bill requires the court that orders protective placement for an individual to review, not more than 12 months after the initial order for protective placement and annually thereafter, the reports of the county and the guardian ad litem, described above, and the annual report filed by the guardian under s. 880.38 (3). In its review, the court must determine whether any of the following is necessary:

1. Performance of an independent evaluation of the physical, mental, and social condition of the individual, and the individual's service needs. If the court determines that an independent evaluation is necessary, the evaluation shall be performed at the expense of the individual unless the individual is indigent. If the individual is indigent, the evaluation is performed at the expense of the responsible county department. The court must order the performance of an independent evaluation if any of the following applies:

a. The report submitted by the county is not timely filed or the court determines that the report fails to meet the statutory requirements.

b. Following review of the guardian ad litem's report, the court determines that independent evaluation is necessary.

c. The individual or the individual's guardian or guardian ad litem requests an independent evaluation.

2. Obtaining any other information with respect to the individual.

3. Appointment of legal counsel. If the court appoints legal counsel and it appears that the individual is indigent, the court shall refer the individual to the authority for indigency determinations under s. 977.07 (1). The court must order legal counsel for an individual if any of the following applies:

a. Following review of the guardian ad litem's report, the court determines that legal counsel for the individual is necessary.

b. The individual or the individual's guardian or guardian ad litem requests appointment of legal counsel.

4. Holding of a full due process hearing.

Upon completion of its review, the court must order either a summary hearing or a full due process hearing. A summary hearing may be held in court or may be held by other means such as by telephone or by a videoconference. The court must hold a full due process hearing if any of the following applies:

a. The individual or the individual's guardian or guardian ad litem requests a full due process hearing.

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b. The report of the guardian ad litem indicates that the individual no longer meets standards for protective placement.

c. The report of the guardian ad litem indicates that the current placement is not in the least restrictive environment consistent with the individual's needs.

d. The report of the guardian ad litem indicates that the individual objects to the current placement.

Following the summary hearing or the full due process hearing, the court must do one of the following:

1. Order the continuation of the individual's protective placement in the facility in which he or she resides at the time of the hearing. The court shall make this order if it finds that the individual continues to meet the standards for protective placement, and the individual's protective placement is in the least restrictive environment that is consistent with his or her needs and with factors under current s. 55.06 (9) (a). The court must include the information relied upon as a basis for the order and make findings based on the factors set forth in s. 55.06 (2) in support of the need for continuation of protective placement.

2. Order transfer of protective placement to a less restrictive residential facility or order the county department of residency to develop or recommend a less restrictive protective placement. If the court makes such an order, it shall order the county department of residency to arrange for the individual's transfer to the new protective placement within 60 days after the court's order unless the court extends the period to permit development of a protective placement. The court shall make this order if it finds that the individual continues to meet the standards for protective placement and the protective placement of the individual is not in the least restrictive environment that is consistent with the individual's needs and with the factors under current s. 55.06 (9) (a). The court may order protective services along with transfer of placement.

3. Terminate the protective placement. The court shall make this order if it determines that the individual no longer meets the standards for protective placement. If the court terminates a protective placement, it must review the needs of the individual with respect to protective services and order protective services if it determines the individual meets the standards for protective services. If the court determines that the individual does not meet the standards for protective services, and the individual is being transferred or discharged from his or her current residential facility, the county department must assist the residential facility with discharge planning for the individual, including planning for a proper residential living arrangement and the necessary support services for the individual.

The bill provides that any individual whose protective placement is terminated pursuant to an annual review may reside in his or her current residential facility for up to 60 days after the termination in order to arrange for alternative living. If the residential facility has fewer than 16 beds, the individual may remain in the residential facility as long as the requirements of current s. 55.05 (5) are met. The bill specifies that admission of the individual, if an adult, to another residential facility, must be under s. 55.05 (5).

The bill requires the court to provide a copy of its order to the individual, the individual's guardian, guardian ad litem and legal counsel, the residential facility in which the individual is protectively placed, and the county department.

Establishment of County Policy

This bill requires each county protective services agency to ensure that no later than 180 days after the bill's effective date, the county establishes a written policy that specifies procedures to be followed in the county which are designed to ensure that reviews of all protectively placed persons residing in the county are conducted annually. The county protective services agency must maintain a copy of the written policy and must make the policy available for public inspection.

ASSEMBLY BILL 785*Statement Required*

The bill also requires the register in probate to file with the chief judge of the judicial administrative district a statement indicating whether the county has filed a petition and a report for each annual review required to be undertaken for protectively placed persons in the county that year. The statement must include an explanation of the reasons that any required report or petition has not been filed.

Appointment of Legal Counsel in Protective Placement Proceedings

Under current law, s. 55.06 (6), relating to procedures in protective placement proceedings, provides that s. 880.33 (2) applies to all hearings under ch. 55 except for transfers of protective placements. Section 880.33 (2) (a) 1. provides that the proposed ward has the right to counsel in incompetency proceedings. Section 880.33 (2) (a) 2. further provides that if the person requests, but is unable to obtain legal counsel, the court shall appoint legal counsel. The statutes also provide that if the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06, the court shall order the counsel appointed under s. 977.08 to represent the person.

Although ch. 55 does not explicitly provide for counsel appointed under s. 977.08 in case of an indigent subject, the language in s. 880.33 (2) (a) 2. implies that counsel should be appointed. Further, s. 55.06 (11), relating to emergency protective placements, clearly provides for counsel appointed under s. 977.08 in the case of an indigent subject. Finally, it is the practice in this state to appoint counsel under s. 977.08 in the case of an indigent subject of a ch. 55 petition.

This bill amends the public defender statute that sets forth to whom the state public defender must provide legal services by clearly setting forth the requirement that the state public defender provide legal services in cases involving persons who are subject to petitions for protective placement under ch. 55. This codifies current practice.

The remainder of this PREFATORY NOTE consists of a table of contents for reorganized ch. 55:

55.001	Declaration of policy.
55.01	Definitions.
55.02	Protective services and protective placement: duties.
55.03	Status of guardian.
55.043	County protective services agency.
55.045	Funding.
55.05	Voluntary protective services.
55.055	Admissions initially made without court involvement.
55.06	Protective services and protective placement; eligibility.
55.075	Protective services or protective placement; petition.
55.08	Protective services or protective placement: standards.
55.09	Notice of petition and hearing for protective services or protective placement.
55.10	Hearing on petition for protective services or protective placement.
55.11	Comprehensive evaluation; recommendations; statements.
55.12	Order for protective services or protective placement.
55.13	Emergency protective services.
55.135	Emergency and temporary protective placement.
55.14	Involuntary administration of psychotropic medication.
55.15	Transfer of an individual under a protective placement order.
55.16	Modification of an order for protective placement or protective services.

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55.17	Termination of an order for protective placement or protective services.
55.175	Discharge from protective placement.
55.18	Annual review of protective placement.
55.19	Annual review of order authorizing involuntary administration of psychotropic medication.
55.20	Appeals.
55.21	Centers for the developmentally disabled.
55.22	Records.
55.23	Patients' rights.

1 **SECTION 1.** 20.435 (2) (gk) of the statutes is amended to read:

2 20.435 (2) (gk) *Institutional operations and charges.* The amounts in the
3 schedule for care, other than under s. 51.06 (1r), provided by the centers for the
4 developmentally disabled, to reimburse the cost of providing the services and to
5 remit any credit balances to county departments that occur on and after
6 July 1, 1978, in accordance with s. 51.437 (4rm) (c); for care, other than under s.
7 46.043, provided by the mental health institutes, to reimburse the cost of providing
8 the services and to remit any credit balances to county departments that occur on and
9 after January 1, 1979, in accordance with s. 51.42 (3) (as) 2.; for maintenance of
10 state-owned housing at centers for the developmentally disabled and mental health
11 institutes; for repair or replacement of property damaged at the mental health
12 institutes or at centers for the developmentally disabled; and for reimbursing the
13 total cost of using, producing, and providing services, products, and care. All moneys
14 received as payments from medical assistance on and after August 1, 1978; as
15 payments from all other sources including other payments under s. 46.10 and
16 payments under s. 51.437 (4rm) (c) received on and after July 1, 1978; as medical
17 assistance payments, other payments under s. 46.10, and payments under s. 51.42
18 (3) (as) 2. received on and after January 1, 1979; as payments for the rental of
19 state-owned housing and other institutional facilities at centers for the
20 developmentally disabled and mental health institutes; for the sale of electricity,

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1 steam, or chilled water; as payments in restitution of property damaged at the
2 mental health institutes or at centers for the developmentally disabled; for the sale
3 of surplus property, including vehicles, at the mental health institutes or at centers
4 for the developmentally disabled; and for other services, products, and care shall be
5 credited to this appropriation, except that any payment under s. 46.10 received for
6 the care or treatment of patients admitted under s. 51.10, 51.15, or 51.20 for which
7 the state is liable under s. 51.05 (3), ~~of patients admitted under s. 55.06 (9) (d) or (e)~~
8 ~~for which the state is liable under s. 55.05 (1)~~, of forensic patients committed under
9 ch. 971 or 975, admitted under ch. 975, or transferred under s. 51.35 (3), or of patients
10 transferred from a state prison under s. 51.37 (5), to the Mendota Mental Health
11 Institute or the Winnebago Mental Health Institute shall be treated as general
12 purpose revenue — earned, as defined under s. 20.001 (4); and except that moneys
13 received under s. 51.06 (6) may be expended only as provided in s. 13.101 (17).

NOTE: Deletes cross-references to s. 55.06 (9) (d) and (e), which are repealed by the bill.

14 **SECTION 2.** 46.011 (2) of the statutes is amended to read:

15 46.011 (2) “Prisoner” means any person who is either arrested, incarcerated,
16 imprisoned or otherwise detained in excess of 12 hours by any law enforcement
17 agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11)
18 (b) or ~~55.06 (11) (a)~~ 55.135 (1) or ch. 980. “Prisoner” does not include any person who
19 is serving a sentence of detention under s. 973.03 (4) unless the person is in the
20 county jail under s. 973.03 (4) (c).

NOTE: Changes a cross-reference to emergency protective placement, the provisions of which are renumbered under this bill.

21 **SECTION 3.** 46.10 (2) of the statutes is amended to read:

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1 46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,
2 including but not limited to a person admitted, committed, protected, or placed under
3 s. 975.01, 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., s. 55.05 (5),
4 2003 stats., and 55.06, 2003 stats., and ss. 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37
5 (5), 51.45 (10), (11), (12) and (13), 55.05, ~~55.06~~ 55.055, 55.12, 55.13, 55.135, 971.14
6 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and
7 supplies provided by any institution in this state including University of Wisconsin
8 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
9 care, maintenance, services and supplies, any person receiving care and services
10 from a county department established under s. 51.42 or 51.437 or from a facility
11 established under s. 49.73, and any person receiving treatment and services from a
12 public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4)
13 (e) or 980.08 (5) and the person's property and estate, including the homestead, and
14 the spouse of the person, and the spouse's property and estate, including the
15 homestead, and, in the case of a minor child, the parents of the person, and their
16 property and estates, including their homestead, and, in the case of a foreign child
17 described in s. 48.839 (1) who became dependent on public funds for his or her
18 primary support before an order granting his or her adoption, the resident of this
19 state appointed guardian of the child by a foreign court who brought the child into
20 this state for the purpose of adoption, and his or her property and estate, including
21 his or her homestead, shall be liable for the cost of the care, maintenance, services
22 and supplies in accordance with the fee schedule established by the department
23 under s. 46.03 (18). If a spouse, widow or minor, or an incapacitated person may be
24 lawfully dependent upon the property for their support, the court shall release all or
25 such part of the property and estate from the charges that may be necessary to

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1 provide for those persons. The department shall make every reasonable effort to
2 notify the liable persons as soon as possible after the beginning of the maintenance,
3 but the notice or the receipt thereof is not a condition of liability.

NOTE: Changes cross-references to protective placement, which is renumbered in
this bill.

4 **SECTION 4.** 46.21 (2m) (c) of the statutes is amended to read:

5 46.21 **(2m)** (c) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78
6 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (e)~~ 55.22 (3), 146.82, 252.11
7 (7) and 253.07 (3) (c), any subunit of the county department of human services acting
8 under this subsection may exchange confidential information about a client, without
9 the informed consent of the client, with any other subunit of the same county
10 department of human services, with a resource center, care management
11 organization or family care district, or with any person providing services to the
12 client under a purchase of services contract with the county department of human
13 services or with a resource center, care management organization or family care
14 district, if necessary to enable an employee or service provider to perform his or her
15 duties, or to enable the county department of human services to coordinate the
16 delivery of services to the client.

17 **SECTION 5.** 46.215 (1m) of the statutes is amended to read:

18 46.215 **(1m)** EXCHANGE OF INFORMATION. Notwithstanding ss. 46.2895 (9), 48.78
19 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (e)~~ 55.22 (3), 146.82, 252.11
20 (7), 253.07 (3) (c) and 938.78 (2) (a), any subunit of the county department of social
21 services acting under this section may exchange confidential information about a
22 client, without the informed consent of the client, with any other subunit of the same
23 county department of social services, with a resource center, care management

ASSEMBLY BILL 785**SECTION 5**

1 organization or family care district, or with any person providing services to the
2 client under a purchase of services contract with the county department of social
3 services or with a resource center, care management organization or family care
4 district, if necessary to enable an employee or service provider to perform his or her
5 duties, or to enable the county department of social services to coordinate the
6 delivery of services to the client.

7 **SECTION 6.** 46.22 (1) (dm) of the statutes is amended to read:

8 46.22 (1) (dm) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78
9 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (e)~~ 55.22 (3), 146.82, 252.11
10 (7), 253.07 (3) (c) and 938.78 (2) (a), any subunit of the county department of social
11 services acting under this subsection may exchange confidential information about
12 a client, without the informed consent of the client, with any other subunit of the
13 same county department of social services, with a resource center, care management
14 organization or family care district, or with any person providing services to the
15 client under a purchase of services contract with the county department of social
16 services or with a resource center, care management organization or family care
17 district, if necessary to enable an employee or service provider to perform his or her
18 duties, or to enable the county department of social services to coordinate the
19 delivery of services to the client.

20 **SECTION 7.** 46.23 (3) (e) of the statutes is amended to read:

21 46.23 (3) (e) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78
22 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (e)~~ 55.22 (3), 146.82, 252.11
23 (7), 253.07 (3) (c) and 938.78 (2) (a), any subunit of a county department of human
24 services acting under this section may exchange confidential information about a
25 client, without the informed consent of the client, with any other subunit of the same

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1 county department of human services, with a resource center, care management
2 organization or family care district, or with any person providing services to the
3 client under a purchase of services contract with the county department of human
4 services or with a resource center, care management organization or family care
5 district, if necessary to enable an employee or service provider to perform his or her
6 duties, or to enable the county department of human services to coordinate the
7 delivery of services to the client.

NOTE: SECTIONS 4 to 7 change a cross-reference to provisions relating to confidentiality of treatment and service records for persons who are protected under chapter 55. These provisions are renumbered in this bill.

8 **SECTION 8.** 46.27 (6r) (b) 2. of the statutes is amended to read:

9 46.27 **(6r)** (b) 2. The person has ~~chronic~~ serious and persistent mental illness,
10 as defined under s. 51.01 ~~(3g)~~ (14t), affecting mental health to the extent that
11 long-term or repeated hospitalization is likely unless the person receives long-term
12 community support services.

NOTE: Deletes a reference to the term "chronic mental illness", which is eliminated in this bill, and replaces it with the updated term "serious and persistent mental illness".

13 **SECTION 9.** 46.275 (4) (b) 1. of the statutes is amended to read:

14 46.275 **(4)** (b) 1. Consent for participation is given either by the person's parent,
15 guardian or legal custodian, if the person is under age 18, or by the person or the
16 person's guardian, if the person is age 18 or over, except that this subdivision does
17 not limit the authority of the circuit court to enter, change, revise or extend a
18 dispositional order under subch. VI of ch. 48 or subch. VI of ch. 938 or to order a
19 protective placement or protective services under s. ~~55.06~~ 55.12.

NOTE: Amends language in medical assistance waiver program language to reflect the bill's clarification that protective services, as well as protective placement, may be court ordered.

ASSEMBLY BILL 785**SECTION 10**

1 **SECTION 10.** 46.279 (2) of the statutes, as affected by 2005 Wisconsin Act ...
2 (Assembly Bill 296), is amended to read:

3 **46.279 (2) PLACEMENTS AND ADMISSIONS TO INTERMEDIATE FACILITIES.** Except as
4 provided in sub. (5), no person may protectively place or continue protective
5 placement of an individual with a developmental disability in an intermediate
6 facility and no intermediate facility may admit or continue service for such an
7 individual unless, before the protective placement, continued placement following
8 review under s. ~~55.06 (10)~~ 55.18, or admission and after having considered a plan
9 developed under sub. (4), a court under s. ~~55.06 (9) (a) or (10) (a) 2.~~ 55.12 or 55.18 (1)
10 (ar) finds that protective placement in the intermediate facility is the most
11 integrated setting that is appropriate to the needs of the individual or that the county
12 of residence of the individual would not reasonably be able to provide
13 community-based care in accordance with the plan within the limits of available
14 state and federal funds and county funds required to be appropriated to match state
15 funds, taking into account information presented by all affected parties. An
16 intermediate facility to which an individual who has a developmental disability
17 applies for admission shall, within 5 days after receiving the application, notify the
18 county department that is participating in the program under s. 46.278 of the county
19 of residence of the individual who is seeking admission concerning the application.

20 **SECTION 11.** 46.279 (3) of the statutes, as affected by 2005 Wisconsin Act ...
21 (Assembly Bill 296), is amended to read:

22 **46.279 (3) PLACEMENTS AND ADMISSIONS TO NURSING FACILITIES.** Except as
23 provided in sub. (5), if the department or an entity determines from a screening
24 under s. 49.45 (6c) (b) that an individual requires active treatment for developmental
25 disability, no individual may be protectively placed in a nursing facility or have

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1 protective placement in a nursing facility continued following review under s. ~~55.06~~
2 ~~(10)~~ 55.18, and no nursing facility may admit or continue service for the individual,
3 unless the department or entity that conducts the screening determines that the
4 individual's need for care cannot fully be met in an intermediate facility or under a
5 plan under sub. (4) or that the county of residence of the individual would not
6 reasonably be able to provide community-based care in accordance with the plan
7 within the limits of available state and federal funds and county funds required to
8 be appropriated to match state funds.

NOTE: SECTIONS 10 and 11 change a cross-reference to orders for protective placement, the provisions of which are renumbered in this bill.

9 **SECTION 12.** 46.279 (4) (c) of the statutes is amended to read:

10 46.279 (4) (c) Within 120 days after a proposal is made under s. ~~55.06 (9) (a)~~
11 55.12 (6) to ~~place~~ provide protective placement to the individual in an intermediate
12 facility or a nursing facility.

NOTE: Changes a cross-reference to the annual review of protective placements, the provisions of which are renumbered in this bill.

13 **SECTION 13.** 46.279 (4) (d) of the statutes is amended to read:

14 46.279 (4) (d) Within 120 days after receiving written notice under s. ~~55.06 (10)~~
15 ~~(a) 2.~~ 55.18 (1) (ar) of the protective placement of the individual in a nursing facility
16 or an intermediate facility.

NOTE: Changes a cross-reference to the annual review of protective placement, the provisions of which are renumbered in this bill.

17 **SECTION 14.** 46.279 (4) (e) of the statutes is amended to read:

18 46.279 (4) (e) Within 90 days after extension of a temporary protective
19 placement order by the court under s. ~~55.06 (11) (e)~~ 55.135 (5).

NOTE: Changes a cross-reference to temporary protective placement, the provisions of which are renumbered in this bill.

20 **SECTION 15.** 46.279 (5) of the statutes is amended to read:

ASSEMBLY BILL 785**SECTION 15**

1 46.279 (5) EXCEPTIONS. Subsections (2) and (3) do not apply to an emergency
2 protective placement under s. ~~55.06 (11) (a)~~ 55.135 or to a temporary protective
3 placement under s. ~~55.06 (11) (e) or (12)~~ 55.135 (5) or 55.055 (5).

NOTE: Changes cross-references to emergency and temporary protective placements, the provisions of which are renumbered under this bill.

4 **SECTION 16.** 46.283 (7) (b) of the statutes is amended to read:

5 46.283 (7) (b) Notwithstanding ss. 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45
6 (14) (a), ~~55.06 (17) (e)~~ 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a),
7 a resource center acting under this section may exchange confidential information
8 about a client, as defined in s. 46.287 (1), without the informed consent of the client,
9 under s. 46.21 (2m) (c), 46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.284 (7), 46.2895
10 (10), 51.42 (3) (e) or 51.437 (4r) (b) in the county of the resource center, if necessary
11 to enable the resource center to perform its duties or to coordinate the delivery of
12 services to the client.

13 **SECTION 17.** 46.284 (7) (b) of the statutes is amended to read:

14 46.284 (7) (b) Notwithstanding ss. 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45
15 (14) (a), ~~55.06 (17) (e)~~ 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a),
16 a care management organization acting under this section may exchange
17 confidential information about a client, as defined in s. 46.287 (1), without the
18 informed consent of the client, under s. 46.21 (2m) (c), 46.215 (1m), 46.22 (1) (dm),
19 46.23 (3) (e), 46.283 (7), 46.2895 (10), 51.42 (3) (e) or 51.437 (4r) (b) in the county of
20 the care management organization, if necessary to enable the care management
21 organization to perform its duties or to coordinate the delivery of services to the
22 client.

NOTE: SECTIONS 16 and 17 change cross-references to records in protective placement and services proceedings, the provisions of which are renumbered in this bill.

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1 **SECTION 18.** 46.286 (1) (intro.) of the statutes is amended to read:

2 46.286 (1) **ELIGIBILITY.** (intro.) A person is eligible for, but not necessarily
3 entitled to, the family care benefit if the person is at least 18 years of age; has a
4 physical disability, as defined in s. 15.197 (4) (a) 2., a developmental disability, as
5 defined in s. 51.01 (5) (a), or ~~infirmities of aging~~ degenerative brain disorder, as
6 defined in s. 55.01 (3) ~~(1v)~~; and meets all of the following criteria:

7 **SECTION 19.** 46.286 (3) (a) (intro.) of the statutes is amended to read:

8 46.286 (3) (a) (intro.) Subject to pars. (c) and (d), a person is entitled to and may
9 receive the family care benefit through enrollment in a care management
10 organization if he or she is at least 18 years of age, has a physical disability, as defined
11 in s. 15.197 (4) (a) 2., a developmental disability, as defined in s. 51.01 (5) (a), or
12 ~~infirmities of aging~~ degenerative brain disorder, as defined in s. 55.01 (3) ~~(1v)~~, is
13 financially eligible, fulfills any applicable cost-sharing requirements and meets any
14 of the following criteria:

15 **SECTION 20.** 46.286 (3) (a) 3. of the statutes is amended to read:

16 46.286 (3) (a) 3. Is functionally eligible at the intermediate level and is
17 determined by an agency under s. 46.90 (2) or specified by a county protective
18 services agency, as defined in s. 55.01 (1t), to be in need of protective services under
19 ~~s. 55.05~~ or protective placement under s. ~~55.06~~ ch. 55.

20 **SECTION 21.** 46.2895 (10) of the statutes is amended to read:

21 46.2895 (10) **EXCHANGE OF INFORMATION.** Notwithstanding sub. (9) and ss. 48.78
22 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (e)~~ 55.22 (3), 146.82, 252.11
23 (7), 253.07 (3) (c) and 938.78 (2) (a), a family care district acting under this section
24 may exchange confidential information about a client, as defined in s. 46.287 (1),
25 without the informed consent of the client, under s. 46.21 (2m) (c), 46.215 (1m), 46.22

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1 (1) (dm), 46.23 (3) (e), 46.283 (7), 46.284 (7), 51.42 (3) (e) or 51.437 (4r) (b) in the
2 jurisdiction of the family care district, if necessary to enable the family care district
3 to perform its duties or to coordinate the delivery of services to the client.

4 **SECTION 22.** 46.90 (1) (c) of the statutes is amended to read:

5 46.90 (1) (c) "Elder person" means a person who is age 60 or older or who is
6 subject to the infirmities of aging degenerative brain disorder.

7 **SECTION 23.** 46.90 (1) (d) of the statutes is renumbered 46.90 (1) (bg) and
8 amended to read:

9 46.90 (1) (bg) "~~Infirmities of aging~~ Degenerative brain disorder" has the
10 meaning provided under s. 55.01 ~~(3)~~ (1v).

NOTE: SECTIONS 18, 19, 22 and 23 delete the term "infirmities of aging" and replace
it with the more up-to-date term "degenerative brain disorder".

11 **SECTION 24.** 49.001 (5m) of the statutes is amended to read:

12 49.001 (5m) "Prisoner" means any person who is either arrested, incarcerated,
13 imprisoned or otherwise detained in excess of 12 hours by any law enforcement
14 agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11)
15 (b) or ~~55.06 (11) (a), 55.13, or 55.135~~ or ch. 980. "Prisoner" does not include any person
16 who is serving a sentence of detention under s. 973.03 (4) unless the person is in the
17 county jail under s. 973.03 (4) (c).

NOTE: Changes a cross-reference to emergency detention, the provisions of which
are renumbered in this bill.

18 **SECTION 25.** 49.001 (8) of the statutes is amended to read:

19 49.001 (8) "Voluntary" means according to a person's individual's free choice,
20 if competent, or, if incompetent, by choice of a guardian if incompetent, unless the
21 individual is subject to a court-ordered placement under ch. 55, is placed by an
22 agency having a court-ordered involuntary commitment of the individual under ch.

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1 51, or is involuntarily committed to the department of corrections or to the
2 department under ch. 971 or 980.

NOTE: Amends the definition of “voluntary” in ch. 49.

3 **SECTION 26.** 49.43 (10v) of the statutes is created to read:

4 49.43 (10v) “Serious and persistent mental illness” has the meaning given in
5 s. 51.01 (14t).

6 **SECTION 27.** 49.45 (6m) (i) 2. of the statutes is amended to read:

7 49.45 (6m) (i) 2. Payment for personal or residential care is available for a
8 person in a facility certified under 42 USC 1396 to 1396p only if the person entered
9 a facility before the date specified in subd. 1. and has continuously resided in a
10 facility since the date specified in subd. 1. If the person has a primary diagnosis of
11 developmental disabilities or ~~chronic~~ serious and persistent mental illness, payment
12 for personal or residential care is available only if the person entered a facility on or
13 before November 1, 1983.

14 **SECTION 28.** 49.45 (25) (am) 2. of the statutes is amended to read:

15 49.45 (25) (am) 2. Has a ~~chronic~~ serious and persistent mental illness, ~~as~~
16 ~~defined under s. 51.01 (3g).~~

NOTE: SECTIONS 26 to 28 change the term “chronic mental illness” to “serious and persistent mental illness”, which is the more up-to-date term.

17 **SECTION 29.** 49.45 (30m) (b) of the statutes is amended to read:

18 49.45 (30m) (b) No payment under this section may be made for services
19 specified under par. (a) or (am) unless the individual who receives the services is
20 protectively placed provided protective placement under s. 55.06 (9) (a), 2003 stats.,
21 or s. 55.12, is provided emergency protective services under s. 55.05 (4), 2003 stats.,
22 or s. 55.13, or is placed under provided an emergency protective placement under s.

ASSEMBLY BILL 785**SECTION 29**

1 55.06 (11) (a), 2003 stats., or s. 55.135 or a temporary protective placement under s.
2 55.06 (11) (c), 2003 stats., or s. 55.135 (5) or 55.055 (5).

NOTE: Changes cross-references to protective placement and emergency protective placement proceedings, the provisions of which are renumbered in the draft.

3 **SECTION 30.** 49.45 (30m) (c) 2. of the statutes is amended to read:

4 49.45 **(30m)** (c) 2. For an individual who was ~~protectively placed~~ provided
5 protective placement under ch. 55 at any time, any annual review that is conducted
6 under s. ~~55.06 (10) (a) 1.~~ 55.18 (1) (a) (intro.) after April 30, 2005, complies with the
7 requirements of s. ~~55.06 (10) (a) 2~~ 55.18 (1) (ar).

NOTE: Changes cross-references to annual review of protective placement, the provisions of which are renumbered in the draft.

8 **SECTION 31.** 50.02 (2) (ad) of the statutes is created to read:

9 50.02 **(2)** (ad) The department shall promulgate rules that require each facility
10 licensed under this subchapter to provide information necessary for the department
11 to assess the facility's compliance with s. 55.14.

NOTE: Requires the DHFS to promulgate rules that require community-based residential facilities, nursing homes, adult family homes, and residential care apartment complexes to provide DHFS information necessary for DHFS to determine if those facilities are in compliance with the provisions relating to involuntary administration of psychotropic medication created by the bill.

12 **SECTION 32.** 50.03 (5m) (c) of the statutes is amended to read:

13 50.03 **(5m)** (c) *Relocation.* The department shall offer removal and relocation
14 assistance to residents removed under this section, including information on
15 available alternative placements. Residents shall be involved in planning the
16 removal and shall choose among the available alternative placements, except that
17 where an emergency situation makes prior resident involvement impossible the
18 department may make a temporary placement until a final placement can be
19 arranged. Residents may choose their final alternative placement and shall be given
20 assistance in transferring to such place. No resident may be forced to remain in a

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1 temporary or permanent placement except pursuant to the procedures provided
2 under s. 55.06, 2003 stats., or an order under s. 55.12 for protective placement. Where
3 the department makes or participates in making the relocation decision,
4 consideration shall be given to proximity to residents' relatives and friends.

5 **SECTION 33.** 50.06 (2) (c) of the statutes is amended to read:

6 50.06 (2) (c) A petition for guardianship for the individual under s. 880.07 and
7 a petition under s. 55.075 for protective placement of the individual ~~under s. 55.06~~
8 ~~(2)~~ are filed prior to the proposed admission.

NOTE: Changes a cross-reference to the petition for protective placement, the provisions of which are renumbered in the draft.

9 **SECTION 34.** 50.06 (2) (d) of the statutes is created to read:

10 50.06 (2) (d) The incapacitated individual does not verbally object to or
11 otherwise actively protest the admission. If he or she makes such an objection or
12 protest, he or she may be admitted to the facility, but the person in charge of the
13 facility shall immediately notify the county department under s. 55.02 (2) for the
14 county in which the individual is living or the agency with which the county
15 department contracts. Representatives of the county department or agency shall
16 visit the individual as soon as possible, but not later than 72 hours after notification,
17 and do all of the following:

18 1. Determine whether the protest persists or has been voluntarily withdrawn
19 and consult with the person who consented to the admission regarding the reasons
20 for the admission.

21 2. Attempt to have the incapacitated individual released within 72 hours if the
22 protest is not withdrawn and the individual does not satisfy all of the criteria under

ASSEMBLY BILL 785**SECTION 34**

1 s. 55.08 (1) or 55.135 (1), and provide assistance in identifying appropriate
2 alternative living arrangements.

3 3. Comply with s. 55.135 if the requirements of s. 55.135 (1) are met and
4 emergency protective placement in that facility or another facility is necessary or file
5 a petition for protective placement under s. 55.075. The court, with the permission
6 of the facility, may order the incapacitated individual to remain in the facility
7 pending the outcome of the protective placement proceedings.

NOTE: Creates a new provision in the statute relating to admissions of
incapacitated persons to facilities such as nursing homes and community-based
residential facilities. Currently, such admissions directly from a hospital to a facility may
be made if certain specified persons consent to the admission, if the incapacitated person
does not have a valid power of attorney for health care and has not been adjudicated
incompetent under ch. 880, if certain conditions apply. This SECTION adds another
condition, which requires that the incapacitated individual does not verbally object to or
otherwise actively protest the admission. This SECTION also sets out what procedure must
be followed if the person objects to or protests the admission.

8 **SECTION 35.** 51.01 (2g) (b) of the statutes is amended to read:

9 51.01 (2g) (b) “Brain injury” does not include alcoholism, Alzheimer’s disease
10 as specified under s. 46.87 (1) (a) or ~~the infirmities of aging~~ degenerative brain
11 disorder, as specified under s. ~~55.01 (3)~~ defined in s. 55.01 (1v).

12 **SECTION 36.** 51.01 (3g) of the statutes is renumbered 51.01 (14t) and amended
13 to read:

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

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1 wide spectrum of psychotic and other severely disabling psychiatric diagnostic
2 categories, but does not include ~~infirmities of aging~~ degenerative brain disorder, as
3 defined in s. 55.01 (1v), or a primary diagnosis of ~~mental retardation~~ a developmental
4 disability or of alcohol or drug dependence.

5 **SECTION 37.** 51.01 (3s) of the statutes is amended to read:

6 51.01 (3s) “Community support program” means a coordinated care and
7 treatment system ~~which~~ that provides a network of services through an identified
8 treatment program and staff to ensure ongoing therapeutic involvement and
9 individualized treatment in the community for ~~persons~~ individuals with ~~chronic~~
10 serious and persistent mental illness.

11 **SECTION 38.** 51.01 (5) (a) of the statutes is amended to read:

12 51.01 (5) (a) “Developmental disability” means a disability attributable to
13 brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, mental
14 retardation, or another neurological condition closely related to mental retardation
15 or requiring treatment similar to that required for mental retardation, which has
16 continued or can be expected to continue indefinitely and constitutes a substantial
17 handicap to the afflicted individual. “Developmental disability” does not include
18 senility ~~which~~ that is primarily caused by the process of aging or ~~the infirmities of~~
19 aging degenerative brain disorder, as defined in s. 55.01 (1v).

NOTE: SECTIONS 35 to 38 revise the terms “chronic mental illness”, “mental
retardation”, and “infirmities of aging” to “serious and persistent mental illness”,
“developmental disability”, and “degenerative brain disorder”.

20 **SECTION 39.** 51.03 (3) (a) 6. of the statutes is amended to read:

21 51.03 (3) (a) 6. The number of ~~persons~~ individuals for whom guardians are
22 appointed under s. 55.14 or s. 880.33 (4m), 2003 stats.

23 **SECTION 40.** 51.10 (4m) (a) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 785**SECTION 40**

1 51.10 (4m) (a) (intro.) An adult who meets the criteria for voluntary admission
2 under sub. (4) and whose admission is approved under sub. (1) or (2) may also be
3 admitted to an inpatient treatment facility if:

NOTE: Deletes the requirement that the voluntary admission of an adult to an inpatient treatment facility who does not indicate a desire to leave the facility be approved by the treatment director of the treatment facility or the director of a center for the developmentally disabled and the county department.

4 **SECTION 41.** 51.10 (8) of the statutes is amended to read:

5 51.10 (8) An adult for whom, because of incompetency, a guardian of the person
6 has been appointed under ch. 880 ~~because of the subject's incompetency~~ may be
7 voluntarily admitted to an inpatient treatment facility ~~under this section only~~ if the
8 guardian consents after the requirements of sub. (4m) (a) 1. are satisfied or if the
9 guardian and the ward consent to such the admission under this section.

NOTE: Provides that the guardian of an incompetent adult may provide consent to the voluntary admission of the ward to an inpatient treatment facility, in cases where the ward does not indicate a desire to leave the facility, if the procedures for voluntary admission in ch. 51 are followed.

10 **SECTION 42.** 51.15 (1) (a) 4. of the statutes is amended to read:

11 51.15 (1) (a) 4. Behavior manifested by a recent act or omission that, due to
12 mental illness or drug dependency, he or she is unable to satisfy basic needs for
13 nourishment, medical care, shelter, or safety without prompt and adequate
14 treatment so that a substantial probability exists that death, serious physical injury,
15 serious physical debilitation, or serious physical disease will imminently ensue
16 unless the individual receives prompt and adequate treatment for this mental illness
17 or drug dependency. No substantial probability of harm under this subdivision exists
18 if reasonable provision for the individual's treatment and protection is available in
19 the community and there is a reasonable probability that the individual will avail
20 himself or herself of these services, if the individual ~~can receive protective placement~~

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1 ~~under s. 55.06~~ may be provided protective placement or protective services under ch.
2 55, or, in the case of a minor, if the individual is appropriate for services or placement
3 under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does not
4 automatically establish a substantial probability of death, serious physical injury,
5 serious physical debilitation or serious disease under this subdivision. Food, shelter
6 or other care provided to an individual who is substantially incapable of providing
7 the care for himself or herself, by any person other than a treatment facility, does not
8 constitute reasonable provision for the individual's treatment or protection available
9 in the community under this subdivision.

10 **SECTION 43.** 51.15 (5) of the statutes is amended to read:

11 51.15 (5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a
12 population of less than 500,000, the law enforcement officer or other person
13 authorized to take a child into custody under ch. 48 or to take a juvenile into custody
14 under ch. 938 shall sign a statement of emergency detention that shall provide
15 detailed specific information concerning the recent overt act, attempt, or threat to
16 act or omission on which the belief under sub. (1) is based and the names of persons
17 observing or reporting the recent overt act, attempt, or threat to act or omission. The
18 law enforcement officer or other person is not required to designate in the statement
19 whether the subject individual is mentally ill, developmentally disabled, or drug
20 dependent, but shall allege that he or she has cause to believe that the individual
21 evidences one or more of these conditions. The statement of emergency detention
22 shall be filed by the officer or other person with the detention facility at the time of
23 admission, and with the court immediately thereafter. The filing of the statement
24 has the same effect as a petition for commitment under s. 51.20. When, upon the
25 advice of the treatment staff, the director of a facility specified in sub. (2) determines

ASSEMBLY BILL 785**SECTION 43**

1 that the grounds for detention no longer exist, he or she shall discharge the
2 individual detained under this section. Unless a hearing is held under s. 51.20 (7)
3 or ~~55.06 (11) (b)~~ 55.135, the subject individual may not be detained by the law
4 enforcement officer or other person and the facility for more than a total of 72 hours,
5 exclusive of Saturdays, Sundays, and legal holidays.

6 **SECTION 44.** 51.20 (1) (a) 2. c. of the statutes is amended to read:

7 51.20 (1) (a) 2. c. Evidences such impaired judgment, manifested by evidence
8 of a pattern of recent acts or omissions, that there is a substantial probability of
9 physical impairment or injury to himself or herself. The probability of physical
10 impairment or injury is not substantial under this subd. 2. c. if reasonable provision
11 for the subject individual's protection is available in the community and there is a
12 reasonable probability that the individual will avail himself or herself of these
13 services, if the individual is appropriate for protective placement under s. ~~55.06~~ may
14 be provided protective placement or protective services under ch. 55, or, in the case
15 of a minor, if the individual is appropriate for services or placement under s. 48.13
16 (4) or (11) or 938.13 (4). The subject individual's status as a minor does not
17 automatically establish a substantial probability of physical impairment or injury
18 under this subd. 2. c. Food, shelter or other care provided to an individual who is
19 substantially incapable of obtaining the care for himself or herself, by a person other
20 than a treatment facility, does not constitute reasonable provision for the subject
21 individual's protection available in the community under this subd. 2. c.

22 **SECTION 45.** 51.20 (1) (a) 2. d. of the statutes is amended to read:

23 51.20 (1) (a) 2. d. Evidences behavior manifested by recent acts or omissions
24 that, due to mental illness, he or she is unable to satisfy basic needs for nourishment,
25 medical care, shelter or safety without prompt and adequate treatment so that a

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1 substantial probability exists that death, serious physical injury, serious physical
2 debilitation, or serious physical disease will imminently ensue unless the individual
3 receives prompt and adequate treatment for this mental illness. No substantial
4 probability of harm under this subd. 2. d. exists if reasonable provision for the
5 individual's treatment and protection is available in the community and there is a
6 reasonable probability that the individual will avail himself or herself of these
7 services, if the individual is ~~appropriate for protective placement under s. 55.06~~ may
8 be provided protective placement or protective services under ch. 55, or, in the case
9 of a minor, if the individual is appropriate for services or placement under s. 48.13
10 (4) or (11) or 938.13 (4). The individual's status as a minor does not automatically
11 establish a substantial probability of death, serious physical injury, serious physical
12 debilitation or serious disease under this subd. 2. d. Food, shelter or other care
13 provided to an individual who is substantially incapable of obtaining the care for
14 himself or herself, by any person other than a treatment facility, does not constitute
15 reasonable provision for the individual's treatment or protection available in the
16 community under this subd. 2. d.

17 **SECTION 46.** 51.20 (1) (a) 2. e. of the statutes is amended to read:

18 51.20 (1) (a) 2. e. For an individual, other than an individual who is alleged to
19 be drug dependent or developmentally disabled, after the advantages and
20 disadvantages of and alternatives to accepting a particular medication or treatment
21 have been explained to him or her and because of mental illness, evidences either
22 incapability of expressing an understanding of the advantages and disadvantages of
23 accepting medication or treatment and the alternatives, or substantial incapability
24 of applying an understanding of the advantages, disadvantages, and alternatives to
25 his or her mental illness in order to make an informed choice as to whether to accept

ASSEMBLY BILL 785**SECTION 46**

1 or refuse medication or treatment; and evidences a substantial probability, as
2 demonstrated by both the individual's treatment history and his or her recent acts
3 or omissions, that the individual needs care or treatment to prevent further
4 disability or deterioration and a substantial probability that he or she will, if left
5 untreated, lack services necessary for his or her health or safety and suffer severe
6 mental, emotional, or physical harm that will result in the loss of the individual's
7 ability to function independently in the community or the loss of cognitive or
8 volitional control over his or her thoughts or actions. The probability of suffering
9 severe mental, emotional, or physical harm is not substantial under this subd. 2. e.
10 if reasonable provision for the individual's care or treatment is available in the
11 community and there is a reasonable probability that the individual will avail
12 himself or herself of these services or if the individual is ~~appropriate for protective~~
13 ~~placement under s. 55.06~~ may be provided protective placement or protective
14 services under ch. 55. Food, shelter, or other care that is provided to an individual
15 who is substantially incapable of obtaining food, shelter, or other care for himself or
16 herself by any person other than a treatment facility does not constitute reasonable
17 provision for the individual's care or treatment in the community under this subd.
18 2. e. The individual's status as a minor does not automatically establish a substantial
19 probability of suffering severe mental, emotional, or physical harm under this subd.
20 2. e.

21 **SECTION 47.** 51.20 (1) (am) of the statutes is amended to read:

22 51.20 (1) (am) If the individual has been the subject of inpatient treatment for
23 mental illness, developmental disability, or drug dependency immediately prior to
24 commencement of the proceedings as a result of a voluntary admission or, a
25 commitment or protective placement ordered by a court under this section or s. 55.06,

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1 2003 stats., or s. 971.17, or ch. 975, or a protective placement or protective services
2 ordered under s. 55.12, or if the individual has been the subject of outpatient
3 treatment for mental illness, developmental disability, or drug dependency
4 immediately prior to commencement of the proceedings as a result of a commitment
5 ordered by a court under this section ~~or~~ s. 971.17, or ch. 975, the requirements of a
6 recent overt act, attempt or threat to act under par. (a) 2. a. or b., ~~a~~ pattern of recent
7 acts or omissions under par. (a) 2. c. or e., or recent behavior under par. (a) 2. d. may
8 be satisfied by a showing that there is a substantial likelihood, based on the subject
9 individual's treatment record, that the individual would be a proper subject for
10 commitment if treatment were withdrawn. If the individual has been admitted
11 voluntarily to an inpatient treatment facility for not more than 30 days prior to the
12 commencement of the proceedings and remains under voluntary admission at the
13 time of commencement, the requirements of a specific recent overt act, attempt or
14 threat to act, or pattern of recent acts or omissions may be satisfied by a showing of
15 an act, attempt or threat to act, or ~~a~~ pattern of acts or omissions which took place
16 immediately previous to the voluntary admission. If the individual is committed
17 under s. 971.14 (2) or (5) at the time proceedings are commenced, or has been
18 discharged from the commitment immediately prior to the commencement of
19 proceedings, acts, attempts, threats, omissions, or behavior of the subject individual
20 during or subsequent to the time of the offense shall be deemed recent for purposes
21 of par. (a) 2.

22 **SECTION 48.** 51.20 (1m) of the statutes is amended to read:

23 51.20 (1m) ALTERNATE GROUNDS FOR COMMITMENT. For purposes of subs. (2) to
24 (9), the requirement of finding probable cause to believe the allegations in sub. (1)
25 (a) or (am) may be satisfied by finding probable cause to believe that the individual

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1 satisfies sub. (1) (a) 1. and evidences such impaired judgment, manifested by
2 evidence of a recent act or omission, that there is a substantial probability of physical
3 impairment or injury to himself or herself. The probability of physical impairment
4 or injury may not be deemed substantial under this subsection if reasonable
5 provision for the individual's protection is available in the community and there is
6 a reasonable probability that the individual will avail himself or herself of the
7 services or if the individual is appropriate for protective placement under s. 55.06
8 may be provided protective placement or protective services under ch. 55. The
9 individual's status as a minor does not automatically establish a substantial
10 probability of physical impairment or injury under this subsection. Food, shelter or
11 other care provided to an individual who is substantially incapable of obtaining the
12 care for himself or herself, by any person other than a treatment facility, does not
13 constitute reasonable provision for the individual's protection available in the
14 community under this subsection.

NOTE: SECTIONS 42 and 44 to 48 amend various standards in current law relating to emergency detention and involuntary commitment for treatment, by providing that a showing of a substantial probability of harm to the person does not exist if the person may be provided protective placement or protective services under ch. 55.

15 **SECTION 49.** 51.20 (7) (d) 1. (intro.) of the statutes is amended to read:

16 51.20 (7) (d) 1. (intro.) If the court determines after hearing that there is
17 probable cause to believe that the subject individual is a fit subject for guardianship
18 and protective placement or services, the court may, without further notice, appoint
19 a temporary guardian for the subject individual and order temporary protective
20 placement or services under ch. 55 for a period not to exceed 30 days, and shall
21 proceed as if petition had been made for guardianship and protective placement or
22 services. If the court orders only temporary protective services for a subject
23 individual under this paragraph, the individual shall be provided care only on an

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1 outpatient basis. The court may order psychotropic medication as a temporary
2 protective service under this paragraph if it finds that there is probable cause to
3 believe that the allegations under s. ~~880.07 (1m) (e) and (em)~~ 55.14 (3) (e) apply, that
4 the individual is not competent to refuse psychotropic medication and that the
5 medication ordered will have therapeutic value and will not unreasonably impair the
6 ability of the individual to prepare for and participate in subsequent legal
7 proceedings. An individual is not competent to refuse psychotropic medication if,
8 because of ~~chronic~~ serious and persistent mental illness, and after the advantages
9 and disadvantages of and alternatives to accepting the particular psychotropic
10 medication have been explained to the individual, one of the following is true:

11 **SECTION 50.** 51.20 (7) (d) 1. b. of the statutes is amended to read:

12 51.20 (7) (d) 1. b. The individual is substantially incapable of applying an
13 understanding of the advantages, disadvantages and alternatives to his or her
14 ~~chronic~~ serious and persistent mental illness in order to make an informed choice as
15 to whether to accept or refuse psychotropic medication.

16 **SECTION 51.** 51.35 (4m) (intro.) of the statutes is amended to read:

17 51.35 (4m) ~~TRANSFER OR DISCHARGE OF PERSONS WITH CHRONIC~~ SERIOUS AND
18 PERSISTENT MENTAL ILLNESS. (intro.) The department or county department under s.
19 51.42 or any person authorized to discharge or transfer patients under this section
20 shall, prior to the discharge of a patient with ~~chronic~~ serious and persistent mental
21 illness from an inpatient facility, or prior to the transfer of a patient with ~~chronic~~
22 serious and persistent mental illness from inpatient to outpatient status, with the
23 patient's permission if the patient is a voluntary patient, do all of the following:

NOTE: SECTIONS 49 to 51 revise the term "chronic mental illness" to "serious and persistent mental illness".

ASSEMBLY BILL 785**SECTION 52**

1 **SECTION 52.** 51.39 of the statutes is amended to read:

2 **51.39 Resident patients on unauthorized absence.** If any patient who is
3 admitted, transferred, or placed under s. 55.06, 2003 stats., or s. 51.13, 51.15, 51.20,
4 51.35 (3), 51.37, or 51.45 (11) (b), (12) or (13) ~~or 55.06 or ch. 55, 971, 975, or 980 or~~
5 ~~transferred under s. 51.35 (3) or 51.37~~ is on unauthorized absence from a treatment
6 facility, the sheriff or any other law enforcement agency in the county in which the
7 patient is found or in which it is believed the patient may be present, upon the
8 request of the director, shall take charge of and return the patient to the facility. The
9 costs incident to the return shall be paid out of the facility's operating funds and be
10 charged back to the patient's county of residence.

NOTE: Changes various cross-references regarding protective placement and transfer of a person who is protectively placed.

11 **SECTION 53.** 51.40 (2) (intro.) of the statutes is amended to read:

12 **51.40 (2) DETERMINATION OF RESIDENCE.** (intro.) For purposes of determining
13 responsibility for funding the provision of services under chs. 46, 51 and 55, the
14 county of residence of individuals aged 18 or older with developmental disability or
15 chronic serious and persistent mental illness in state facilities or nursing homes
16 shall be determined as follows:

NOTE: Revises the term "chronic mental illness" to "serious and persistent mental illness".

17 **SECTION 54.** 51.40 (2) (a) 1. of the statutes is amended to read:

18 **51.40 (2) (a) 1.** 'Commitment or ~~protection~~ protective placement.' If an
19 individual is under a court order of commitment under this chapter or protective
20 placement under s. 55.06, 2003 stats., or s. 55.12, the individual remains a resident
21 of the county in which he or she has residence at the time the commitment or

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1 protective placement is made. If the court makes no specific finding of a county of
2 residence, the individual is a resident of the county in which the court is located.

NOTE: Changes a cross-reference to the procedure for protective placement, the provisions of which are renumbered in this bill.

3 **SECTION 55.** 51.40 (2) (a) 2. of the statutes is amended to read:

4 51.40 (2) (a) 2. 'Placement by a county.' Except for the provision of emergency
5 services under s. 51.15, 51.42 (1) (b), 51.437 (4) (c), or 51.45 (11) and (12), emergency
6 protective services under s. 55.13, or 55.06 (11) emergency protective placement
7 under s. 55.135, if a county department or an agency of a county department
8 arranges or makes placement of the individual into a state facility or nursing home,
9 the individual is a resident of the county of that county department. Any agency of
10 the county department is deemed to be acting on behalf of the county department in
11 arranging or making placement.

NOTE: Changes a cross-reference to emergency protective placement, the provisions of which are renumbered in this bill.

12 **SECTION 56.** 51.42 (1) (b) of the statutes is amended to read:

13 51.42 (1) (b) *County liability.* The county board of supervisors has the primary
14 responsibility for the well-being, treatment and care of the mentally ill,
15 developmentally disabled, alcoholic and other drug dependent citizens residing
16 within its county and for ensuring that those individuals in need of such emergency
17 services found within its county receive immediate emergency services. This
18 primary responsibility is limited to the programs, services and resources that the
19 county board of supervisors is reasonably able to provide within the limits of
20 available state and federal funds and of county funds required to be appropriated to
21 match state funds. County liability for care and services purchased through or
22 provided by a county department of community programs established under this

ASSEMBLY BILL 785**SECTION 56**

1 section shall be based upon the client's county of residence except for emergency
2 services for which liability shall be placed with the county in which the individual
3 is found. For the purpose of establishing county liability, "emergency services"
4 includes those services provided under the authority of s. 55.05 (4), 2003 stats., or
5 s. 55.06 (11) (a), 2003 stats., or s. 51.15, 51.45 (11) (a) or (b) or (12), ~~55.05 (4) or 55.06~~
6 (11) (a) 55.13, or 55.135 for not more than 72 hours. Nothing in this paragraph
7 prevents recovery of liability under s. 46.10 or any other statute creating liability
8 upon the individual receiving a service or any other designated responsible party, or
9 prevents reimbursement by the department of health and family services for the
10 actual cost of all care and services from the appropriation under s. 20.435 (7) (da),
11 as provided in s. 51.22 (3).

NOTE: Changes cross-references to emergency protective services, the provisions
of which are renumbered in this bill.

12 **SECTION 57.** 51.42 (3) (ar) 4. d. of the statutes is amended to read:

13 51.42 (3) (ar) 4. d. Related research and staff in-service training, including
14 periodic training on emergency detention procedures under s. 51.15, emergency
15 protective services under s. 55.13, and emergency protective placement procedures
16 under s. ~~55.06 (11) 55.135~~, for individuals persons within the jurisdiction of the
17 county department of community programs who are authorized to take ~~persons~~
18 individuals into custody under ss. 51.15 and ~~55.06 (11) 55.135~~. In developing
19 in-service training on emergency detention and emergency protective placement
20 procedures, the county department of community programs shall consult the county
21 department of developmental disabilities services under s. 51.437 in counties where
22 these departments are separate.

NOTE: Changes cross-references to emergency protective services and emergency
protective placement, the provisions of which are renumbered in this bill.

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1 **SECTION 58.** 51.42 (3) (e) of the statutes is amended to read:

2 51.42 **(3)** (e) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78
3 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), ~~55.06 (17) (e)~~ 55.22 (3), 146.82, 252.11
4 (7), 253.07 (3) (c) and 938.78 (2) (a), any subunit of a county department of community
5 programs acting under this section may exchange confidential information about a
6 client, without the informed consent of the client, with any other subunit of the same
7 county department of community programs, with a resource center, care
8 management organization or family care district, or with any person providing
9 services to the client under a purchase of services contract with the county
10 department of community programs or with a resource center, care management
11 organization or family care district, if necessary to enable an employee or service
12 provider to perform his or her duties, or to enable the county department of
13 community programs to coordinate the delivery of services to the client.

NOTE: Changes a cross-reference to access to records in protective placement and services cases, the provisions of which are renumbered in this bill.

14 **SECTION 59.** 51.421 (1) of the statutes is amended to read:

15 51.421 **(1)** PURPOSE. In order to provide the least restrictive and most
16 appropriate care and treatment for persons with ~~chronic~~ serious and persistent
17 mental illness, community support programs should be available in all parts of the
18 state. In order to integrate community support programs with other long-term care
19 programs, community support programs shall be coordinated, to the greatest extent
20 possible, with the community options program under s. 46.27, with the protective
21 services system in a county, with the medical assistance program under subch. IV of
22 ch. 49 and with other care and treatment programs for persons with ~~chronic~~ serious
23 and persistent mental illness.

ASSEMBLY BILL 785**SECTION 60**

1 **SECTION 60.** 51.421 (2) of the statutes is amended to read:

2 51.421 (2) SERVICES. If funds are provided, and within the limits of the
3 availability of funds provided under s. 51.423 (2), each county department under s.
4 51.42 shall establish a community support program. Each community support
5 program shall use a coordinated case management system and shall provide or
6 assure access to services for persons with ~~chronic~~ serious and persistent mental
7 illness who reside within the community. Services provided or coordinated through
8 a community support program shall include assessment, diagnosis, identification of
9 persons in need of services, case management, crisis intervention, psychiatric
10 treatment including medication supervision, counseling and psychotherapy,
11 activities of daily living, psychosocial rehabilitation which may include services
12 provided by day treatment programs, client advocacy including assistance in
13 applying for any financial support for which the client may be eligible, residential
14 services and recreational activities. Services shall be provided to an individual based
15 upon his or her treatment and psychosocial rehabilitation needs.

16 **SECTION 61.** 51.421 (3) (c) of the statutes is amended to read:

17 51.421 (3) (c) Monitor the establishment and the continuing operation of
18 community support programs and ensure that community support programs comply
19 with the standards promulgated by rule. The department shall ensure that the
20 persons monitoring community support programs to determine compliance with the
21 standards are persons who are knowledgeable about treatment programs for persons
22 with ~~chronic~~ serious and persistent mental illness.

NOTE: SECTIONS 59 to 61 revise the term "chronic mental illness" to "serious and
persistent mental illness".

23 **SECTION 62.** 51.437 (4) (c) of the statutes is amended to read:

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1 51.437 (4) (c) County liability for care and services purchased through or
2 provided by a county department of developmental disabilities services established
3 under this section shall be based upon the client's county of residence except for
4 emergency services for which liability shall be placed with the county in which the
5 individual is found. For the purpose of establishing county liability, "emergency
6 services" means those services provided under the authority of s. 55.05 (4), 2003
7 stats., or s. 55.06 (11) (a), 2003 stats., or s. 51.15, 55.05 (4) or 55.06 (11) (a), 55.13, or
8 55.135. Nothing in this paragraph prevents recovery of liability under s. 46.10 or any
9 other statute creating liability upon the individual receiving a service or any other
10 designated responsible party.

NOTE: Changes cross-references to emergency protective services and emergency
protective placement, the provisions of which are renumbered in this bill.

11 **SECTION 63.** 51.437 (4r) (b) of the statutes is amended to read:

12 51.437 (4r) (b) Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83,
13 51.30, 51.45 (14) (a), ~~55.06 (17) (e)~~ 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c) and
14 938.78 (2) (a), any subunit of the county department of developmental disabilities
15 services acting under this section may exchange confidential information about a
16 client, without the informed consent of the client, with any other subunit of the same
17 county department of developmental disabilities services, with a resource center,
18 care management organization or family care district, or with any person providing
19 services to the client under a purchase of services contract with the county
20 department of developmental disabilities services or with a resource center, care
21 management organization or family care district, if necessary to enable an employee
22 or service provider to perform his or her duties, or to enable the county department

ASSEMBLY BILL 785**SECTION 63**

1 of developmental disabilities services to coordinate the delivery of services to the
2 client.

NOTE: Changes a cross-reference to access to records in protective placement and services cases, the provisions of which are renumbered in this bill.

3 **SECTION 64.** 51.67 (intro.) of the statutes is amended to read:

4 **51.67 Alternate procedure; protective services.** (intro.) If, after a hearing
5 under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not
6 warranted and that the subject individual is a fit subject for guardianship and
7 protective placement or services, the court may, without further notice, appoint a
8 temporary guardian for the subject individual and order temporary protective
9 placement or services under ch. 55 for a period not to exceed 30 days. Temporary
10 protective placement for an individual in a center for the developmentally disabled
11 is subject to s. 51.06 (3). Any interested party may then file a petition for permanent
12 guardianship or protective placement or services, including medication, under ch.
13 55. If the individual is in a treatment facility, the individual may remain in the
14 facility during the period of temporary protective placement if no other appropriate
15 facility is available. The court may order psychotropic medication as a temporary
16 protective service under this section if it finds that there is probable cause to believe
17 the individual is not competent to refuse psychotropic medication and that the
18 medication ordered will have therapeutic value and will not unreasonably impair the
19 ability of the individual to prepare for and participate in subsequent legal
20 proceedings. An individual is not competent to refuse psychotropic medication if,
21 because of ~~chronic~~ serious and persistent mental illness, and after the advantages
22 and disadvantages of and alternatives to accepting the particular psychotropic
23 medication have been explained to the individual, one of the following is true:

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1 **SECTION 65.** 51.67 (2) of the statutes is amended to read:

2 51.67 (2) The individual is substantially incapable of applying an
3 understanding of the advantages, disadvantages and alternatives to his or her
4 ~~chronic~~ serious and persistent mental illness in order to make an informed choice as
5 to whether to accept or refuse psychotropic medication.

 NOTE: SECTIONS 64 and 65 revise the term “chronic mental illness” to “serious and
persistent mental illness”.

6 **SECTION 66.** 55.001 of the statutes is amended to read:

7 **55.001 Declaration of policy.** The legislature recognizes that many citizens
8 of the state, because of ~~the infirmities of aging, chronic~~ serious and persistent mental
9 illness, ~~mental retardation, other~~ degenerative brain disorder, developmental
10 disabilities, or other like incapacities incurred at any age, are in need of protective
11 services or protective placement. Except as provided in s. 49.45 (30m) (a), ~~these~~ the
12 protective services or protective placement should, to the maximum degree of
13 feasibility under programs, services and resources that the county board of
14 supervisors is reasonably able to provide within the limits of available state and
15 federal funds and of county funds required to be appropriated to match state funds,
16 allow the individual the same rights as other citizens, and at the same time protect
17 the individual from exploitation, abuse, and degrading treatment. This chapter is
18 designed to establish those protective services and protective placements, to assure
19 their availability to all ~~persons~~ individuals when in need of them, and to place the
20 least possible restriction on personal liberty and exercise of constitutional rights
21 consistent with due process and protection from abuse, exploitation, and neglect.

 NOTE: Inserts references to both protective services and protective placements.
Also, revises terminology to delete the terms “infirmities of aging” and “mental
retardation”; to insert a new term, “degenerative brain disorder” to replace “infirmities
of aging”; and to replace the word “chronic” with the term “serious and persistent”.

ASSEMBLY BILL 785**SECTION 67**

1 **SECTION 67.** 55.01 (1d) of the statutes is created to read:

2 55.01 (1d) “Activated power of attorney for health care” means a power of
3 attorney for health care that has taken effect in the manner specified in s. 155.05 (2).

NOTE: Creates a definition of “activated power of attorney for health care”, a term
which is used in this bill.

4 **SECTION 68.** 55.01 (1v) of the statutes is created to read:

5 55.01 (1v) “Degenerative brain disorder” means the loss or dysfunction of brain
6 cells to the extent that an individual is substantially impaired in his or her ability
7 to provide adequately for his or her own care or custody.

NOTE: Creates a definition of “degenerative brain disorder”, which is a new term
created in this bill to replace the outdated term “infirmities of aging”.

8 **SECTION 69.** 55.01 (2) of the statutes is amended to read:

9 55.01 (2) “Developmentally disabled ~~person~~” means ~~any individual~~ having a
10 disability attributable to mental retardation, cerebral palsy, epilepsy, autism or
11 another neurological condition closely related to mental retardation or requiring
12 treatment similar to that required for mentally retarded individuals, which has
13 continued or can be expected to continue indefinitely, substantially impairs ~~the an~~
14 individual from adequately providing for his or her own care or custody, and
15 constitutes a substantial handicap to the afflicted individual. The term does not
16 include ~~a person affected by senility which~~ that is primarily caused by the process
17 of aging or ~~the infirmities of aging~~ degenerative brain disorder.

NOTE: Revises the term “infirmities of aging” to “degenerative brain disorder”.

18 **SECTION 70.** 55.01 (3) of the statutes is repealed.

NOTE: SECTION 68 creates a new definition of “degenerative brain disorder”, which
is created to replace the repealed definition “infirmities of aging”.

19 **SECTION 71.** 55.01 (4) of the statutes is renumbered 55.01 (4) (intro.) and
20 amended to read:

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1 55.01 (4) (intro.) “Interested person” means any adult of the following:

2 (a) An adult relative or friend of a person an individual sought to be protected
3 under this subchapter; or any chapter.

4 (b) Any official or representative of a public or private agency, corporation or
5 association concerned with the person’s individual’s welfare.

NOTE: Revises the term “interested person”.

6 **SECTION 72.** 55.01 (4) (c) of the statutes is created to read:

7 55.01 (4) (c) A health care agent, as defined in s. 155.01 (4).

NOTE: Includes a health care agent in the definition of “interested person”.

8 **SECTION 73.** 55.01 (4g) of the statutes is amended to read:

9 55.01 (4g) “Intermediate facility” has the meaning given in s. 46.279 (1) ~~(a)~~ (b).

10 **SECTION 74.** 55.01 (4t) of the statutes is amended to read:

11 55.01 (4t) “Nursing facility” has the meaning given in s. 46.279 (1) ~~(b)~~ (c).

12 **SECTION 75.** 55.01 (6), (6m), (6p) and (6r) of the statutes are created to read:

13 55.01 (6) “Protective placement” means a placement that is made to provide for
14 the care and custody of an individual.

15 **(6m)** “Protective placement facility” means a facility to which a court may
16 under s. 55.12 order an individual to be provided protective placement for the
17 primary purpose of residential care and custody.

18 **(6p)** “Protective placement unit” means a ward, wing, or other designated part
19 of a placement facility.

20 **(6r)** “Protective services” includes any of the following:

21 (a) Outreach.

22 (b) Identification of individuals in need of services.

23 (c) Counseling and referral for services.

ASSEMBLY BILL 785**SECTION 75**

1 (d) Coordination of services for individuals.

2 (e) Tracking and follow-up.

3 (f) Social services.

4 (g) Case management.

5 (h) Legal counseling or referral.

6 (i) Guardianship referral.

7 (j) Diagnostic evaluation.

8 (k) Any services that, when provided to an individual with developmental
9 disabilities, degenerative brain disorder, serious and persistent mental illness, or
10 other like incapacity, keep the individual safe from abuse, neglect, or
11 misappropriation of property or prevent the individual from experiencing
12 deterioration or from inflicting harm on himself or herself or another person.

NOTE: Creates a definition of protective placement. This definition is derived from the first sentence of s. 55.06 (1). Creates a definition of protective services. This definition incorporates the noninclusive list of possible services from current s. 55.04 (1) (a), and specifies that “protective services” includes any services that are intended to keep specified individuals safe from abuse, neglect, or misappropriation of property, or prevent the individual from inflicting harm on himself or herself or another person.

13 **SECTION 76.** 55.01 (6t) of the statutes is created to read:

14 55.01 (6t) “Residence” means the voluntary concurrence of an individual’s
15 physical presence with his or her intent to remain in a place of fixed habitation.
16 Physical presence is prima facie evidence of intent to remain.

NOTE: Creates a definition of “residence” for use in ch. 55. This definition is based on the definition of “residence” in s. 49.001.

17 **SECTION 77.** 55.01 (6v) of the statutes is created to read:

18 55.01 (6v) “Serious and persistent mental illness” has the meaning given in s.
19 51.01 (14t).

NOTE: Creates a definition of “serious and persistent mental illness”, which is used in this bill and replaces the outdated term “chronic mental illness”.

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1 **SECTION 78.** 55.01 (6x) of the statutes is created to read:

2 55.01 (6x) “Treatment facility” has the meaning given in s. 51.01 (19).

NOTE: Provides that in ch. 55, “treatment facility” has the same definition as in ch. 51: “any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs, community support programs and rehabilitation programs”.

3 **SECTION 79.** 55.01 (6y) of the statutes is created to read:

4 55.01 (6y) “Voluntary” means according to an individual’s free choice, if
5 competent, or by choice of a guardian, if adjudicated incompetent.

NOTE: Creates a definition of “voluntary”, a term which is used in this bill.

6 **SECTION 80.** 55.02 of the statutes is repealed and recreated to read:

7 **55.02 Protective services and protective placement: duties. (1)**

8 DEPARTMENT DUTIES. (a) The department shall do all of the following:

- 9 1. Cooperate with county departments to develop and operate a coordinated,
10 statewide system for protective services and protective placement.
- 11 2. Monitor and supervise the implementation and operation of the protective
12 services and protective placement system.
- 13 3. Provide technical assistance to county departments providing protective
14 services and protective placement.
- 15 4. Evaluate the protective services and protective placement system.

16 (b) The department may provide protective services and protective placement
17 directly or contract for the provision of protective services or protective placement.

18 **(2) COUNTY DEPARTMENT DUTIES.** (a) The chairperson of each county board of
19 supervisors shall designate a county department under s. 46.215, 46.22, 46.23, 51.42,
20 or 51.437 that is providing services in the county on its own or through a joint
21 mechanism with another county department or county to have the responsibility for

ASSEMBLY BILL 785**SECTION 80**

1 planning for the provision of protective services and protective placement and for
2 directly providing protective services, protective placement, or both, or entering into
3 a contract under s. 46.036 with a responsible agency for the provision of protective
4 services, protective placement, or both.

5 (b) In addition to the responsibilities specified in par. (a), the county
6 department shall:

7 1. Monitor and evaluate protective services and protective placements.

8 2. Prepare and submit reports required by the department, or by a court if
9 protective services or protective placement are ordered by a court.

10 3. Develop requirements for submittal by guardians of the person of reports to
11 the county department under s. 880.38 (3).

12 4. Designate at least one appropriate medical facility or protective placement
13 facility as an intake facility for the purpose of emergency protective placements
14 under s. 55.135.

NOTE: Revises the duties of the DHFS and the county departments to more accurately reflect the actual role of each in the protective services and protective placement system. Also, creates a new requirement that each county department must designate an appropriate intake facility for emergency protective placements.

15 **SECTION 81.** 55.03 of the statutes is renumbered 55.03 (1) and amended to read:

16 55.03 (1) AGENCY AS GUARDIAN. No agency acting as a guardian appointed under
17 ch. 880 shall may be a provider of protective services or protective placement for its
18 ward under this chapter.

19 (2) TRANSFER OF GUARDIANSHIP AND LEGAL CUSTODY. Nothing in this chapter shall
20 may be construed to prohibit the transfer of guardianship and legal custody under
21 s. 48.427 or s. 48.43.

22 **SECTION 82.** 55.04 (title) and (1) to (3) of the statutes are repealed.

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1 **SECTION 83.** 55.04 (4) of the statutes is renumbered 55.03 (3) and amended to
2 read:

3 **55.03 (3) GUARDIAN AUTHORITY AND RESPONSIBILITY APPLICABLE TO PARENT OF**
4 **MINOR.** Where any responsibility or authority is created under this chapter upon or
5 in relation to a guardian, ~~such~~ the responsibility or authority is deemed to apply to
6 a parent or person in the place of a parent in the case of a minor who is or who is
7 alleged to be developmentally disabled.

NOTE: The program responsibilities formerly specified in s. 55.04 have been incorporated into newly created definitions of protective services and protective placement in s. 55.01 (6) and (6r), respectively, and into the repealed and recreated version of s. 55.02.

The bill incorporates the provisions of current ss. 55.02 and 55.04 into ss. 55.02 and 55.03.

8 **SECTION 84.** 55.043 (1) (a) (intro.) of the statutes is amended to read:

9 **55.043 (1) (a) (intro.)** If a county protective services agency has probable cause
10 to believe that there is misappropriation of property or neglect or abuse of a
11 vulnerable adult, the county protective services agency may conduct an
12 investigation ~~in Milwaukee County~~ to determine if the vulnerable adult in question
13 is in need of protective services. The county protective services agency shall conduct
14 the investigation in accordance with standards established by the department for
15 conducting the investigations. The investigation shall include at least one of the
16 following:

NOTE: Deletes a reference to Milwaukee County in the statute that confers authority on a county protective services agency to conduct an investigation into alleged abuse of a vulnerable adult. The effect of this amendment is to permit all counties in the state to exercise this authority.

17 **SECTION 85.** 55.043 (1) (a) 1. and 3. of the statutes are amended to read:

18 **55.043 (1) (a) 1.** Observation of or an interview with the vulnerable adult, in
19 private to the extent practicable, and with or without consent of his or her guardian
20 or agent under an activated power of attorney for health care, if any.

ASSEMBLY BILL 785**SECTION 85**

1 3. An interview with the guardian or agent under an activated power of
2 attorney for health care, if any, and with the caretaker, if any, of the vulnerable adult.

3 **SECTION 86.** 55.043 (1) (b) 1. of the statutes is amended to read:

4 55.043 (1) (b) 1. The vulnerable adult or his or her guardian or agent under an
5 activated power of attorney for health care, if any, consents to the examination.

6 **SECTION 87.** 55.043 (1) (b) 2. a. and b. of the statutes are amended to read:

7 55.043 (1) (b) 2. a. The vulnerable adult has no guardian or agent under an
8 activated power of attorney for health care.

9 b. The vulnerable adult's guardian or agent under an activated power of
10 attorney for health care refuses to consent to the examination, but the examination
11 is authorized by order of a court.

NOTE: SECTIONS 85 to 87 insert a reference to an agent under an activated power of attorney for health care, in the event that a vulnerable adult under ch. 55 has such an agent who may act on his or her behalf in protective services or protective placement proceedings.

12 **SECTION 88.** 55.043 (4) (a) of the statutes is amended to read:

13 55.043 (4) (a) Offer services, including protective services ~~under s. 55.05, a,~~
14 ~~protective placement under s. 55.06,~~ relocation assistance, or other services.

15 **SECTION 89.** 55.043 (4) (b) of the statutes is amended to read:

16 55.043 (4) (b) Take appropriate emergency action, including provision of
17 emergency protective services under s. 55.13 or emergency protective placement
18 under s. ~~55.06~~ 55.135, if the county protective services agency considers that the
19 emergency action is in the vulnerable adult's best interests and the emergency action
20 is the least restrictive appropriate intervention.

NOTE: Changes cross-references to emergency protective services and emergency protective placement, the provisions of which are renumbered in this bill.

21 **SECTION 90.** 55.045 of the statutes is amended to read:

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1 **55.045 Funding.** Except as provided in s. 49.45 (30m) (a), the appropriate
2 county department ~~designated under s. 55.02~~ shall within the limits of available
3 state and federal funds and of county funds required to be appropriated to match
4 state funds, provide for the reasonable program needs of ~~persons~~ individuals who are
5 ~~protectively placed~~ provided protective placement or who receive protective services
6 under this chapter, including reasonable expenses for the evaluations required by s.
7 ~~55.06 (8)~~ 55.11. Payment and collections for protective placement or protective
8 services provided in public facilities specified in s. 46.10 shall be governed in
9 accordance with s. 46.10. The department may require that a ~~person~~ an individual
10 who is ~~protectively placed~~ provided protective placement or receives protective
11 services under this chapter provide reimbursement for services or care and custody
12 received, based on the ability of the person individual to pay for such costs.

13 **SECTION 91.** 55.05 (title) of the statutes is amended to read:

14 **55.05** (title) **Protective Voluntary protective services.**

15 **SECTION 92.** 55.05 (2) (intro.) of the statutes is amended to read:

16 55.05 **(2)** (intro.) The department or ~~an~~ a county department or agency
17 ~~providing with which the county department contracts under s. 55.02 (2) that~~
18 ~~provides~~ protective services under s. 55.04 may provide such the services under any
19 of the following conditions:

20 **SECTION 93.** 55.05 (2) (a) of the statutes is amended to read:

21 55.05 **(2)** (a) The person An individual who needs or believes he or she needs
22 protective service ~~may seek such service~~ services requests the services.

23 **SECTION 94.** 55.05 (2) (b) of the statutes is amended to read:

24 55.05 **(2)** (b) ~~Any~~ An interested person ~~may request~~ requests protective services
25 on behalf of a ~~person~~ an individual in need of services. A guardian may request and

ASSEMBLY BILL 785**SECTION 94**

1 consent to protective services on behalf of the guardian's ward. An agent under an
2 activated power of attorney for health care may request and consent to protective
3 services on behalf of the agent's principal.

4 **SECTION 95.** 55.05 (2) (c) of the statutes is repealed.

5 **SECTION 96.** 55.05 (2) (d) of the statutes is repealed.

6 **SECTION 97.** 55.05 (3) of the statutes is amended to read:

7 55.05 (3) VOLUNTARY PROTECTIVE SERVICES PREFERRED. An individual shall
8 receive protective services voluntarily unless ordered by the court under s. 55.12,
9 requested by ~~a-~~ the individual's guardian or agent under an activated power of
10 attorney for health care, or provided on an emergency basis in accordance with sub-
11 (4) s. 55.13.

NOTE: Amends current law relating to voluntary protective services, to provide a separate statutory section for voluntary protective services and to insert references to an agent under an activated power of attorney for health care, who may, in some situations, be authorized to request and consent to protective services for a principal.

12 **SECTION 98.** 55.05 (4) (title) and (a) of the statutes are renumbered 55.13 (title)
13 and (1) and amended to read:

14 **55.13** (title) **Emergency protective services.** (1) Emergency protective
15 services may be provided for not more than 72 hours ~~where~~ when there is reason to
16 believe that, if the emergency protective services are not provided, the person
17 individual entitled to the services or others will incur a substantial risk of serious
18 physical harm.

19 **SECTION 99.** 55.05 (4) (b) of the statutes is renumbered 55.13 (4) and amended
20 to read:

21 55.13 (4) ~~Where~~ If it is necessary to forcibly enter a premises forcibly to provide
22 or investigate the need for emergency protective services, the representative of an
23 ~~agency or~~ staff member of a county ~~protective services agency~~ department shall

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1 obtain a court order authorizing entry and shall make the entry accompanied by a
2 sheriff, police officer, or member of a fire department. When it appears probable that
3 substantial physical harm, irreparable injury, or death may occur to an individual,
4 the police officer, fire fighter, or sheriff may enter a premises without a court order
5 if the time required to obtain such an order would result in greater risk of physical
6 harm to the individual.

7 **SECTION 100.** 55.05 (4) (c) of the statutes is renumbered 55.13 (5) and amended
8 to read:

9 55.13 (5) ~~Where~~ If a forcible entry is made under ~~par. (b)~~ sub. (4), a report of
10 the exact circumstances, including the date, time, place, factual basis for the need
11 of ~~such~~ the entry, and the exact services rendered, shall be made and forwarded to
12 the court within 14 days of after entry by the person making ~~such~~ the entry.

13 **SECTION 101.** 55.05 (5) (title) of the statutes is renumbered 55.055 (title) and
14 amended to read:

15 **55.055** (title) **Admissions initially made without court involvement.**

16 **SECTION 102.** 55.05 (5) (a) of the statutes is repealed.

NOTE: This statute is repealed because it is unnecessary; moreover, it is misleading, because an individual who is legally and actually capable of consenting may consent to enter *any* regulated residential, medical, or treatment facility, not just those specified.

17 **SECTION 103.** 55.05 (5) (b) 1. of the statutes is renumbered 55.055 (1) (a) and
18 amended to read:

19 55.055 (1) (a) ~~Guardians of persons~~ The guardian of an individual who have
20 has been found incompetent under s. 880.33 may consent to the individual's
21 admission to a foster home, group home, or community-based residential facility, as
22 defined under s. 50.01 (1g), without a protective placement order under s. ~~55.06~~ 55.12
23 if the home or facility is licensed for fewer than 16 beds. Prior to providing that

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1 consent, and annually thereafter, the guardian shall review the ward's right to the
2 least restrictive residential environment and may consent only to admission to a
3 home or facility that implements ~~those rights~~ that right.

NOTE: Changes a cross-reference to the procedure for protective placement, the provisions of which are renumbered in this bill.

4 **SECTION 104.** 55.05 (5) (b) 2. of the statutes is renumbered 55.055 (1) (b) and
5 amended to read:

6 55.055 (1) (b) ~~Guardians~~ The guardian of persons an individual who have ~~has~~
7 been found incompetent under s. 880.33 may consent to the individual's admission
8 to a nursing home if ~~the person is admitted directly from a hospital inpatient unit~~
9 ~~for recuperative care or other facility not specified in par. (a) for which protective~~
10 ~~placement is otherwise required~~ for a period not to exceed ~~3 months, unless the~~
11 ~~hospital admission was for psychiatric care 60 days. In order to be admitted under~~
12 ~~this paragraph, the individual must be in need of recuperative care or be unable to~~
13 ~~provide for his or her own care or safety so as to create a serious risk of substantial~~
14 ~~harm to himself or herself or others.~~ Prior to providing that consent, the guardian
15 shall review the ward's right to the least restrictive residential environment and
16 consent only to admission to a nursing home or other facility that implements these
17 ~~rights~~ that right. Following the ~~3-month~~ 60-day period, the admission may be
18 extended for an additional 60 days if a petition for protective placement proceeding
19 under s. 55.06 is required 55.075 has been brought, or, if no petition for protective
20 placement under s. 55.075 has been brought, for an additional 30 days for the
21 purpose of allowing the initiation of discharge planning for the individual.
22 Admission under this paragraph is not permitted for an individual with a primary
23 diagnosis of mental illness or developmental disability.

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NOTE: Renumbers and amends a provision in current law that permits a person to be admitted to a nursing home prior to a protective placement proceeding on a short term basis. This provision permits individuals to be admitted to a facility not only directly from a hospital inpatient unit, as under current law, but also in cases where the individual is in need of recuperative care or unable to provide for his or her own care or safety so as to create a serious risk of substantial harm to himself or herself or others. In addition, this provision is revised to permit a 60 day admission, rather than a 3 month admission; however, the provision permits the placement to be extended for an additional 60 days if a protective placement petition has been brought, or, if no petition has been brought, for an additional 30 days to allow the initiation of discharge planning.

1 **SECTION 105.** 55.05 (5) (c) (intro.) of the statutes is renumbered 55.055 (3)
2 (intro.) and amended to read:

3 55.055 (3) (intro.) If a ~~person~~ an individual admitted under ~~par. (b) sub. (1)~~
4 verbally objects to or otherwise actively protests such an admission, the person in
5 charge of the home, nursing home, or other facility shall immediately notify the
6 ~~agency designated under s. 55.02~~ county department for the county in which the
7 ~~person~~ individual is living. Representatives of that ~~agency~~ county department shall
8 visit the ~~person~~ individual as soon as possible, but no later than 72 hours after
9 notification, and do the following:

10 **SECTION 106.** 55.05 (5) (c) 1. of the statutes is renumbered 55.055 (3) (a) and
11 amended to read:

12 55.055 (3) (a) Determine whether the protest persists or has been voluntarily
13 withdrawn and consult with the ~~person's~~ individual's guardian regarding the
14 reasons for the admission.

15 **SECTION 107.** 55.05 (5) (c) 2. of the statutes is renumbered 55.055 (3) (b) and
16 amended to read:

17 55.055 (3) (b) Attempt to have the ~~person~~ individual released within 72 hours
18 if the protest is not withdrawn and ~~necessary elements of s. 55.06 (2) or (11) are not~~
19 ~~present~~ the individual does not satisfy all standards under s. 55.08 (1) or criteria

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1 under 55.135 (1) and provide assistance in identifying appropriate alternative living
2 arrangements.

NOTE: Changes a cross-reference to the standards for protective placement and emergency protective placement, the provisions of which are renumbered in this bill.

3 **SECTION 108.** 55.05 (5) (c) 3. of the statutes is renumbered 55.055 (3) (c) and
4 amended to read:

5 55.055 (3) (c) Comply with s. ~~55.06 (11)~~ 55.135, if ~~all elements are present the~~
6 individual satisfies all criteria under s. 55.135 (1) and emergency placement in that
7 home, nursing home, or other facility or another home, nursing home, or other
8 facility is necessary, or file a petition for protective placement under s. ~~55.06 (2)~~
9 55.075. The court, with the permission of the home, nursing home, or facility, may
10 order the ~~person~~ individual to remain in the home, nursing home, or other facility
11 pending the outcome of the protective placement proceedings.

NOTE: Changes a cross-reference to emergency protective placement, the provisions of which are renumbered in this bill.

12 **SECTION 109.** 55.05 (5) (d) of the statutes is renumbered 55.055 (4) and
13 amended to read:

14 55.055 (4) The admission to a health care facility, as defined in s. 155.01 (6),
15 of a principal by a health care agent under the terms of a power of attorney for health
16 care instrument and in accordance with ch. 155 or the admission of an individual to
17 a nursing home or community-based residential facility under the requirements of
18 s. 50.06 is not a protective placement under this chapter.

19 **SECTION 110.** 55.055 (1) (c) of the statutes is created to read:

20 55.055 (1) (c) The guardian of a ward who has been found incompetent in a state
21 other than this state may consent to admission of the ward under par. (a) or (b) if the
22 ward is currently a resident of this state. A petition for guardianship and protective

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1 placement shall be filed in this state within 60 days after the ward's admission under
2 this paragraph.

NOTE: Provides that the procedure for admissions to facilities that are initially made without court involvement may be initiated by an out-of-state guardian if the ward is currently a resident of this state provided the petition for guardianship and protective placement is filed within 60 days after the ward's admission to the facility.

3 **SECTION 111.** 55.055 (1) (d) of the statutes is created to read:

4 55.055 (1) (d) A resident of this state who is the guardian of a ward who has
5 been found incompetent in, and resides in, a state other than this state may consent
6 to an admission of the ward under par. (a) or (b) if the guardian intends to move the
7 ward to this state within 30 days after the consent to the admission. A petition for
8 guardianship and protective placement shall be filed in this state within 60 days
9 after a ward's admission under this paragraph.

NOTE: Provides that an in-state guardian of an out-of-state ward may consent to an admission to a facility that is initially made without court involvement if the guardian intends to move the ward to this state within 30 days after the consent to the admission, provided the petition for guardianship and protective placement is filed within 60 days after the ward's admission to the facility.

10 **SECTION 112.** 55.055 (2) of the statutes is created to read:

11 55.055 (2) (a) In this subsection, "facility" means any of the following:

- 12 1. A group home.
- 13 2. A foster home.
- 14 3. A community-based residential facility, as defined in s. 50.01 (1g).
- 15 4. An adult family home, as defined in s. 50.01 (1).
- 16 5. A nursing home, as defined in s. 50.01 (3).

17 (b) Whenever a petition for guardianship on the ground of incompetency is filed
18 with respect to an individual who resides in a facility licensed for 16 or more beds,
19 a petition for protective placement of the individual shall also be filed. The
20 individual may continue to reside in the facility until the court issues a decision on

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1 the petition for guardianship and protective placement of the individual. Thereafter,
2 the individual may continue to reside in the facility only if the court's order under s.
3 55.12 specifies protective placement of the individual in a facility licensed for 16 or
4 more beds.

NOTE: Specifies that a guardian may not consent to the continued residence of a person in a facility licensed for 16 or more beds. Specifies that whenever a petition for guardianship on the ground of incompetency is filed with respect to a person who resides in a facility licensed for 16 or more beds, a petition for protective placement of the person shall also be filed. Specifies that the person may continue to reside in the facility if the court orders placement of the person in a facility licensed for 16 or more beds and may continue to reside in the facility pending the court's decision on the placement petition.

5 **SECTION 113.** 55.06 (1) (intro.) of the statutes is renumbered 55.06 and
6 amended to read:

7 **55.06 Protective services and protective placement; eligibility.** ~~A~~
8 ~~protective placement under this section is a placement of a ward for the primary~~
9 ~~purpose of providing care and custody. To be eligible for court-ordered protective~~
10 ~~placement or protective services, an individual shall be a resident of or present in the~~
11 ~~state and have a need for protective placement or protective services. The individual~~
12 ~~shall have attained the age of 18, but an individual who is alleged to be~~
13 ~~developmentally disabled may receive protective placement or protective services~~
14 ~~upon attaining the age of 14. No protective Protective placement under this section~~
15 ~~or protective services may be ordered unless under this chapter there is a~~
16 ~~determination of incompetency only for an individual who is determined to be~~
17 ~~incompetent in accordance with ch. 880, except in the case of or for a minor who is~~
18 ~~alleged to be developmentally disabled, and only if there is a finding of a need for~~
19 ~~protective placement in accordance with sub. (2) except as provided in subs. (11) and~~
20 ~~(12) under s. 55.12, and ss. 55.055 (5), 55.13, and 55.135 are inappropriate or do not~~
21 ~~apply. A procedure for adult court-ordered protective placement or protective~~

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1 ~~services may be initiated 6 months prior to an individual's birthday at which he or~~
2 ~~she first becomes eligible for placement before a minor attains age 18.~~

NOTE: Amends the current provision on eligibility for protective placement to include eligibility for court-ordered protective services.

3 **SECTION 114.** 55.06 (1) (a) of the statutes is renumbered 55.075 (1) and
4 amended to read:

5 55.075 (1) ~~The board designated under s. 55.02~~ department, the county
6 department or an agency ~~designated by it with which the county department~~
7 contracts under s. 55.02 (2), a guardian, or an interested person may file a petition
8 for appointment of a guardian and for protective services or protective placement for
9 an individual. The department shall provide for a schedule of reimbursement for the
10 cost of ~~such~~ the proceedings based upon the ability to pay of the proposed ward or
11 ~~person~~ individual to be protected.

NOTE: Renumbers provisions in current law relating to petitioning for protective services or placement and revises who may file a petition.

12 **SECTION 115.** 55.06 (1) (b) of the statutes is renumbered 55.075 (4) (b) and
13 amended to read:

14 55.075 (4) (b) If a person seeking to be the guardian of a proposed ward requests
15 the assistance of a ~~board designated under s. 55.02~~ county department or an agency
16 ~~designated by it with which it contracts under s. 55.02 (2) in petitioning for~~
17 ~~guardianship or for protective service or placement, such~~ services or protective
18 placement, the assistance may be considered a service and may be charged for based
19 upon the ability of ~~such~~ the person to pay for the service.

NOTE: Creates an exception to the requirement in s. 55.075 (4) (a), created in this bill, that the court must, unless it is inequitable, award payment of the petitioner's costs from the assets of the person sought to be provided protective placement or services.

20 **SECTION 116.** 55.06 (1) (c) of the statutes is renumbered 55.02 (3) and amended
21 to read:

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1 55.02 (3) CORPORATION COUNSEL. ~~If requested by the court, the~~ The corporation
2 counsel of the county in which the petition is brought may or, if requested by the
3 court, shall assist in conducting proceedings under this chapter.

NOTE: Amends current law to provide that the corporation counsel for the county in which the petition for protective placement or services is brought may assist in conducting proceedings under this chapter. The corporation counsel must assist if requested by the court, as under current law.

4 **SECTION 117.** 55.06 (1) (d) of the statutes is renumbered 55.03 (4) and amended
5 to read:

6 55.03 (4) GUARDIAN AUTHORITY FOR MAKING PROTECTIVE PLACEMENT. No guardian
7 or temporary guardian may make a permanent protective placement of his or her
8 ward unless ordered by a court under ~~this section s. 55.12~~, but a guardian or
9 temporary guardian may admit a ward to certain residential facilities under s. 55.05
10 (5) 55.055 or make an emergency protective placement under s. ~~55.06 (11)~~ 55.135.

NOTE: Renumbers and amends a provision in current law relating to a guardian's authority to make a protective placement of a ward, admit the ward to certain residential facilities, or make an emergency protective placement.

11 **SECTION 118.** 55.06 (2) (intro.) of the statutes is repealed.

NOTE: Repeals a provision in current law; this provision is recreated in a new section of the bill.

12 **SECTION 119.** 55.06 (2) (a) of the statutes is renumbered 55.08 (1) (a) and
13 amended to read:

14 55.08 (1) (a) ~~Has~~ The individual has a primary need for residential care and
15 custody;.

16 **SECTION 120.** 55.06 (2) (b) of the statutes is renumbered 55.08 (1) (b) and
17 amended to read:

18 55.08 (1) (b) Except in the case of a minor who is alleged to be developmentally
19 disabled, the individual has either been determined to be incompetent by a circuit
20 court or has had submitted on the minor's behalf a petition for a guardianship;.

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1 **SECTION 121.** 55.06 (2) (c) of the statutes is renumbered 55.08 (1) (c) and
2 amended to read:

3 55.08 (1) (c) As a result of developmental disabilities, ~~infirmities of aging,~~
4 ~~chronic degenerative brain disorder, serious and persistent~~ mental illness, or other
5 like incapacities, the individual is so totally incapable of providing for his or her own
6 care or custody as to create a substantial risk of serious harm to ~~oneself~~ himself or
7 herself or others. Serious harm may be ~~occasioned~~ evidenced by overt acts or acts
8 of omission; ~~and~~.

NOTE: Revises the terms “infirmities of aging” and “chronic mental illness” to
“degenerative brain disorder” and “serious and persistent mental illness”, respectively.

9 **SECTION 122.** 55.06 (2) (d) of the statutes is renumbered 55.08 (1) (d) and
10 amended to read:

11 55.08 (1) (d) Has The individual has a disability which that is permanent or
12 likely to be permanent.

13 **SECTION 123.** 55.06 (3) (a) of the statutes is renumbered 55.075 (2) (a) and
14 amended to read:

15 55.075 (2) (a) The A petition shall allege that the individual meets the
16 standards specified in s. 55.08 (1) or (2) and state with particularity the factual basis
17 for the allegations ~~specified in sub. (2).~~

18 **SECTION 124.** 55.06 (3) (b) of the statutes is renumbered 55.075 (2) (b) and
19 amended to read:

20 55.075 (2) (b) The petition ~~under sub. (2)~~ shall be based on personal knowledge
21 of the individual alleged to need protective placement or protective services.

22 **SECTION 125.** 55.06 (3) (c) of the statutes is renumbered 55.075 (5) (a) and
23 amended to read:

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1 55.075 (5) (a) ~~The~~ A petition under sub. (1) shall be filed in the county of
2 residence of the person individual to be protected, except that the petition may be
3 filed in the county in which the individual is physically present due to extraordinary
4 circumstances, including requiring medical aid and preventing harm to the
5 individual or others. The county of residence, as determined by the court, under s.
6 51.40, or by the guardian, is the county of responsibility.

NOTE: Clarifies where the petition for protective placement or services shall be filed. The petition must be filed in the county of residence of the individual to be protected, or where the person is present due to extraordinary circumstances.

7 **SECTION 126.** 55.06 (4) of the statutes is renumbered 55.075 (3) and amended
8 to read:

9 55.075 (3) A petition for guardianship ~~if required under sub. (2) (b) must~~
10 described in s. 55.08 (1) (b) or (2) (a) shall be heard prior to ordering protective
11 placement under this section or protective services. If ~~incompetency has been the~~
12 individual is determined incompetent under s. 880.33 more than ~~one year preceding~~
13 12 months before the filing of an application for protective placement or protective
14 services on his or her behalf, the court shall review the finding of incompetency.

15 **SECTION 127.** 55.06 (5) of the statutes is renumbered 55.09 (1) and amended
16 to read:

17 55.09 (1) NOTICE TO INDIVIDUAL. Notice of a petition for protective placement
18 or protective services shall be served upon the ~~person~~ individual sought to be placed
19 protected, by personal service, at least 10 days ~~prior to~~ before the time set for a
20 hearing. ~~Upon service of the notice, the person sought to be protected shall be~~
21 ~~informed of the complete contents of the notice.~~ The person serving the notice shall
22 inform the individual sought to be protected of the complete contents of the notice
23 and shall return a certificate to the circuit judge verifying that the petition has been

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1 delivered and notice given. The notice shall include the names of all petitioners.
2 Notice shall also be served personally or by mail upon the person's guardian ad litem,
3 legal counsel, guardian, if any, presumptive adult heirs, and upon other persons who
4 have physical custody of the person to be protected whose names and addresses are
5 known to the petitioner or can with reasonable diligence be ascertained, to any
6 governmental or private body or group from whom the person to be protected is
7 known to be receiving aid, and to such other persons or entities as the court may
8 require. Notice shall also be served personally or by mail upon the department at
9 least 10 days prior to the time set for hearing if the person sought to be protected may
10 be placed in a center for the developmentally disabled. Notice shall also be served
11 personally or by mail, at least 10 days before the time set for hearing, upon the county
12 department that is participating in the program under s. 46.278 of the county of
13 residence of the person sought to be protected, if the person has a developmental
14 disability and may be placed in an intermediate facility or a nursing facility, except
15 that, for a person sought to be protected to whom s. 46.279 (4m) applies, this notice
16 shall instead be served on the department. The incompetent or proposed
17 incompetent is presumed able to attend the hearing unless, after a personal
18 interview, the guardian ad litem certifies to the court that the person is unable to
19 attend.

NOTE: Deletes provision from current law relating to notice of petition and hearing for protective placement. These provisions are placed in a new statutory section, s. 55.09, "Notice of petition and hearing for protective services or placement.", which is found in SECTION 159 of this bill.

20 **SECTION 128.** 55.06 (5m) of the statutes is renumbered 55.10 (1) and amended
21 to read:

22 55.10 (1) TIME LIMITS. A petition for protective placement of a person who has
23 been admitted to a nursing home or a community-based residential facility under

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1 ~~s. 50.06~~ or protective services shall be heard within 60 days after it is filed unless an
2 extension of this time is requested by the petitioner, the individual sought to be
3 protected or the individual's guardian ad litem, or the county department, in which
4 case the court may extend the date for hearing by up to 45 days. If an individual
5 under s. 50.06 (3) alleges that an another individual is making a health care decision
6 under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual
7 or if the incapacitated individual verbally objects to or otherwise actively protests the
8 admission, the petition shall be heard as soon as possible within the 60-day period.

NOTE: Allows certain parties to request an extension of up to 45 days of the 60-day time period within which a petition for protective placement or services must be heard.

9 **SECTION 129.** 55.06 (6) of the statutes is renumbered 55.10 (4) (b) and amended
10 to read:

11 55.10 (4) (b) Guardian ad litem; costs. ~~Section 880.33 (2) applies to all hearings~~
12 ~~under this chapter except for transfers of placement under sub. (9) (b), (c) and (e).~~
13 ~~A person to be protected shall have a~~ The court shall in all cases require the
14 appointment of an attorney as guardian ad litem who is an attorney appointed in
15 accordance with s. 757.48 (1) present at all hearings under this chapter if the person
16 does not have full legal counsel. The responsibilities and duties of a guardian ad
17 litem on behalf of a proposed ward or individual who is alleged incompetent specified
18 in s. 880.331 (4) apply to a guardian ad litem appointed in a proceeding for protective
19 services or protective placement on behalf of an individual sought to be protected.
20 If a guardian has been appointed for an individual who is the subject of a petition for
21 court-ordered protective placement or protective services, the guardian ad litem
22 shall interview the guardian. The guardian ad litem shall be present at all hearings
23 under this chapter if the individual sought to be protected does not have full legal

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1 counsel. The court may, however, excuse a personal appearance by a guardian ad
2 litem based on information contained in a written report by the guardian ad litem
3 to the court. If the ~~person~~ individual sought to be protected is an adult who is
4 indigent, the county of legal settlement shall be liable for any fees due the guardian
5 ad litem fees. If the ~~person~~ individual sought to be protected is a child, ~~the person's~~
6 minor, the minor's parents or the county of legal settlement in which the hearing is
7 held shall be liable for any fees due the guardian ad litem fees as provided in s. 48.235
8 (8). ~~The subject individual, attorney or guardian ad litem shall have the right to~~
9 ~~present and cross-examine witnesses, including any person making an evaluation~~
10 ~~or review under sub. (8) (c).~~

NOTE: Clarifies that the responsibilities and duties of a guardian ad litem on behalf
of an individual who is the subject of a protective placement or services proceeding are
the same as those in a proceeding under ch. 880, relating to guardianship.

11 **SECTION 130.** 55.06 (7) of the statutes is renumbered 55.10 (4) (d) and amended
12 to read:

13 55.10 (4) (d) Standard of proof. ~~Except for emergency placement or temporary~~
14 ~~placement under subs. (11) and (12), before~~ Before protective placement or protective
15 services may be ordered under ~~this chapter~~ s. 55.12, the court or jury must find by
16 clear and convincing evidence that the individual to be placed protected is in need
17 of protective placement ~~as provided in sub. (2)~~ because he or she meets all of the
18 standards under s. 55.08 (1) or is in need of protective services because he or she
19 meets all of the standards under s. 55.08 (2).

NOTE: Clarifies the standard of proof at protective placement or services hearing;
provides that the person must meet the standards for protective placement or protective
services before an order may be entered.

20 **SECTION 131.** 55.06 (8) (intro.) of the statutes is renumbered 55.11 (1) (intro.)
21 and amended to read:

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1 55.11 (1) (intro.) Before ordering the protective placement of or protective
2 services for any individual, the court shall ~~direct~~ require a comprehensive evaluation
3 of the ~~person in need of placement~~ individual sought to be protected, if such an
4 evaluation has not already been made. The court may utilize available
5 multidisciplinary resources in the community in determining the need for protective
6 placement or protective services. ~~The board designated under s. 55.02 or an agency~~
7 ~~designated by it~~ county department or an agency with which it contracts under s.
8 55.02 (2) shall cooperate with the court in securing available resources. ~~Where~~
9 ~~applicable by reason of the particular disability, the appropriate board designated~~
10 ~~under s. 55.02 or an agency designated by it having responsibility for the place of~~
11 ~~legal residence of the individual as provided in s. 49.001 (6) shall make a~~
12 ~~recommendation for placement. If the court is considering placement of the~~
13 ~~individual in a center for the developmentally disabled, the court shall request a~~
14 ~~statement or testimony from the department regarding whether the placement is~~
15 ~~appropriate for the person's needs and whether it is consistent with the purpose of~~
16 ~~the center under s. 51.06 (1). If the individual has a developmental disability and~~
17 ~~the court is considering placement of the individual in an intermediate facility or a~~
18 ~~nursing facility, the court shall request a statement or testimony from the county~~
19 ~~department of the individual's county of residence that is participating in the~~
20 ~~program under s. 46.278 as to whether the individual's needs could be met in a~~
21 ~~noninstitutional setting, except that, if s. 46.279 (4m) applies to the individual, the~~
22 ~~court shall request the statement or testimony from the department, rather than the~~
23 ~~county department. A copy of the comprehensive evaluation shall be provided to the~~
24 ~~guardian, the guardian ad litem, and to the individual or attorney at least 96 hours~~
25 ~~in advance of the hearing to determine placement. The court or the cooperating~~

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1 agency obtaining the evaluation shall request appropriate information which shall
2 include at least the following:

3 **SECTION 132.** 55.06 (8) (a) of the statutes is renumbered 55.11 (1) (a) and
4 amended to read:

5 55.11 (1) (a) The address of the place where the ~~person~~ individual is residing
6 and the person or agency who is providing services at present, if any.

7 **SECTION 133.** 55.06 (8) (b) of the statutes is renumbered 55.11 (1) (b) and
8 amended to read:

9 55.11 (1) (b) A resume of any professional treatment and services provided to
10 the ~~person~~ individual by the department or agency, ~~if any~~, in connection with the
11 problem creating the need for protective placement or protective services.

12 **SECTION 134.** 55.06 (8) (c) of the statutes is renumbered 55.11 (1) (c) and
13 amended to read:

14 55.11 (1) (c) A medical, psychological, social, vocational, and educational
15 evaluation and review, ~~where~~ if necessary, and any recommendations for or against
16 maintenance of partial legal rights as provided in s. 880.33. ~~Such~~ The evaluation and
17 review shall include recommendations for the individual's placement that are
18 consistent with the least restrictive environment required requirements of s. 55.12
19 (3), (4), and (5).

NOTE: SECTION 131 to 134 renumber and reorganize provisions regarding a
comprehensive evaluation of an individual who is the subject of a protective placement
or services petition.

20 **SECTION 135.** 55.06 (9) (a) of the statutes is renumbered 55.12 (1) and amended
21 to read:

22 55.12 (1) ~~The court may order protective services under s. 55.05 (2) (d) as an~~
23 ~~alternative to placement.~~ When ordering protective placement under the standards

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1 specified in s. 55.08 (1) or protective services under the standards specified in s. 55.08
2 (2), the court, on the basis of the evaluation and other relevant evidence, shall order
3 the appropriate board specified under s. 55.02 or an agency designated by it to
4 protectively place county department or agency with which it contracts under s.
5 55.02 (2) to provide protective placement or protective services to the individual.

6 ~~Placement by the appropriate board or designated agency is~~

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

13 (4) Factors to be considered that a county department shall consider in making
14 providing protective placement or protective services shall include the needs of the
15 person individual to be protected for health, social, or rehabilitative services; the
16 level of supervision needed; the reasonableness of the placement or services given the
17 cost and the actual benefits in the level of functioning to be realized by the individual;
18 the limits of available state and federal funds and of county funds required to be
19 appropriated to match state funds; and the reasonableness of the protective
20 placement or protective services given the number or projected number of
21 individuals who will need protective placement or protective services and given the
22 limited funds available.

23 (5) Except as provided in s. 49.45 (30m), the county may not be required to
24 provide funding, in addition to its funds that are required to be appropriated to
25 match state funds, in order to protectively place provide protective placement or

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1 protective services to an individual. Placement Protective placement under this
2 section does not replace commitment of ~~a person~~ an individual in need of acute
3 psychiatric treatment under s. 51.20 or 51.45 (13).

4 **(2)** Subject to s. 46.279, protective placement may be made to such facilities as
5 nursing homes, public medical institutions, centers for the developmentally disabled
6 under the requirements of s. 51.06 (3), foster care services and or other home
7 placements, or to other appropriate facilities, but may not be made to units for the
8 acutely mentally ill. An individual who is subject to an order for protective
9 placement or protective services may be detained on an emergency basis under s.
10 51.15 or involuntarily committed under s. 51.20 or may be voluntarily admitted to
11 a treatment facility for inpatient care under s. 51.10 (8). No individual who is subject
12 to an order for protective placement or services may be involuntarily transferred to,
13 detained in, or committed to a treatment facility for care except under s. 51.15 or
14 51.20. Protective placement in a locked unit shall require a specific finding of the
15 court as to the need for the action.

16 **(6)** If the ~~appropriate board or designated~~ county department or agency with
17 which it contracts under s. 55.02 (2) proposes to place provide protective placement
18 to an individual who has a developmental disability in an intermediate facility or a
19 nursing facility under an order under this paragraph section, the county department
20 or agency, or, if s. 46.279 (4m) applies to the individual, the department or the
21 department's contractor shall develop a plan under s. 46.279 (4) and furnish the plan
22 to the board county department or agency and to the individual's guardian. The
23 board county department or agency with which it contracts under s. 55.02 (2) shall
24 place provide protective placement to the individual in a noninstitutional
25 community setting in accord with the plan unless the court finds that protective

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1 placement in the intermediate facility or nursing facility is the most integrated
2 setting, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the
3 individual, taking into account information presented by all affected parties. ~~The~~
4 ~~prohibition of placements in units for the acutely mentally ill does not prevent~~
5 ~~placement by a court for short-term diagnostic procedures under par. (d). Placement~~
6 ~~in a locked unit shall require a specific finding of the court as to the need for such~~
7 ~~action. A placement facility may transfer a patient from a locked unit to a less~~
8 ~~restrictive environment without court approval.~~

NOTE: Renumbers and reorganizes the provisions relating to an order for protective placement or services; clarifies that an individual who is subject to an order of protective placement or services may be detained on an emergency basis under s. 51.15 or involuntarily committed under s. 51.20, or voluntarily admitted to a treatment facility for inpatient care under s. 51.10 (8).

9 **SECTION 136.** 55.06 (9) (b) of the statutes is repealed.

10 **SECTION 137.** 55.06 (9) (c) of the statutes is repealed.

NOTE: SECTIONS 136 and 137 repeal provisions that have been incorporated into other statutory sections.

11 **SECTION 138.** 55.06 (9) (d) of the statutes is repealed.

12 **SECTION 139.** 55.06 (9) (e) of the statutes is repealed.

NOTE: SECTIONS 138 and 139 repeal provisions that have been found unconstitutional.

13 **SECTION 140.** 55.06 (10) (a) 1. of the statutes is renumbered 55.18 (1) (a) (intro.)

14 and amended to read:

15 55.18 (1) (a) (intro.) ~~The county department or any agency which is responsible~~
16 ~~for a protective placement~~ of the individual's county of residence shall, except as
17 provided in sub. (1m), annually review the status of each person placed at least once
18 every 12 months from the date of admission. The court in its order of placement may,
19 however, require that such review be conducted more frequently individual who has
20 been provided protective placement. The review shall include in writing an a visit

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1 to the individual and a written evaluation of the physical, mental and social
2 condition of each such person, and the individual and the service needs of the
3 individual. The review shall be made a part of the permanent record of such person.
4 ~~The review shall include recommendations for discharge or placement in services~~
5 ~~which place less restrictions on personal freedom, where appropriate. The results~~
6 ~~of the review shall be furnished to the department in such form as the department~~
7 ~~may require and shall be furnished to the court that ordered the placement and to~~
8 ~~the person's guardian. the individual. The county department shall inform the~~
9 guardian of the individual of the review at the time the review is made and shall,
10 before completing a report of the review, invite the individual and the guardian to
11 submit comments or information concerning the individual's need for protective
12 placement or protective services. Not later than the first day of the 11th month after
13 the initial order is made for protective placement for an individual and, except as
14 provided in par. (b), annually thereafter, the county department shall do all of the
15 following:

NOTE: Renumbers and amends provisions relating to annual review of protective placement. Provides that the individual's guardian must be notified of the review and invite the individual and the guardian to submit comments or information concerning the individual's need for protective placement or protective services.

Requires the county department of the county of residence of a protectively placed individual to annually review the status of the individual, as required by *State ex. rel. Watts* and *County of Dunn v. Goldie H.*, as described in the PREFATORY NOTE. Specifies the required elements of the review, including a visit to the individual and a written evaluation of the individual's condition.

16 **SECTION 141.** 55.06 (10) (a) 2. of the statutes is renumbered 55.18 (1) (ar) and
17 amended to read:

18 55.18 (1) (ar) If the ~~person~~ individual has a developmental disability and is
19 protectively placed in an intermediate facility or a nursing facility, the agency that
20 is responsible for the protective placement shall notify in writing the county

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1 department of the county of residence of the ~~person~~ individual that is participating
2 in the program under s. 46.278 or, if s. 46.279 (4m) applies to the ~~person~~ individual,
3 the department, at least 120 days before the review. The county department so
4 notified or, if s. 46.279 (4m) applies, the department's contractor, shall develop a plan
5 under s. 46.279 (4) and furnish the plan to the court that ordered the protective
6 placement and to the ~~person's~~ individual's guardian. The court shall order that the
7 ~~person~~ individual be transferred to the noninstitutional community setting in
8 accordance with the plan unless the court finds that protective placement in the
9 intermediate facility or nursing facility is the most integrated setting, as defined in
10 s. 46.279 (1) (bm), that is appropriate to the needs of the ~~person~~ individual taking into
11 account information presented by all affected parties.

12 **SECTION 142.** 55.06 (10) (b) of the statutes is renumbered 55.17 (1) and
13 amended to read:

14 55.17 (1) PETITION. ~~The~~ An individual, the individual's guardian or guardian
15 ad litem, the department, an agency, a guardian or a ward a county department or
16 agency with it contracts under s. 55.02 (2), or any other interested person may file
17 a petition at any time petition the court for modification or for termination of a an
18 order for protective placement. A or protective services. The petition shall be served
19 on the individual; the individual's guardian; the individual's attorney and guardian
20 ad litem, if any; and the county department. The petition to terminate a protective
21 placement shall allege that the conditions which warranted placement as specified
22 in sub. (2) are no longer present. A petition shall be heard if a hearing has not been
23 held within the previous 6 months but a hearing may be held at any time in the
24 discretion of the court. The petition shall be heard within 21 days of its receipt by
25 the court individual no longer meets the standards under s. 55.08 (1) for

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1 court-ordered protective placement or under s. 55.08 (2) for court-ordered protective
2 services.

NOTE: Revises the provisions relating to a petition for protective services or placement. These provisions expand who may petition and who must be served with the petition; and remove provisions regarding hearing on the petition, which are placed in a separate provision.

3 **SECTION 143.** 55.06 (10) (c) of the statutes is repealed.

NOTE: Repeals a provision in current law that provides that termination of a guardianship or attainment of the age of majority by a minor terminates a protective placement order.

4 **SECTION 144.** 55.06 (11) (a) of the statutes is renumbered 55.135 (1) and
5 amended to read:

6 55.135 (1) If, from personal observation of, or a reliable report made to, a
7 sheriff, police officer, fire fighter, guardian, if any, or authorized representative of a
8 ~~board designated under s. 55.02 or an agency designated by it~~ county department or
9 an agency with which it contracts under s. 55.02 (2), it appears probable that an
10 individual ~~will suffer irreparable injury or death or will present~~ is so totally
11 incapable of providing for his or her own care or custody as to create a substantial
12 risk of serious physical harm to himself or herself or others as a result of
13 developmental disabilities, ~~infirmities of aging, chronic~~ degenerative brain disorder,
14 serious and persistent mental illness, or other like incapacities if not immediately
15 placed, the person making the observation or to whom the report is made may take
16 into custody and transport the individual to an appropriate medical or protective
17 placement facility. The person making emergency protective placement shall
18 prepare a statement at the time of detention providing specific factual information
19 concerning the person's observations or reports made to the person and the basis for
20 emergency placement. The statement shall be filed with the director of the facility
21 and ~~shall also be filed with any petition under sub. (2)~~ s. 55.075. At the time of

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1 emergency protective placement the individual shall be informed by the director of
2 the facility or the director's designee, both orally and in writing, of his or her right
3 to contact an attorney and a member of his or her immediate family and the right to
4 have an attorney provided at public expense, as provided under s. 967.06 and ch. 977,
5 if the individual is a ~~child~~ minor or is indigent. The director or designee shall also
6 provide the individual with a copy of the statement by the person making emergency
7 protective placement.

NOTE: Changes a provision in current law regarding emergency protective placement, by providing that, in addition to the personal observation of a law enforcement officer, firefighter, guardian or authorized representative of a county department, detention may be made based on a reliable report made to one of these persons.

8 **SECTION 145.** 55.06 (11) (am) of the statutes is renumbered 55.135 (2) and
9 amended to read:

10 55.135 (2) Whoever signs a statement under ~~par. (a)~~ sub. (1) knowing the
11 information contained ~~therein~~ in the statement to be false is guilty of a Class H
12 felony.

13 **SECTION 146.** 55.06 (11) (ar) of the statutes is renumbered 55.135 (3) and
14 amended to read:

15 55.135 (3) A person who acts in accordance with this ~~subsection~~ section is not
16 liable for any actions performed in good faith.

17 **SECTION 147.** 55.06 (11) (b) of the statutes is renumbered 55.135 (4) and
18 amended to read:

19 55.135 (4) ~~Upon detention~~ When an individual is detained under this section,
20 a petition shall be filed under ~~sub. (2)~~ s. 55.075 by the person making such ~~the~~
21 emergency protective placement and a preliminary hearing shall be held within 72
22 hours, excluding Saturdays, Sundays and legal holidays, to establish probable cause
23 to believe the grounds for protective placement under ~~sub. (2)~~ s. 55.08 (1). The sheriff

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1 or other person making emergency protective placement under ~~par. (a)~~ sub. (1) shall
2 provide the individual with written notice and orally inform him or her of the time
3 and place of the preliminary hearing. If the detainee is not under guardianship, a
4 petition for guardianship shall accompany the protective placement petition, except
5 in the case of a minor who is alleged to be developmentally disabled. In the event that
6 protective placement is not appropriate, the court may elect to treat a petition for
7 protective placement as a petition for commitment under s. 51.20 or 51.45 (13).

8 **SECTION 148.** 55.06 (11) (c) of the statutes is renumbered 55.135 (5) and
9 amended to read:

10 55.135 (5) Upon ~~a~~ finding of probable cause under ~~par. (b)~~ sub. (4), the court
11 may order temporary protective placement up to 30 days pending the hearing for a
12 permanent protective placement, or the court may order such protective services as
13 may be required. If the court orders under this subsection an individual who has a
14 developmental disability ~~is ordered, under this paragraph, to be temporarily placed~~
15 receive temporary protective placement in an intermediate facility or in a nursing
16 facility, and if at the hearing for permanent protective placement the court orders
17 that the individual be ~~protectively placed~~ provide protective placement, the court
18 may, before commencement of permanent protective placement, extend the
19 temporary protective placement order for not more than 90 days if necessary for the
20 county department that is participating in the program under s. 46.278 or, if s. 46.279
21 (4m) applies, the department's contractor to develop the plan required under s.
22 46.279 (4).

23 **SECTION 149.** 55.06 (11) (d) of the statutes is renumbered 55.135 (6) and
24 amended to read:

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1 55.135 (6) A law enforcement agency, fire department, or county department
2 ~~designated under s. 55.02 or an agency designated by that county department or~~
3 ~~agency with which it contracts under s. 55.02 (2)~~ shall designate at least one
4 employee authorized to take an individual into custody under this ~~subsection~~ section
5 who shall attend the in-service training on emergency detention and emergency
6 protective placement offered by a county department of community programs under
7 s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the
8 designated employee's jurisdiction offers an in-service training program.

9 **SECTION 150.** 55.06 (12) of the statutes is renumbered 55.055 (5) and amended
10 to read:

11 55.055 (5) ~~When~~ If a ward lives with the his or her guardian, the guardian may
12 make temporary protective placement of the ward. ~~Placement may be made, to~~
13 provide the guardian with a vacation or to ~~temporarily~~ release the guardian
14 temporarily for a family emergency. ~~Such~~ The temporary protective placement may
15 be made for not more than 30 days but the court may, upon application, grant an
16 additional period not to exceed 60 days in all. The application shall include ~~such~~ any
17 information as that the court may reasonably deem necessary. When reviewing the
18 application, the court shall provide the least restrictive temporary protective
19 placement ~~which~~ that is consistent with the needs of the ward.

20 **SECTION 151.** 55.06 (14) of the statutes is renumbered 55.175 and amended to
21 read:

22 **55.175 Discharge from protective placement.** Prior to discharge from a
23 protective placement, the ~~appropriate board which is responsible for placement~~
24 county department shall review the need for provision of continuing protective
25 services or for continuation of full or limited guardianship or provision for ~~such a~~ a

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1 guardianship if the individual has no guardian. ~~Recommendation shall be made~~ The
2 county department shall make a recommendation to the court if the recommendation
3 includes a course of action for which court approval would be required. Prior to
4 discharge from any state institute or center for the developmentally disabled, the
5 department shall make ~~such~~ the review under s. 51.35 (7).

6 **SECTION 152.** 55.06 (15) of the statutes is repealed.

NOTE: Repeals a provision regarding the responsibilities of a guardian to the ward,
since these provisions are present in ch. 880, stats.

7 **SECTION 153.** 55.06 (16) of the statutes is renumbered 55.21 and amended to
8 read:

9 **55.21 Centers for the developmentally disabled.** Placements Protective
10 placements to centers for the developmentally disabled and discharges from such
11 institutions shall be in compliance with s. 51.35 (4).

12 **SECTION 154.** 55.06 (17) of the statutes is renumbered 55.22 and amended to
13 read:

14 **55.22 Records.** (1) (intro.) ~~Any~~ No records of the court pertaining to protective
15 services or protective placement proceedings, including evaluations, reviews and
16 recommendations prepared under ~~sub. (8) (e)~~ s. 55.11 (1) (c), are ~~not~~ open to public
17 inspection but are any record is available to all of the following:

18 (a) The individual who is the subject of the proceedings and the subject's
19 individual's guardian at all times.

20 (b) The subject's individual's attorney or guardian ad litem, without the
21 subject's individual's consent and without modification of the records, in order to
22 prepare for any court proceedings relating to the subject's individual's protective

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1 services or protective placement or relating to the subject's individual's
2 guardianship.

3 (c) Other persons only with the informed written consent of the subject
4 individual as provided in s. 51.30 (2) or under an order of the court that maintains
5 the records.

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

9 (3) All treatment and service records pertaining to a person an individual who
10 is protected under this chapter or for whom application has been made for protection
11 under this chapter are confidential ~~and privileged to the subject~~. Section 51.30
12 governs access to treatment and service records.

NOTE: Renumbers a provision in current law relating to records in protective placement and services proceedings and makes minor wording changes.

13 **SECTION 155.** 55.06 (18) of the statutes is renumbered 55.20 and amended to
14 read:

15 **55.20 Appeals.** An appeal may be taken to the court of appeals from a final
16 judgment or final order under this section chapter within the time period specified
17 in s. 808.04 (3) and in accordance with s. 809.30 by the subject of the petition or the
18 individual's guardian, by any petitioner, or by the representative of the public.

19 **SECTION 156.** 55.07 of the statutes is renumbered 55.23, and 55.23 (1) and (2),
20 as renumbered, are amended to read:

21 55.23 (1) The rights and limitations upon rights, procedures for enforcement
22 of rights, and penalties prescribed in s. 51.61 apply to persons individuals who
23 receive services under this chapter, whether on a voluntary or involuntary basis.

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1 (2) A parent who has been denied periods of physical placement under s. 767.24
2 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian with respect to
3 access to a ~~child's~~ minor's records under this chapter.

4 **SECTION 157.** 55.075 of the statutes is created to read:

5 **55.075 Protective services or protective placement; petition.** Except as
6 provided in s. 971.14 (6) (b):

7 (1) WHO MAY PETITION.

8 (2) CONTENTS OF PETITION.

9 (3) PETITION FOR GUARDIANSHIP; REVIEW OF INCOMPETENCY.

10 (4) FEES AND COSTS OF PETITION. (a) The court shall award, from the assets of
11 the individual sought to be protectively placed or protectively served, payment of the
12 petitioner's reasonable attorney fees and costs, unless the court finds, after
13 considering all of the following, that it would be inequitable to do so:

14 1. The petitioner's interest in the matter, including any conflict of interest that
15 the petitioner may have had in pursuing the guardianship or protective placement
16 or services.

17 2. The ability of the estate of the individual sought to be protectively placed or
18 protectively served to pay the petitioner's reasonable attorney fees and costs.

19 3. Whether the petition was contested and, if so, the nature of the contest.

20 4. Whether the individual sought to be protectively placed or protectively
21 served had executed a durable power of attorney under s. 243.07 or a power of
22 attorney for health care under s. 155.05 or had provided advance consent to nursing
23 home admission or engaged in other advance planning to avoid protective placement
24 or protective services.

25 5. Any other factors that the court considers to be relevant.

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1 **(5)** WHERE A PETITION MAY BE FILED; VENUE; COUNTY OF RESPONSIBILITY.

2 (b) The court in which a petition is first filed under par. (a) shall determine
3 venue. The court shall direct that proper notice be given to any potentially
4 responsible or affected county. Proper notice is given to a potentially responsible or
5 affected county if written notice of the proceeding is sent by certified mail to the
6 county's clerk and corporation counsel. After all potentially responsible or affected
7 counties and parties have been given an opportunity to be heard, the court shall
8 determine that venue lies in the county in which the petition is filed under par. (a)
9 or in another county, as appropriate. If the court determines that venue lies in
10 another county, the court shall order the entire record certified to the proper court.
11 A court in which a subsequent petition is filed shall, upon being satisfied of an earlier
12 filing in another court, summarily dismiss the subsequent petition.

NOTE: Renumbers and reorganizes provisions relating to a petition for protective placement or services. Adds to ch. 55 provisions similar to those in current s. 880.24 (3), stats., requiring the court to award payment of reasonable attorney fees and costs to a person who petitions for protective services or placement. Also, adds new provisions relating to venue in a protective placement or services proceeding.

13 **SECTION 158.** 55.08 of the statutes is created to read:

14 **55.08 Protective services or protective placement: standards. (1)**

15 PROTECTIVE PLACEMENT. A court may under s. 55.12 order protective placement for
16 an individual who meets all of the following standards:

17 **(2) PROTECTIVE SERVICES.** A court may under s. 55.12 order protective services
18 for an individual who meets all of the following standards:

19 (a) The individual has been determined to be incompetent by a circuit court or
20 is a minor who is alleged to be developmentally disabled and on whose behalf a
21 petition for a guardianship has been submitted.

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

NOTE: Renumbers and reorganizes provisions relating to standards that a court must consider when determining whether an individual meets the standards for protective placement; adds standards that a court must consider when determining whether an individual meets the standards for court-ordered protective services. Although courts order protective services under current law, there are no specific statutory provisions for courts to follow when ordering protective services.

5 **SECTION 159.** 55.09 of the statutes is created to read:

6 **55.09 Notice of petition and hearing for protective services or**
7 **placement.**

8 **(2) OTHER NOTICE REQUIRED.** In addition to the notice required under sub. (1),
9 notice shall be served, personally or by mail, at least 10 days before the time set for
10 a hearing, upon all of the following:

11 (a) The guardian ad litem, legal counsel, and guardian, if any, of the individual
12 sought to be protected.

13 (b) The agent under an activated power of attorney for health care, if any, of the
14 individual sought to be protected.

15 (c) The presumptive adult heirs, if any, of the individual sought to be protected.

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

19 (e) The county department.

20 (f) Any governmental or private body or group from whom the individual sought
21 to be protected is known to be receiving aid.

22 (g) Any other persons or entities that the court may require.

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1 (h) The department, if the individual sought to be protected may be placed in
2 a center for the developmentally disabled.

3 (i) The county department that is participating in the program under s. 46.278
4 of the county of residence of the individual sought to be protected, if the individual
5 has a developmental disability and may be placed in an intermediate facility or a
6 nursing facility, except that, for an individual sought to be protected to whom s.
7 46.279 (4m) applies, this notice shall instead be served on the department.

8 **(3) NOTICE OF PETITION FOR INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC**
9 **MEDICATION.** Notice of a petition under s. 55.14 shall be served personally or by mail
10 upon the corporation counsel and county department.

NOTE: Creates a new section relating to notice of petition and hearing for protective services or placement, which incorporates and reorganizes provisions in current law regarding who must be served with notice of a hearing for protective services or placement.

11 **SECTION 160.** 55.10 of the statutes is created to read:

12 **55.10 Hearing on petition for protective services or protective**
13 **placement.**

14 **(2) ATTENDANCE.** The individual sought to be protected shall be present at the
15 hearing on the petition unless, after a personal interview, the guardian ad litem
16 certifies in writing to the court that the individual is unwilling to participate or
17 unable to participate in a meaningful way or certifies other specific reasons why the
18 individual is unable to attend. If the individual is unable to attend a hearing only
19 because of physical inaccessibility or lack of transportation, the court shall, if
20 requested by the individual, the individual's guardian ad litem, the individual's
21 counsel, or other interested person, hold the hearing in a place where the individual
22 is able to attend.

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

6 **(4) RIGHTS.** The following provisions apply to all hearings under this chapter
7 except transfers of placement under s. 55.15 and summary hearings under ss. 55.18
8 (3) (d) and 55.19 (3) (d):

9 **(a) Counsel; costs.** The individual sought to be protected has the right to counsel
10 whether or not the individual is present at the hearing on the petition. The court
11 shall require representation by full legal counsel whenever the petition alleges that
12 the individual is not competent to refuse psychotropic medication under s. 55.14, the
13 individual sought to be protected requested such representation at least 72 hours
14 before the hearing, the guardian ad litem or any other person states that the
15 individual sought to be protected is opposed to the petition, or the court determines
16 that the interests of justice require it. If the individual sought to be protected or any
17 other person on his or her behalf requests but is unable to obtain legal counsel, the
18 court shall appoint legal counsel. Counsel shall be provided at public expense, as
19 provided under s. 967.06 and ch. 977, if the individual is indigent. If the individual
20 sought to be protected is an adult who is indigent, and if counsel was not appointed
21 under s. 977.08, the county in which the hearing is held is liable for any fees due the
22 individual's legal counsel. If the individual sought to be protected is represented by
23 counsel appointed under s. 977.08 in a proceeding for the appointment of a guardian
24 under s. 880.33, the court shall order the counsel appointed under s. 977.08 to
25 represent under this section the individual sought to be protected.

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1 (c) *Trial by jury; right to cross examine witnesses.* The individual sought to be
2 protected has the right to a trial by a jury if demanded by the individual sought to
3 be protected or his or her attorney or guardian ad litem. The number of jurors shall
4 be determined under s. 756.06 (2) (b). The individual sought to be protected, and the
5 individual's attorney and guardian ad litem have the right to present and
6 cross-examine witnesses, including any person making an evaluation or review
7 under s. 55.11.

8 (e) *Independent evaluation.* The individual sought to be protected has the right
9 to secure an independent evaluation as provided in s. 55.11 (2).

NOTE: Creates a new section on hearing on the petition for protective placement
or services, which incorporates and reorganizes provisions in current law. Also, modifies
provision regarding attendance of the individual to be protected at the hearing. Specifies
the rights that apply to all hearings under ch. 55. These rights are present under current
law, but are contained in ch. 880 and only cross-referenced currently in ch. 55. This
provisions specifies these rights within ch. 55 for easier reference.

10 **SECTION 161.** 55.11 of the statutes is created to read:

11 **55.11 Comprehensive evaluation; recommendations; statements.**

12 (2) If requested by the individual sought to be protected, or anyone on the
13 individual's behalf, the individual sought to be protected has the right at his or her
14 own expense, or, if indigent, at the expense of the county where the petition is filed,
15 to secure an independent comprehensive evaluation, if an independent
16 comprehensive evaluation has not already been made. The individual, or anyone on
17 the individual's behalf, may present a report of this independent comprehensive
18 evaluation or the evaluator's personal testimony as evidence at the hearing.

19 (3) A copy of the comprehensive evaluation and any independent
20 comprehensive evaluation shall be provided to the individual's guardian, agent
21 under any activated health care power of attorney, and guardian ad litem, and to the

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1 individual or the individual's attorney at least 96 hours in advance of the hearing to
2 determine protective placement or protective services.

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

7 (5) If the court is considering protective placement of the individual in a center
8 for the developmentally disabled, the court shall request a statement or testimony
9 from the department regarding whether the protective placement is appropriate for
10 the individual's needs and whether it is consistent with the purpose of the center
11 under s. 51.06 (1).

12 (6) If the individual has a developmental disability and the court is considering
13 protective placement of the individual in an intermediate facility or a nursing
14 facility, the court shall request a statement or testimony from the county department
15 of the individual's county of residence that is participating in the program under s.
16 46.278 as to whether the individual's needs could be met in a noninstitutional
17 setting, except that, if s. 46.279 (4m) applies to the individual, the court shall request
18 the statement or testimony from the department, rather than the county
19 department.

NOTE: Creates a new section relating to a comprehensive evaluation in a protective placement or services proceeding, which incorporates and reorganizes provisions in current law. Also, creates a right to request an independent evaluation by a person who is the subject of a protective placement proceeding that is parallel to the right to request an independent evaluation in s. 880.33 (2) (b) when a person is the subject of a guardianship proceeding.

This right to an independent evaluation applies when such an evaluation has not already been made. For example, if a person who is the subject of both a guardianship and protective placement proceeding requested an independent evaluation under s. 880.33 (2) (b), the person would not also be able to request an independent evaluation under s. 55.11.

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1 **SECTION 162.** 55.12 of the statutes is created to read:

2 **55.12 Order for protective services or protective placement.**

3 **(7)** If an individual to be protectively placed is a resident of a facility licensed
4 for 16 or more beds, the court may consider whether moving the individual would
5 create a serious risk of harm to that individual.

6 **(8)** The court may order protective services as an alternative to protective
7 placement.

8 **(9)** The court may order psychotropic medication as a protective service only
9 as provided in s. 55.14.

NOTE: Moves provisions in current s. 55.06 (9) (a), relating to orders for protective services or protective placements, to a newly created statutory section, s. 55.12. Also, creates additional provisions that clarify court orders relating to moving an individual who is a resident of a facility licensed for 16 or more beds; court orders for protective services as an alternative to placement; and court orders for psychotropic medication as a protective service.

10 **SECTION 163.** 55.13 (2) and (3) of the statutes are created to read:

11 **55.13 (2)** If the county department or agency with which the county
12 department contracts under s. 55.02 (2) that is providing emergency protective
13 services to an individual under sub. (1) has reason to believe that the individual
14 meets the criteria for protective services under s. 55.08 (2), the county department
15 or agency may file a petition under s. 55.075. If a petition is filed, a preliminary
16 hearing shall be held within 72 hours, excluding Saturdays, Sundays, and legal
17 holidays, to establish probable cause that the criteria under s. 55.08 (2) are present.
18 The county department or agency shall provide the individual with written notice
19 and orally inform the individual of the time and place of the preliminary hearing.
20 If the individual is not under guardianship, a petition for guardianship shall
21 accompany the petition under s. 55.08 (2), except in the case of a minor who is alleged
22 to be developmentally disabled.

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1 **(3)** Upon finding probable cause under sub. (2), the court may order emergency
2 protective services to continue to be provided for up to 60 days pending the hearing
3 on protective services under s. 55.10.

NOTE: Creates new provisions to provide direction to a county department that is providing emergency protective services to permit the department to file a petition for protective services for an individual who is receiving emergency protective services.

4 **SECTION 164.** 55.135 (title) of the statutes is created to read:

5 **55.135 (title) Emergency and temporary protective placement.**

NOTE: Creates a title for new statutory section on emergency and temporary protective placement.

6 **SECTION 165.** 55.14 of the statutes is created to read:

7 **55.14 Involuntary administration of psychotropic medication. (1)** In
8 this section:

9 (a) "Involuntary administration of psychotropic medication" means any of the
10 following:

11 1. Placing psychotropic medication in an individual's food or drink with
12 knowledge that the individual protests receipt of the psychotropic medication.

13 2. Forcibly restraining an individual to enable administration of psychotropic
14 medication.

15 3. Requiring an individual to take psychotropic medication as a condition of
16 receiving privileges or benefits.

17 (c) "Protest" means make more than one discernible negative response, other
18 than mere silence, to the offer of, recommendation for, or other proffering of
19 voluntary receipt of psychotropic medication. "Protest" does not mean a discernible
20 negative response to a proposed method of administration of the psychotropic
21 medication.

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1 (d) “Psychotropic medication” means a prescription drug, as defined in s. 450.01
2 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

3 **(2)** Involuntary administration of psychotropic medication, with consent of a
4 guardian, may be ordered as a protective service under the requirements of this
5 section.

6 **(3)** In addition to the other requirements of this chapter pertaining to petitions
7 for protective services, a petition under this section shall allege that all of the
8 following are true:

9 (a) A physician has prescribed psychotropic medication for the individual.

10 (b) The individual is not competent to refuse psychotropic medication.

11 (c) The individual has refused to take the psychotropic medication voluntarily
12 or attempting to administer psychotropic medication to the individual voluntarily is
13 not feasible or is not in the best interests of the individual. If the petition alleges that
14 the individual has refused to take psychotropic medication voluntarily, the petition
15 shall identify the reasons, if known, for the individuals refusal to take psychotropic
16 medication voluntarily. The petition also shall provide evidence showing that a
17 reasonable number of documented attempts to administer psychotropic medication
18 voluntarily using appropriate interventions that could reasonably be expected to
19 increase the individual’s willingness to take psychotropic medication voluntarily
20 have been made and have been unsuccessful. If the petition alleges that attempting
21 to administer psychotropic medications to the individual voluntarily is not feasible
22 or is not in the best interests of the individual, the petition must identify specific
23 reasons supporting that allegation.

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1 (d) The individual's condition for which psychotropic medication has been
2 prescribed is likely to be improved by administration of psychotropic medication and
3 the individual is likely to respond positively to psychotropic medication.

4 (e) Unless psychotropic medication is administered involuntarily, the
5 individual will incur an immediate or imminent substantial probability of physical
6 harm, impairment, injury, or debilitation or will present a substantial probability of
7 physical harm to others. The substantial probability of physical harm, impairment,
8 injury, or debilitation shall be evidenced by one of the following:

9 1. The individual's history of at least 2 episodes, one of which has occurred
10 within the previous 24 months, that indicate a pattern of overt activity, attempts,
11 threats to act, or omissions that resulted from the individual's failure to participate
12 in treatment, including psychotropic medication, and that resulted in a finding of
13 probable cause for commitment under s. 51.20 (7), a settlement agreement approved
14 by a court under s. 51.20 (8) (bg), or commitment ordered under s. 51.20 (13).

15 2. Evidence that the individual meets one of the dangerousness criteria set
16 forth in s. 51.20 (1) (a) 2. a. to e.

17 (4) A petition under this section must include a written statement signed by
18 a physician who has personal knowledge of the individual that provides general
19 clinical information regarding the appropriate use of psychotropic medication for the
20 individual's condition and specific data that indicates that the individual's current
21 condition necessitates the use of psychotropic medication.

22 (5) The guardian ad litem appointed under s. 55.10 (4) (b) for an individual who
23 is the subject of a petition under this section shall report to the court whether the
24 allegations in the petition required under sub. (3) are true, and whether involuntary
25 administration of psychotropic medication is in the best interests of the individual.

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1 (6) If requested by an individual who is the subject of a petition under this
2 section or anyone on his or her behalf, the individual has the right at his or her own
3 expense, or if indigent at the expense of the county in which the petition is filed, to
4 secure an independent medical or psychological examination relevant to the issues
5 of whether the allegations in the petition required under sub. (3) are true, and
6 whether involuntary administration of psychotropic medication is in the best
7 interest of the individual, and to present a report of this independent evaluation or
8 the evaluator's personal testimony as evidence at the hearing.

9 (7) Upon the filing of a petition under this section, the court shall appoint
10 counsel as required under s. 55.10 (4) (a). A petition under this section shall be heard
11 within 30 days after it is filed.

12 (8) The court may issue an order authorizing an individual's guardian to
13 consent to involuntary administration of psychotropic medication to the individual
14 and may order involuntary administration of psychotropic medication to the
15 individual as a protective service, with the guardian's consent, if the court or jury
16 finds by clear and convincing evidence that the allegations in the petition required
17 under sub. (3) are true, all other requirements for involuntary administration of
18 psychotropic medication under this section have been met, psychotropic medication
19 is necessary for treating the condition described in the statement under sub. (4), and
20 all other requirements of this chapter for ordering protective services have been met.
21 An order under this section shall do all of the following:

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

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

9 (b) Order the individual to comply with the treatment plan under par. (a). The
10 order shall provide that if the individual fails to comply with provisions of the
11 treatment plan that require the individual to take psychotropic medications, the
12 medications may be administered involuntarily with consent of the guardian. The
13 order shall specify the methods of involuntary administration of psychotropic
14 medication to which the guardian may consent. An order authorizing the forcible
15 restraint of an individual shall specify that a person licensed under s. 441.06, 441.10,
16 or 448.05 (2) or (5) shall be present at all times that psychotropic medication is
17 administered in this manner and shall require the person or facility using forcible
18 restraint to maintain records stating the date of each administration, the medication
19 administered, and the method of forcible restraint utilized.

20 (9) If an individual who is subject to an order under this section is not in
21 compliance with the order because he or she refuses to take psychotropic medication
22 as ordered under the treatment plan, and it is necessary for the individual to be
23 transported to an appropriate facility for forcible restraint for administration of
24 psychotropic medication, the corporation counsel may file with the court a statement
25 of the facts of the noncompliance of the individual. The statement shall be sworn to

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1 be true and shall be based upon the information and belief of the person filing the
2 statement. The statement shall be signed by the individual's guardian and by the
3 director or designee of the county department or an agency with which it contracts
4 under s. 55.02 (2) to develop and administer the treatment plan. Upon receipt of the
5 statement of noncompliance, if the court finds by clear and convincing evidence that
6 the individual has substantially failed to comply with the administration of
7 psychotropic medication as ordered under the treatment plan, the court may issue
8 an order authorizing the sheriff or any other law enforcement agency in the county
9 in which the individual is found or in which it is believed that the individual may be
10 present to take the individual into custody and transport him or her to an
11 appropriate facility for administration of psychotropic medication using forcible
12 restraint, with consent of the guardian.

13 (10) Nothing in this section prohibits the involuntary administration of
14 psychotropic medication as an emergency protective service under s. 55.13.

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

18 (12) The department shall annually submit to the legislature under s. 13.172
19 (2) a report regarding orders under this section.

20 (13) An order under this section is subject to annual review under s. 55.19.

NOTE: Establishes a procedure by which a court may order involuntary
administration of psychotropic medication, with consent of a guardian, as a protective
service, as described in detail in the PREFATORY NOTE.

21 **SECTION 166.** 55.15 of the statutes is created to read:

22 **55.15 Transfer of an individual under a protective placement order.**

23 (1) TRANSFERS AUTHORIZED. An individual under a protective placement order may

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1 be transferred between protective placement units, between protective placement
2 facilities, or from a protective placement unit to a medical facility. The individual
3 may not be transferred, under the protective placement order, to any facility for
4 which commitment procedures are required under ch. 51.

5 (2) WHO MAY TRANSFER. A guardian, a county department or agency with which
6 it contracts under s. 55.03 (2) that provided protective placement to the individual
7 pursuant to the order of the court, the department, or a protective placement facility
8 may transfer an individual under a protective placement order under the
9 requirements of this section, notwithstanding the fact that a court order has named
10 a specific facility for the protective placement of the individual.

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

14 (4) CONSENT OF COUNTY DEPARTMENT. No individual may be transferred under
15 this section to a facility that is more costly to the county without the written consent
16 of the county department, except in the case of an emergency transfer under sub. (5)
17 (b).

18 (5) NOTICE OF TRANSFER. (a) *Nonemergency transfer*. A person or entity who
19 initiates a transfer shall provide 10 days' prior written notice of a transfer to the court
20 that ordered the protective placement and to each of the other persons and entities
21 specified in sub. (2) who did not initiate the transfer. The notice of transfer shall
22 include notice of the right of the individual under a protective placement, the
23 individual's attorney, if any, or other interested person to petition the court for a
24 hearing on the transfer.

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1 (b) *Emergency transfer.* If an emergency makes it impossible to provide the
2 notice specified in par. (a) or to obtain the prior written consent of the guardian
3 specified in sub. (3), the individual may be transferred without the prior written
4 consent of the guardian and without the notice specified in par. (a). Written notice
5 shall be provided immediately upon transfer to each of the persons and entities
6 specified under sub. (2) who did not initiate the transfer. Notice shall also be
7 provided to the court that ordered the protective placement within a reasonable time,
8 not to exceed 48 hours from the time of transfer. The notice shall include notice of
9 the right to file with the court under sub. (6) a petition objecting to the emergency
10 transfer.

11 **(6) PETITION.** An individual under protective placement, the individual's
12 guardian, the individual's attorney, if any, or any other interested person may file a
13 petition with the court objecting to a proposed transfer or to an emergency transfer
14 made under sub. (5) (b). The petition shall specify the reasons for the person's
15 objection to the transfer.

16 **(7) HEARING.** (a) The court shall order a hearing within 10 days after the filing
17 of a petition under sub. (6).

18 (b) The court shall notify the petitioner, the individual under protective
19 placement, the individual's guardian, the individual's attorney, if any, and the county
20 department of the time and place of the hearing.

21 (c) A guardian ad litem shall be appointed to represent the individual under
22 protective placement at the hearing. If the individual is an adult who is indigent, the
23 county in which the hearing is held shall be liable for guardian ad litem fees. If the
24 individual is a minor, the individual's parents or the county in which the hearing is
25 held shall be liable for guardian ad litem fees as provided in s. 48.235 (8).

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1 (cm) The court shall appoint counsel for the individual under protective
2 placement if the individual, the individual's guardian ad litem, or anyone on the
3 individual's behalf requests that counsel be appointed for the individual

4 (d) The petitioner, individual under protective placement, the individual's
5 guardian, the individual's guardian ad litem, and the individual's attorney, if any,
6 have the right to attend the hearing and to present and cross-examine witnesses.

7 **(8) STANDARD FOR TRANSFER.** In determining whether to approve a proposed
8 transfer or an emergency transfer made under sub. (5) (b), the court shall consider
9 all of the following:

10 (a) Whether the requirements of s. 55.12 (2) and (6) are met.

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

15 (c) Whether the protective placement is in the best interests of the person under
16 protective placement.

17 **(9) ORDER RELATING TO TRANSFER.** Following the hearing under sub. (7), the
18 court shall do one of the following:

19 (a) If the court finds that the individual continues to meet the standards under
20 s. 55.08 (1) and the individual's proposed protective placement does not meet the
21 standards for transfer under sub. (8), the court shall issue an order prohibiting the
22 transfer. The court shall include the information relied upon as a basis for the order
23 and shall make findings based on the standards under sub. (8) in support of the
24 denial of the transfer.

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1 (b) If the court finds that the individual continues to meet the standards under
2 s. 55.08 (1) and the proposed transfer meets the standard under sub. (8), the court
3 shall approve the proposed transfer. The court may order protective services along
4 with transfer of protective placement. The court shall include the information relied
5 upon as a basis for the order and shall make findings based on the standards in s.
6 55.08 (1) in support of the need for continued protective placement.

7 (c) If the court finds that the individual no longer meets the standards under
8 s. 55.08 (1), the court shall terminate the protective placement, as provided in s.
9 55.17.

NOTE: Revises the provisions in current law regarding transfers of protective placements. Provides that transfers between placement units, between placement facilities, or from a placement facility to a medical facility (provided that the medical facility is not a psychiatric facility), may be made by a county or the Department of Health and Family Services (DHFS), in addition to a guardian or placement facility. However, if such a transfer is made, 10 days' prior written notice must be given by the transferring entity to the guardian, the county, the department, and the placement facility. Further, this bill requires that a county, the department, or placement facility making such a transfer must obtain the prior written consent of the guardian. If an emergency precludes providing the required prior written notice, or precludes obtaining the guardian's prior written consent, written notice must be provided immediately upon transfer. Under the bill, if a guardian, ward or attorney, or other interested person files a petition specifying objections to a transfer, the court must order a hearing within 10 days after filing the petition, or within 96 hours after filing of the petition in the case of an emergency transfer made without the required prior written notice and prior written consent of the guardian.

For nonemergency transfers, the purpose of the hearing is to determine whether the proposed placement meets the standards of s. 55.12 (2) and (6), is in the least restrictive environment or most integrated setting, and is in the best interests of the ward.

10 **SECTION 167.** 55.16 of the statutes is created to read:

11 **55.16 Modification of an order for protective placement or protective**
12 **services. (1) USE OF TRANSFER PROVISIONS.** If a petitioner is an entity authorized
13 under s. 55.15 (2) to transfer an individual under a protective placement and the
14 modification sought is a transfer of an individual between protective placement
15 units, between protective placement facilities, or from a protective placement unit

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1 to a medical facility that is not a psychiatric facility, the petitioner may utilize the
2 procedure in s. 55.15 in lieu of the procedure under this subsection.

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

12 (b) *Modification of an order for protective placement; allegations.* A petition for
13 modification of an order for protective placement shall make one of the following
14 allegations:

15 1. That the protective placement is not in the least restrictive environment that
16 is consistent with the requirements of s. 55.12 (3), (4), and (5).

17 2. That a protective placement in a facility with a higher level of restrictiveness
18 would be more consistent with the requirements of s. 55.12 (3), (4), and (5).

19 3. That a protective placement in a different facility with the same level of
20 restrictiveness as the current placement would be more consistent with the
21 requirements of s. 55.12 (4) and (5) for reasons unrelated to the level of
22 restrictiveness.

23 (c) *Modification of an order for protective services; allegations.* 1. A petition for
24 modification of an order for protective services, other than an order under s. 55.14,
25 shall allege that the protective services are not provided in the least restrictive

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1 environment or manner that is consistent with the requirements of s. 55.12 (3), (4),
2 and (5).

3 2. A petition for modification of an order under s. 55.14 shall allege that
4 modification of the order or the treatment plan for the individual would be in his or
5 her best interests.

6 **(3) HEARING.** (a) The court shall order a hearing within 21 days after the filing
7 of a petition under sub. (2), except that the court is not required to order a hearing
8 if a hearing on a court-ordered protective placement for the individual or on a
9 petition for court-ordered protective services or transfer of protective placement
10 with respect to the individual has been held within the previous 6 months.

11 (b) The court may extend the 21-day limitation in par. (a) if requested by the
12 individual or the individual's guardian, guardian ad litem, or legal counsel.

13 (c) The hearing shall be subject to s. 55.10 (4).

14 **(4) ORDER MODIFICATION FOR INDIVIDUAL UNDER PROTECTIVE PLACEMENT.** After a
15 hearing under sub. (3) on a petition for modification of an order for protective
16 placement, the court shall make one of the following orders and shall include in the
17 order the information relied on as a basis for that order:

18 (a) If the court finds that the individual continues to meet the standards under
19 s. 55.08 (1) and the individual's protective placement is in the least restrictive
20 environment that is consistent with the requirements of s. 55.12 (3), (4), and (5), the
21 court shall order continuation of the protective placement in the facility in which the
22 individual resides at the time of the hearing.

23 (b) If the court finds that the individual continues to meet the standards under
24 s. 55.08 (1) and the protective placement of the individual is not in the least
25 restrictive environment that is consistent with the requirements of s. 55.12 (3), (4),

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1 and (5), the court shall order transfer of the individual to a protective placement that
2 is in the least restrictive environment consistent with the requirements of s. 55.12
3 (3), (4), and (5). In lieu of ordering transfer of the individual to a specific facility, the
4 court may order the county department of the individual's residence to develop or
5 recommend a protective placement that is in the least restrictive environment
6 consistent with the requirements of s. 55.12 (3), (4), and (5), and arrange for the
7 individual's transfer to that protective placement within 60 days after the court's
8 order. The court may extend this time period to permit development of a protective
9 placement. The court may order protective services along with transfer of protective
10 placement.

11 (c) If the court finds that the individual no longer meets the standards under
12 s. 55.08 (1), the court shall terminate the protective placement, as provided in s.
13 55.17 (3) (c).

14 **(5) ORDER MODIFICATION FOR INDIVIDUAL RECEIVING COURT-ORDERED PROTECTIVE**
15 **SERVICES.** (a) After a hearing under sub. (3) on a petition for modification of an order
16 for protective services, other than an order under s. 55.14, the court shall make one
17 of the following orders and shall include in the order the information relied on as a
18 basis for that order:

19 1. If the court finds that the individual continues to meet the standards under
20 s. 55.08 (2) and the current protective services are provided in the least restrictive
21 manner that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court
22 shall continue the order for protective services.

23 2. If the court finds that the individual continues to meet the standards under
24 s. 55.08 (2) and the protective services ordered for the individual are not provided in
25 the least restrictive manner that is consistent with the requirements of s. 55.12 (3),

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1 (4), and (5), the court shall order protective services that are more consistent with
2 those requirements. The services shall be provided in the least restrictive manner
3 consistent with the requirements of s. 55.12 (3), (4), and (5).

4 3. If the court finds that the individual no longer meets the standards for
5 protective services under s. 55.08 (2), the court shall terminate the order for
6 protective services, as provided in s. 55.17 (4) (a) 3.

7 (b) After a hearing under sub. (3) on a petition for modification of an order under
8 s. 55.14, the court shall make one of the orders required under s. 55.19 (3) (e) and
9 shall include in the order the information relied on as a basis for that order.

NOTE: Revises the limited provisions in current law regarding modification of an order for a protective placement. A petition for modification of an order for protective placement may be filed by an individual subject to a protective placement; the individual's guardian, legal counsel, or guardian ad litem; the DHFS; the county department that placed the individual; a contractual agency; or any interested person. The petition must be served on the individual; the individual's guardian; the individual's legal counsel and guardian ad litem, if any; and the county department. The petition must contain specific allegations, depending on whether the individual is under a protective placement order or court-ordered protective services. A hearing on the petition must be held within 21 days after the filing of the petition, if a hearing on a protective placement petition or transfer has not been held within the previous 6 months. The order must contain specific findings regarding whether the person currently meets the standard for protective placement or court-ordered protective services. If the person continues to meet the standard for protective placement or court-ordered protective services, the court must continue the order or modify the order so that the placement or service are consistent with the person's needs if the person's needs have changed. If the person does not currently meet the standard for protective placement or protective services, the order must require termination of the protective placement or court-ordered protective services. Notice of the order must be provided to the individual; the individual's guardian, guardian ad litem, and legal counsel, if any; and the residential facility, if the person receives services in such a facility. The transfer provisions may be used if the modification sought is transfer of an individual between placement units, between placement facilities, or from a placement unit to a medical facility, and if the petitioner is an entity authorized to initiate such a transfer.

10 **SECTION 168.** 55.17 of the statutes is created to read:

11 **55.17 Termination of an order for protective placement or protective**
12 **services.**

13 **(2) HEARING.** A hearing under this section shall comply with s. 55.16 (3).

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1 **(3) ORDER FOR INDIVIDUAL UNDER PROTECTIVE PLACEMENT.** After a hearing under
2 sub. (2) on a petition for termination of an order for protective placement, the court
3 shall make one of the following orders and shall include in the order the information
4 relied on as a basis for that order:

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

10 (b) If the court finds that the individual continues to meet the standards under
11 s. 55.08 (1) and the protective placement of the individual is not in the least
12 restrictive environment that is consistent with the requirements of s. 55.12 (3), (4),
13 and (5), the court shall make an order specified in s. 55.16 (4) (b).

14 (c) If the individual no longer meets the standards under s. 55.08 (1), the court
15 shall terminate the protective placement. If the protective placement is terminated,
16 all of the following shall apply:

17 1. The court shall review the needs of the individual with respect to protective
18 services. If the court determines that the individual meets the standards for
19 protective services under s. 55.08 (2), the court may order protective services. The
20 services shall be provided in the least restrictive manner consistent with the
21 requirements of s. 55.12 (3), (4), and (5).

22 2. If the court determines that the individual does not meet the standards for
23 protective services under s. 55.08 (2), and the individual is being transferred or
24 discharged from his or her current residential facility, the county department shall
25 assist the residential facility with discharge planning for the individual, including

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1 planning for a proper residential living arrangement and the necessary support
2 services for the individual.

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

10 (4) ORDER FOR INDIVIDUAL RECEIVING COURT-ORDERED PROTECTIVE SERVICES. (a)
11 After a hearing under sub. (2) on a petition for termination of an order for protective
12 services, other than an order under s. 55.14, the court shall make one of the following
13 orders and shall include in the order the information relied on as a basis for that
14 order:

15 1. If the individual continues to meet the standards under s. 55.08 (2) and the
16 protective services ordered for the individual are provided in the least restrictive
17 manner that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court
18 shall continue the order for protective services.

19 2. If the individual continues to meet the standards under s. 55.08 (2) and the
20 protective services ordered for the individual are not provided in the least restrictive
21 manner that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court
22 shall make an order for protective services as provided in s. 55.16 (5) (a) 2.

23 3. If the individual no longer meets the standards for protective services under
24 s. 55.08 (2), the court shall terminate the order for protective services.

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1 (b) After a hearing under sub. (2) on a petition for termination of an order under
2 s. 55.14, the court shall make one of the orders required under s. 55.19 (3) (e) and
3 shall include in the order the information relied on as a basis for that order.

NOTE: Establishes procedures for the termination of a protective placement or court order for protective services. The provisions pertaining to who may petition, the contents of the petition, service of the petition, and requirement for conducting the hearing for a modification of protective placement or court-ordered protective services apply to petitions for a termination of placement or services.

The court may make one of the following orders after a hearing on a petition for termination of protective placement or services:

1. If the individual continues to meet the statutory standards for protective placement and the placement is in the least restrictive environment consistent with the person's needs and with the statutory factors, order continuation of the person's protective placement in the same facility.

2. If the individual continues to meet the statutory standards for protective placement but the placement is not in an environment consistent with the person's needs and with the statutory factors, the court shall transfer the person to a facility that is in the least restrictive environment consistent with the person's needs and with the factors. In addition to this option, the court may also order protective services.

3. If the individual no longer meets the statutory standard for protective placement, the court shall terminate the protective placement. If the placement is terminated, the court must either order protective services or ensure the development of a proper living arrangement for the person if the individual is being transferred or discharged from his or her current residential facility. If the person who is the subject of the petition is under an order for protective services, the court may order continuation of the protective services order if the person continues to meet the statutory standard for court-ordered protective services; order that the protective services be provided in a manner more consistent with the person's needs; or terminate the order for protective services if the person no longer meets the standard.

4 **SECTION 169.** 55.18 of the statutes is created to read:

5 **55.18 Annual review of protective placement.** All of the following shall
6 be performed with respect to any individual who is subject to an order for protective
7 placement under s. 55.12 or to an order for protective placement initially issued
8 under s. 55.06 (9) (a), 2003 stats.:

9 **(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW.** (a) 1. File a report of the
10 review with the court that ordered the protective placement. The report shall include
11 information on all of the following:

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1 a. The functional abilities and disabilities of the individual at the time the
2 review is made, including the needs of the individual for health, social, or
3 rehabilitation services, and the level of supervision needed.

4 b. The ability of community services to provide adequate support for the
5 individual's needs.

6 c. The ability of the individual to live in a less restrictive setting.

7 d. Whether sufficient services are available to support the individual and meet
8 the individual's needs in the community and if so, an estimate of the cost of the
9 services, including the use of county funds.

10 e. 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 f. The comments of the individual and the individual's guardian during the
18 performance of the review, as summarized by the county department, and the
19 response of the county department to the comments.

20 g. The comments, if any, of a staff member at the facility in which the individual
21 is placed that are relevant to the review of the individual's placement.

22 2. File with the court under subd. 1. a petition for annual review by the court
23 of the protective placement ordered for the individual.

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1 3. Provide the report under subd. 1. to the individual and the guardian of the
2 individual, and to the individual's agent under an activated power of attorney for
3 health care, if any.

4 (b) If, following an annual review of an individual's status under par. (a), the
5 individual or the individual's guardian or guardian ad litem requests modification
6 or termination of the individual's protective placement and a hearing under the
7 requirements of s. 55.10 (4) is provided, or if a hearing under the requirements of s.
8 55.10 (4) is provided pursuant to a petition for modification or termination of the
9 protective placement, the county is not required to initiate a subsequent review of
10 the individual's status under par. (a) until the first day of the 11th month after the
11 date that the court issues a final order after the hearing.

12 (bm) If the individual is subject to an order for involuntary administration of
13 psychotropic medication under s. 55.14, the review under par. (a) shall be conducted
14 simultaneously with the review under s. 55.19.

15 (c) The review under par. (a) may not be conducted by a person who is an
16 employee of the facility in which the individual resides.

17 **(1m) COUNTY AGREEMENT.** The county of residence of an individual whose
18 placement is in a different county may enter into an agreement with that county
19 under which the county of the individual's placement performs all or part of the
20 duties of the county of residence under this section.

21 **(2) GUARDIAN AD LITEM APPOINTMENT AND REPORT.** After a county department has
22 filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad
23 litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the
24 following:

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1 (a) Review the report filed under sub. (1) (a) 1., the report required under s.
2 880.38 (3), and any other relevant reports on the individual's condition and
3 placement.

4 (b) Meet with the individual and contact the individual's guardian and orally
5 explain to the individual and guardian all of the following:

6 1. The procedure for review of protective placement.

7 2. The right of the individual to appointment of legal counsel under sub. (3) (c).

8 3. The right to an evaluation under sub. (3) (b).

9 4. The contents of the report under sub. (1) (a) 1.

10 5. That a change in or termination of protective placement may be ordered by
11 the court.

12 6. The right to a hearing under sub. (3) (d) and an explanation that the
13 individual or the individual's guardian may request a hearing that meets the
14 requirements under s. 55.10 (4).

15 (c) Provide the information required under par. (b) to the individual and to the
16 individual's guardian in writing.

17 (d) Review the individual's condition, placement, and rights with the
18 individual's guardian.

19 (e) Ascertain whether the individual wishes to exercise any of his or her rights
20 under sub. (3) (b), (c), or (d)

21 (f) Within 30 days after appointment, file with the court a written report based
22 on information obtained under this subsection and any other evaluations or records
23 of the individual. The report shall discuss whether the individual appears to
24 continue to meet the standards for protective placement under s. 55.08 (1) and
25 whether the protective placement is in the least restrictive environment that is

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1 consistent with the individual's needs. The report shall also state whether any of the
2 following apply:

3 1. An evaluation under sub. (3) (b) is requested by the individual or the
4 individual's guardian ad litem or guardian.

5 2. The individual or the individual's guardian requests modification or
6 termination of the protective placement.

7 3. The individual or the individual's guardian requests or the guardian ad litem
8 recommends that legal counsel be appointed for the individual.

9 4. The individual or the individual's guardian or guardian ad litem requests a
10 full due process hearing under this section for the individual.

11 (g) Certify to the court that he or she has complied with the requirements of
12 pars. (a) to (e).

13 **(3) COURT REVIEW OF REPORTS; HEARING; ORDER.** (a) The court that ordered
14 protective placement for an individual under s. 55.12 shall review the report of the
15 guardian ad litem under sub. (2) (f), the report filed under sub. (1) (a) 1., and the
16 report required under s. 880.38 (3).

17 (b) The court shall order an evaluation, by a person who is not an employee of
18 the county department of the physical, mental, and social condition of the individual
19 and the service needs of the individual that is independent of the review performed
20 under sub. (1) (a) if any of the following apply:

21 1. The report required under sub. (1) (a) 1. is not timely filed, or the court
22 determines that the report fails to meet the requirements of sub. (1) (c).

23 2. Following review of the guardian ad litem's report under sub. (2) (f), the court
24 determines that an independent evaluation for the individual is necessary.

25 3. The individual or the individual's guardian or guardian ad litem so requests.

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1 (bm) If an evaluation is ordered under par. (b), it shall be performed at the
2 expense of the individual or, if the individual is indigent, at the expense of the county
3 under sub. (1) (a).

4 (br) The court shall order that the county department obtain any other
5 necessary information with respect to the individual.

6 (c) The court shall order legal counsel for an individual and, if the individual
7 appears to be indigent, refer him or her to the authority for indigency determinations
8 under s. 977.07 (1) if any of the following apply:

9 1. Following review of the guardian ad litem's report under sub. (2) (f), the court
10 determines that legal counsel for the individual is necessary.

11 2. The individual or the individual's guardian or guardian ad litem so requests.

12 (d) The court shall order either a summary hearing or a hearing under the
13 requirements of s. 55.10 (4). A summary hearing shall be held on the record, may
14 be held in court or by other means, including by telephone or videoconference, is not
15 an evidentiary hearing, and does not require attendance by the individual. The court
16 shall hold a hearing under the requirements of s. 55.10 (4) if any of the following
17 apply:

18 1. The individual or the individual's guardian or guardian ad litem so requests.

19 2. The report under sub. (2) (f) indicates that the individual no longer meets the
20 standards for protective placement under s. 55.08 (1).

21 3. The report under sub. (2) (f) indicates that the current protective placement
22 is not in the least restrictive environment consistent with the individual's needs.

23 4. The report under sub. (2) (f) indicates that the individual objects to the
24 current protective placement.

25 (e) Following the hearing under par. (d), the court shall do one of the following:

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1 1. If the court finds that the individual continues to meet the standards under
2 s. 55.08 (1) and the protective placement of the individual is in the least restrictive
3 environment that is consistent with the requirements of s. 55.12 (3), (4), and (5), the
4 court shall order the continuation of the protective placement in the facility in which
5 the individual resides at the time of the hearing. The court shall include in the order
6 the information relied upon as a basis for the order and shall make findings based
7 on the standards under s. 55.08 (1) in support of the need for continuation of the
8 protective placement.

9 2. If the court finds that the individual continues to meet the standards under
10 s. 55.08 (1) and the protective placement of the individual is not in the least
11 restrictive environment that is consistent with the requirements of s. 55.12 (3), (4),
12 and (5), the court shall order transfer of the individual to a protective placement that
13 is in the least restrictive environment consistent with the requirements of s. 55.12
14 (3), (4), and (5). In lieu of ordering transfer of the individual to a specific facility, the
15 court may order the county department of residence to develop or recommend a
16 protective placement that is in the least restrictive environment consistent with the
17 requirements of s. 55.12 (3), (4), and (5) and arrange for the individual's transfer to
18 that protective placement within 60 days after the court's order. The court may
19 extend this period to permit development of a protective placement. The court may
20 order protective services as well as a transfer of protective placement. The court
21 shall include in the order the information relied upon as a basis for the order and
22 shall make findings based on the standards under s. 55.08 (1) in support of the need
23 for continued protective placement.

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1 3. If the court finds that the individual no longer meets the standards under
2 s. 55.08 (1), the court shall terminate the protective placement. If the protective
3 placement is terminated, s. 55.17 (3) (c) 1. to 3. shall apply.

4 (f) The court shall provide a copy of the order made under par. (e) to all of the
5 following:

6 1. The individual.

7 2. The individual's guardian, guardian ad litem, and legal counsel, if any, and
8 the individual's agent under an activated power of attorney for health care, if any.

9 3. The facility in which the individual resided when the petition for annual
10 review was filed.

11 4. The county department under sub. (1) (a) and, if relevant, sub. (1m).

12 **(4) ESTABLISHMENT OF COUNTY POLICY.** The county department shall ensure that
13 no later than 180 days after the effective date of this subsection [revisor inserts
14 date], the county establishes a written policy that specifies procedures to be followed
15 in the county that are designed to ensure that annual reviews of all individuals who
16 are subject to orders for protective placement under s. 55.12 or to orders for protective
17 placement initially issued under s. 55.06 (9) (a), 2003 stats., residing in the county
18 are conducted as required by this section. The county department shall maintain a
19 copy of the written policy and shall make the policy available for public inspection.

20 **(5) REPORT BY REGISTER IN PROBATE.** By the first January 31 after the effective
21 date of this subsection [revisor inserts date], and by every January 31 thereafter,
22 the register in probate of each county shall file with the chief judge of the judicial
23 administrative district a statement indicating whether each report and petition
24 required to be filed by the county department under sub. (1) that year has been filed.
25 If the statement indicates that a required report or petition has not been filed, the

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1 statement shall include an explanation of the reasons the report or petition has not
2 been filed.

NOTE: Requires annual court review of all orders for protective placement, as described in detail in the PREFATORY NOTE.

3 **SECTION 170.** 55.19 of the statutes is created to read:

4 **55.19 Annual review of order authorizing involuntary administration**
5 **of psychotropic medication.** All of the following shall be performed with respect
6 to any individual who is subject to an order under s. 55.14 or an order initially issued
7 under s. 880.33 (4r), 2003 stats., authorizing involuntary administration of
8 psychotropic medication:

9 **(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW.** (a) The county department
10 of the individual's county of residence shall, except as provided in sub. (1m), review,
11 in compliance with the requirements of this section, the status of each individual who
12 is the subject of the order. The review shall include a visit to the individual and a
13 written evaluation of the physical, mental, and social condition of the individual that
14 is relevant to the issue of the continued need for the order. The review shall be made
15 a part of the permanent record of the individual. The county department shall inform
16 the guardian of the individual of the review at the time the review is made and shall,
17 before completing a report of the review invite the individual and the guardian to
18 submit comments or information concerning the individual's need for involuntary
19 administration of psychotropic medication or other protective services. Not later
20 than the first day of the 11th month after the initial order is made for an individual,
21 except as provided in par. (b), and at least annually thereafter, the county
22 department shall do all of the following:

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1 1. File a report of the review with the court that issued the order. The report
2 of the review shall include information on all of the following:

3 a. Whether the individual continues to meet the standards for protective
4 services.

5 b. Whether the individual is not competent to refuse psychotropic medication,
6 as defined in s. 55.14 (1) (b).

7 c. Whether the individual continues to refuse to take psychotropic medication
8 voluntarily; and whether attempting to administer psychotropic medication to the
9 individual voluntarily is not feasible or is not in the best interests of the individual,
10 including all information required to be specified under s. 55.14 (3) (c).

11 d. Whether the individual's condition for which psychotropic medication has
12 been prescribed has been improved by psychotropic medication and the individual
13 has responded positively to psychotropic medication.

14 e. If the petitioner alleged under s. 55.14 (3) (e) 2. that the individual met one
15 of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e., whether the
16 individual continues to meet the criterion.

17 f. The comments of the individual and the individual's guardian during the
18 performance of the review, as summarized by the county department, and the
19 response of the county department to the comments.

20 g. The comments, if any, of a staff member at the facility at which the individual
21 is placed or receives services or at which psychotropic medication is administered to
22 the individual that are relevant to the review of the continued need for the order.

23 2. File with the court under subd. 1. a petition for annual review by the court
24 of the order.

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1 3. Provide the report under subd. 1. to the individual and the guardian of the
2 individual.

3 (b) If, following an annual review of an individual's status under par. (a), the
4 individual or the individual's guardian or guardian ad litem requests termination of
5 the order and a hearing under the requirements of s. 55.10 (4) is provided, or if a
6 hearing under the requirements of s. 55.10 (4) is provided pursuant to a petition for
7 modification or termination of the order, the county department is not required to
8 initiate a subsequent review under par. (a) until the first day of the 11th month after
9 the date that the court issues a final order after the hearing.

10 (bm) If the individual is subject to a protective placement order, the review
11 under par. (a) shall be conducted simultaneously with the review under s. 55.18 of
12 the individual's protective placement.

13 (c) The review under par. (a) may not be conducted by a person who is an
14 employee of a facility in which the individual resides or from which the individual
15 receives services.

16 **(1m)** COUNTY AGREEMENT. The county of residence of an individual who is
17 subject to an order under s. 55.14 and is provided protective placement in a different
18 county may enter into an agreement with that county under which the county of the
19 individual's placement performs all or part of the duties of the county of residence
20 under this section.

21 **(2)** GUARDIAN AD LITEM APPOINTMENT AND REPORT. After a county department has
22 filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad
23 litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the
24 following:

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1 (a) Review the report filed under sub. (1) (a) 1., and any other relevant reports
2 on the individual's condition and continued need for the order under s. 55.14.

3 (b) Meet with the individual and contact the individual's guardian and orally
4 explain to the individual and guardian all of the following:

5 1. The procedure for review of an order for involuntary administration of
6 psychotropic medication.

7 2. The right of the individual to appointment of legal counsel under sub. (3) (c).

8 3. The right to an evaluation under sub. (3) (b).

9 4. The contents of the report under sub. (1) (a) 1.

10 5. That a termination or modification of the order or modification of the
11 treatment plan for involuntary administration of psychotropic medication may be
12 ordered by the court.

13 6. The right to a hearing under sub. (3) (d) and an explanation that the
14 individual or the individual's guardian may request a hearing that meets the
15 requirements under s. 55.10 (4).

16 (c) Provide the information required under par. (b) to the individual and to the
17 individual's guardian in writing.

18 (d) Review the individual's condition and rights with the individual's guardian.

19 (e) Ascertain whether the individual wishes to exercise any of his or her rights
20 under sub. (3) (b), (c), or (d).

21 (f) Within 30 days after appointment, file with the court a written report based
22 on information obtained under this subsection and any other evaluations or records
23 of the individual. The report shall discuss whether the individual appears to
24 continue to meet the standards for an order under s. 55.14. The report shall also state
25 whether any of the following apply:

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1 1. An evaluation under sub. (3) (b) is requested by the guardian ad litem, the
2 individual, or the individual's guardian.

3 2. The individual or the individual's guardian requests termination of the order
4 under s. 55.14.

5 3. The individual or the individual's guardian requests or the guardian ad litem
6 recommends that legal counsel be appointed for the individual.

7 4. The individual or the individual's guardian or guardian ad litem requests a
8 full due process hearing under this section for the individual.

9 (g) Certify to the court that he or she has complied with the requirements of
10 pars. (a) to (e).

11 **(3) COURT REVIEW OF REPORTS; HEARING; ORDER.** (a) The court that issued the
12 order under s. 55.14 shall review the report of the guardian ad litem under sub. (2)
13 (f) and the report filed under sub. (1) (a) 1.

14 (b) The court shall order an evaluation, by a person who is not an employee of
15 the county department, of the physical, mental, and social condition of the individual
16 that is relevant to the issue of the continued need for the order under s. 55.14 and
17 that is independent of the review performed under sub. (1) (a) if any of the following
18 apply:

19 1. The report required under sub. (1) (a) 1. is not timely filed, or the court
20 determines that the report fails to meet the requirements of sub. (1) (c).

21 2. Following review of the guardian ad litem's report under sub. (2) (f), the court
22 determines that an independent evaluation for the individual is necessary.

23 3. The individual or the individual's guardian or guardian ad litem so requests.

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1 (bm) If an evaluation is ordered under par. (b), it shall be performed at the
2 expense of the individual or, if the individual is indigent, at the expense of the county
3 under sub. (1) (a).

4 (br) The court shall order that the county department obtain any other
5 necessary information with respect to the individual.

6 (c) The court shall order legal counsel for an individual and, if the individual
7 appears to be indigent, refer him or her to the authority for indigency determinations
8 under s. 977.07 (1) if any of the following apply:

9 1. Following review of the guardian ad litem's report under sub. (2) (f), the court
10 determines that legal counsel for the individual is necessary.

11 2. The individual or the individual's guardian or guardian ad litem so requests.

12 (d) The court shall order either a summary hearing or a hearing under the
13 requirements of s. 55.10 (4). A summary hearing shall be held on the record, may
14 be held in court or by other means, including by telephone or videoconference, is not
15 an evidentiary hearing, and does not require attendance by the individual. The court
16 shall hold a hearing under the requirements of s. 55.10 (4) if any of the following
17 apply:

18 1. The individual or the individual's guardian or guardian ad litem so requests.

19 2. The report under sub. (2) (f) indicates that the individual no longer meets the
20 standards for an order under s. 55.14 (8).

21 3. The report under sub. (2) (f) indicates that the individual objects to the order.

22 (e) Following the hearing under par. (d), the court shall do one of the following:

23 1. If the court finds that the individual continues to meet the standards for an
24 order under s. 55.14 (8), the court shall order the continuation of the order. The court
25 shall include in the order the information relied upon as a basis for the order and

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1 shall make findings based on the requirements for allegations of a petition under s.
2 55.14 (3) in support of the need for continuation of the order.

3 2. If the court finds that the individual continues to meet the standards for an
4 order under s. 55.14 (8) but that modification of the order or the treatment plan would
5 be in the best interests of the individual, the court shall modify the order, order
6 modifications to the individual's treatment plan, or both. Any modifications to the
7 treatment plan are subject to the approval of the guardian. The court shall include
8 in the order the information relied upon as a basis for its order and shall make
9 findings based on the requirements for allegations of a petition under s. 55.14 (3) in
10 support of the need for authorizing the guardian to consent to involuntary
11 administration of psychotropic medication.

12 3. If the court finds that the individual no longer meets the standards for an
13 order under s. 55.14 (8), the court shall terminate the order. If the order is
14 terminated, the court shall review the needs of the individual with respect to other
15 protective services. If the court determines that the individual meets the standards
16 for other protective services under s. 55.08 (2) that are not currently being provided
17 to the individual, the court may order those protective services for the individual.

18 (f) The court shall provide a copy of the order made under par. (e) to all of the
19 following:

- 20 1. The individual.
- 21 2. The individual's guardian, guardian ad litem, and legal counsel, if any.
- 22 3. The facility in which the individual resided, if any, when the petition for
23 annual review was filed.
- 24 4. The county department under sub. (1) (a) and, if relevant, sub. (1m).

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NOTE: Requires annual court review of all orders authorizing involuntary administration of psychotropic medication, as described in detail in the PREFATORY NOTE.

1 **SECTION 171.** 165.85 (4) (b) 1d. b. of the statutes is amended to read:

2 165.85 (4) (b) 1d. b. Training on emergency detention standards and
3 procedures under s. 51.15, emergency protective placement standards and
4 procedures under s. ~~55.06~~(11) 55.135, and information on mental health and
5 developmental disabilities agencies and other resources that may be available to
6 assist the officer in interpreting the emergency detention and emergency protective
7 placement standards, making emergency detentions and emergency protective
8 placements, and locating appropriate facilities for the emergency detentions and
9 emergency protective placements of persons.

NOTE: Changes a cross-reference in current law specifying required elements of law enforcement training programs to reflect renumbering and amending of ch. 55.

10 **SECTION 172.** 165.86 (2) (b) of the statutes is amended to read:

11 165.86 (2) (b) Organize a program of training, which shall encourage
12 utilization of existing facilities and programs through cooperation with federal,
13 state, and local agencies and institutions presently active in this field. Priority shall
14 be given to the establishment of the statewide preparatory and recertification
15 training programs described in sub. (1), but the department shall cooperate in the
16 creation and operation of other advanced and special courses, including courses
17 relating to emergency detention of persons under s. 51.15 and emergency protective
18 placement under s. ~~55.06~~(11) 55.135, that meet the curriculum standards
19 recommended by the board. The department may satisfy the requirement for
20 cooperating in the development of special courses relating to emergency detention
21 and emergency protective placement by cooperating with county departments of
22 community programs in the development of these courses under s. 51.42 (3) (ar) 4.

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1 d. The department shall keep appropriate records of all such training courses given
2 in the state and the results thereof in terms of persons attending, agencies
3 represented, and, where applicable, individual grades given.

4 **SECTION 173.** 301.01 (2) (intro.) of the statutes is amended to read:

5 301.01 (2) (intro.) "Prisoner" means any person who is either arrested,
6 incarcerated, imprisoned, or otherwise detained in excess of 12 hours by any law
7 enforcement agency of this state, except when detention is pursuant to s. 55.06 (11)
8 (a), 2003 stats., or s. 51.15, 51.20, 51.45 (11) (b), or ~~55.06 (11) (a)~~ 55.135 or ch. 980.

9 "Prisoner" does not include any of the following:

NOTE: Changes a cross-reference in current law defining "prisoner" in chapter 301
of the statutes, pertaining to the department of corrections, to reflect renumbering and
amending of ch. 55.

10 **SECTION 174.** 560.9811 (1) of the statutes, as affected by 2005 Wisconsin Act
11 25, is amended to read:

12 560.9811 (1) In this section, "~~chronic~~ mental illness serious and persistent" has
13 the meaning given in s. 51.01 (~~3g~~) (14t).

14 **SECTION 175.** 560.9811 (2) of the statutes, as affected by 2005 Wisconsin Act
15 25, is amended to read:

16 560.9811 (2) From the appropriation under s. 20.143 (2) (fr), the department
17 may not award more than \$45,000 in each fiscal year to applying public or nonprofit
18 private entities for the costs of providing certain mental health services to homeless
19 individuals with ~~chronic~~ serious and persistent mental illness. Entities that receive
20 funds awarded by the department under this subsection shall provide the mental
21 health services required under 42 USC 290cc-24. The amount that the department
22 awards to an applying entity may not exceed 50% of the amount of matching funds
23 required under 42 USC 290cc-23.

ASSEMBLY BILL 785**SECTION 175**

NOTE: SECTIONS 174 and 175 delete the word “chronic” and replace it with the term “serious and persistent” to modify the term “mental illness”, which is more up-to-date terminology.

1 **SECTION 176.** 609.65 (1) (intro.) of the statutes is amended to read:

2 609.65 (1) (intro.) If an enrollee of a limited service health organization,
3 preferred provider plan, or defined network plan is examined, evaluated, or treated
4 for a nervous or mental disorder pursuant to a court order under s. 880.33 (4m) or
5 (4r), 2003 stats., an emergency detention under s. 51.15, a commitment or a court
6 order under s. 51.20 or 880.33 (4m) or (4r), an order under s. 55.14 or 55.19 (3) (e),
7 or an order under ch. 980, then, notwithstanding the limitations regarding
8 participating providers, primary providers, and referrals under ss. 609.01 (2) to (4)
9 and 609.05 (3), the limited service health organization, preferred provider plan, or
10 defined network plan shall do all of the following:

NOTE: Changes a cross-reference in current law regarding insurance coverage for court-ordered services for the mentally ill, to reflect renumbering and amending of ch. 55.

11 **SECTION 177.** 757.69 (1) (h) of the statutes is amended to read:

12 757.69 (1) (h) Hear petitions for commitment and conduct probable cause
13 hearings under ss. 51.20, 51.45, 55.13, and ~~55.06 (11)~~ 55.135, conduct reviews of
14 guardianships and protective placements and protective services under chs. 55 and
15 880, advise a person alleged to be mentally ill of his or her rights under the United
16 States and Wisconsin constitutions, and, if the person claims or appears to be unable
17 to afford counsel, refer the person to the authority for indigency determinations
18 specified under s. 977.07 (1) or, if the person is a child, refer that child to the state
19 public defender who shall appoint counsel for the child without a determination of
20 indigency, as provided in s. 48.23 (4).

NOTE: Changes a cross-reference in current law authorizing circuit court commissioners to conduct probable cause hearings on emergency protective placements,

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to reflect renumbering and amending of ch. 55 and authorizes commissioners to conduct probable cause hearings for emergency protective services, which are created in the bill.

1 **SECTION 178.** 767.24 (7) (b) of the statutes is amended to read:

2 767.24 (7) (b) A parent who has been denied periods of physical placement with
3 a child under this section is subject to s. 118.125 (2) (m) with respect to that child's
4 school records, s. 51.30 (5) (bm) with respect to the child's court or treatment records,
5 s. ~~55.07~~ 55.23 with respect to the child's records relating to protective services, and
6 s. 146.835 with respect to the child's patient health care records.

NOTE: Changes a cross-reference in current law regarding access to a child's records relating to protective services by a parent who has been denied periods of physical placement with a child, to reflect renumbering and amending of ch. 55.

7 **SECTION 179.** 808.075 (4) (c) 1. of the statutes is amended to read:

8 808.075 (4) (c) 1. Review Protective placement review under s. 55.18,
9 modification under s. 55.16, or termination of protective placement under s. ~~55.06~~
10 ~~(10)~~ 55.17.

NOTE: Changes a cross-reference in current law regarding permitted court actions pending appeal, to reflect renumbering and amending of ch. 55.

11 **SECTION 180.** 808.075 (4) (c) 2. of the statutes is amended to read:

12 808.075 (4) (c) 2. Hearing required upon transfer under s. ~~55.06~~ ~~(9)~~ 55.15.

NOTE: Changes a cross-reference in current law regarding permitted court actions pending appeal, to reflect renumbering and amending of ch. 55.

13 **SECTION 181.** 808.075 (4) (c) 3. of the statutes is amended to read:

14 808.075 (4) (c) 3. Enforcement of patient's rights under s. ~~55.07~~ 55.23.

NOTE: Changes a cross-reference in current law regarding permitted court actions pending appeal, to reflect renumbering and amending of ch. 55.

15 **SECTION 182.** 809.30 (1) (b) 5. of the statutes is amended to read:

16 809.30 (1) (b) 5. Any other person who may appeal under ss. 51.13 (5), 51.20
17 (15), or ~~55.06~~ ~~(18)~~ 55.20.

NOTE: Changes a cross-reference in current law regarding appeal procedures in cases under ch. 55, to reflect renumbering and amending of ch. 55.

ASSEMBLY BILL 785**SECTION 183**

1 **SECTION 183.** 809.30 (3) of the statutes is amended to read:

2 809.30 (3) APPEALS BY STATE OR OTHER PARTY; APPOINTMENT OF COUNSEL. In a case
3 in which the state of Wisconsin, the representative of the public, any other party, or
4 any person who may appeal under s. 51.13 (5), 51.20 (15), or ~~55.06 (18)~~ 55.20 appeals
5 and the person who is the subject of the case or proceeding is a child or claims to be
6 indigent, the court shall refer the person who is the subject of the case or proceeding
7 to the state public defender for the determination of indigency and the appointment
8 of legal counsel under ch. 977.

NOTE: Changes a cross-reference in current law regarding appeal procedures in cases under ch. 55, to reflect renumbering and amending of ch. 55.

9 **SECTION 184.** 813.123 (4) (a) (intro.) of the statutes is amended to read:

10 813.123 (4) (a) (intro.) Unless the vulnerable adult, guardian or guardian ad
11 litem consents in writing and the judge or circuit court commissioner agrees that the
12 contact is in the best interests of the vulnerable adult, a judge or circuit court
13 commissioner shall issue a temporary restraining order ordering the respondent to
14 avoid interference with an investigation of the vulnerable adult under s. 55.043, or
15 the delivery of protective services to or a protective placement of the vulnerable adult
16 ~~under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 ch.~~
17 55 if all of the following occur:

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

18 **SECTION 185.** 813.123 (4) (a) 2. of the statutes is amended to read:

19 813.123 (4) (a) 2. The judge or circuit court commissioner finds reasonable
20 grounds to believe that the respondent has interfered with, or, based on prior conduct
21 of the respondent, may interfere with, an investigation of the vulnerable adult under
22 s. 55.043, or the delivery of protective services to or a protective placement of the

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1 vulnerable adult under ~~s. 55.05 or a protective placement of the vulnerable adult~~
2 under ~~s. 55.06 ch. 55.~~

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

3 **SECTION 186.** 813.123 (5) (a) (intro.) of the statutes is amended to read:

4 813.123 (5) (a) (intro.) Unless the vulnerable adult, guardian or guardian ad
5 litem consents to that contact in writing and the judge agrees that the contact is in
6 the best interests of the vulnerable adult, a judge may grant an injunction ordering
7 the respondent to avoid interference with an investigation of the vulnerable adult
8 under s. 55.043, or the delivery of protective services to or a protective placement of
9 ~~the vulnerable adult under s. 55.05 or a protective placement of the vulnerable adult~~
10 ~~under s. 55.06 ch. 55~~ if all of the following occur:

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

11 **SECTION 187.** 813.123 (5) (a) 3. b. of the statutes is amended to read:

12 813.123 (5) (a) 3. b. That the respondent has interfered with the delivery ~~to the~~
13 ~~vulnerable adult of protective services under s. 55.05 to~~ or a protective placement of
14 the vulnerable adult under ~~s. 55.06 ch. 55~~ after the offer of services or placement has
15 been made and the vulnerable adult or his or her guardian, if any, has consented to
16 receipt of the protective services or placement.

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

17 **SECTION 188.** 813.123 (6) (c) of the statutes is amended to read:

18 813.123 (6) (c) That the respondent interfered with, or, based on prior conduct
19 of the respondent, may interfere with, an investigation of the vulnerable adult under
20 s. 55.043, or the delivery of protective services to the vulnerable adult under s. 55.05
21 ~~or a protective placement of the vulnerable adult under s. 55.06 ch. 55.~~

ASSEMBLY BILL 785**SECTION 188**

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

1 **SECTION 189.** 813.123 (7) of the statutes is amended to read:

2 813.123 **(7)** INTERFERENCE ORDER. Any order under this section directing a
3 person to avoid interference with an investigation of a vulnerable adult under s.
4 55.043, or the delivery of protective services to a ~~vulnerable adult under s. 55.05~~ or
5 a protective placement of a vulnerable adult under s. ~~55.06~~ ch. 55 prohibits the
6 person from intentionally preventing a representative or employee of the county
7 protective services agency from meeting, communicating, or being in visual or audio
8 contact with the vulnerable adult, except as provided in the order.

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

9 **SECTION 190.** 813.123 (11) of the statutes is amended to read:

10 813.123 **(11)** APPLICABILITY. This section does not apply to vulnerable adults
11 who are patients or residents of state-operated or county-operated inpatient
12 institutions unless the alleged interference with an investigation of the vulnerable
13 adult under s. 55.043 or with the delivery ~~to the vulnerable adult~~ of protective
14 services ~~under s. 55.05~~ to or a protective placement of the vulnerable adult under s.
15 ~~55.06~~ ch. 55 is alleged to have been done by a person other than an employee of the
16 inpatient institution.

NOTE: Changes a cross-reference in current law regarding vulnerable adult restraining orders, to reflect renumbering and amending of ch. 55.

17 **SECTION 191.** 851.72 (11) of the statutes is created to read:

18 851.72 **(11)** Annually submit to the chief judge of the judicial administrative
19 district the statement required under s. 55.18 (5) regarding the completion of annual
20 reviews of protective placement orders under s. 55.18 (1).

NOTE: Requires the register in probate of each county to submit a statement to the chief judge of the judicial administrative district indicating whether each report and

ASSEMBLY BILL 785**SECTION 191**

petition for annual review of protective placement required to be filed by the county department that year has been filed.

1 **SECTION 192.** 880.01 (2) of the statutes is amended to read:

2 880.01 (2) “Developmentally disabled person” means any individual having a
3 disability attributable to mental retardation, cerebral palsy, epilepsy, autism or
4 another neurological condition closely related to mental retardation or requiring
5 treatment similar to that required for mentally retarded individuals, which has
6 continued or can be expected to continue indefinitely, substantially impairs the
7 individual from adequately providing for his or her own care or custody, and
8 constitutes a substantial handicap to the afflicted individual. The term does not
9 include a person affected by senility which is primarily caused by the process of aging
10 or the infirmities of aging degenerative brain disorder.

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder.”

11 **SECTION 193.** 880.01 (4) of the statutes is amended to read:

12 880.01 (4) “Incompetent” means a person adjudged by a court of record to be
13 substantially incapable of managing his or her property or caring for himself or
14 herself by reason of ~~infirmities of aging~~ degenerative brain disorder, developmental
15 disabilities, or other like incapacities. Physical disability without mental incapacity
16 is not sufficient to establish incompetence.

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder.”

17 **SECTION 194.** 880.01 (5) of the statutes is renumbered 880.01 (1t) and amended
18 to read:

19 880.01 (1t) “~~Infirmities of aging~~ Degenerative brain disorder” means organic
20 brain damage caused by advanced age or other physical degeneration in connection
21 ~~therewith to the extent that the person so afflicted~~ the loss or dysfunction of brain

ASSEMBLY BILL 785**SECTION 194**

1 cells to the extent that an individual is substantially impaired in his or her ability
2 to adequately provide adequately for his or her own care or custody.

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder.”

3 **SECTION 195.** 880.01 (7m) of the statutes is renumbered 55.14 (1) (b) and
4 amended to read:

5 55.14 (1) (b) “Not competent to refuse psychotropic medication” means that,
6 ~~because of chronic mental illness, as defined in s. 51.01 (3g)~~ as a result of
7 developmental disabilities, degenerative brain disorder, serious and persistent
8 mental illness, or other like incapacities, and after the advantages and
9 disadvantages of and alternatives to accepting the particular psychotropic
10 medication have been explained to an individual, one of the following is true:

11 1. The individual is incapable of expressing an understanding of the
12 advantages and disadvantages of accepting treatment and the alternatives to
13 accepting treatment.

14 2. The individual is substantially incapable of applying an understanding of
15 the advantages, disadvantages and alternatives to his or her ~~chronic mental illness~~
16 condition in order to make an informed choice as to whether to accept or refuse
17 psychotropic medication.

NOTE: Relocates a provision in ch. 880 that defines “not competent to refuse psychotropic medication” to the newly-created section of ch. 55 that establishes the procedure and requirements for a court order authorizing a guardian to consent to the involuntary administration of psychotropic medication to a ward. Also revises that definition to reflect terminology changes made elsewhere in the bill.

18 **SECTION 196.** 880.01 (8m) of the statutes is created to read:

19 880.01 (8m) “Psychotropic medication” means a prescription drug, as defined
20 in s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging
21 behavior.

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1 **SECTION 197.** 880.07 (1m) of the statutes is repealed.

NOTE: Repeals a provision describing the required contents of a petition alleging that a proposed ward is incompetent to refuse psychotropic medications to reflect that the bill creates a new procedure for these types of petitions in s. 55.14.

2 **SECTION 198.** 880.07 (2m) of the statutes is created to read:

3 880.07 **(2m)** Whenever a petition for guardianship on the ground of
4 incompetency is filed with respect to an individual who resides in a facility licensed
5 for 16 or more beds, a petition for protective placement of the individual shall also
6 be filed.

NOTE: Requires the filing of a protective placement petition whenever a petition for guardianship on the ground of incompetency is filed with respect to a person who resides in a facility licensed for 16 or more beds.

7 **SECTION 199.** 880.08 (1) of the statutes is amended to read:

8 880.08 **(1)** ~~INCOMPETENTS~~ PROPOSED WARD OR WARD. A petitioner shall have
9 notice served of a petition for appointment or change of a guardian upon ~~the a~~
10 proposed ~~incompetent~~ ward or ward and existing guardian, if any, by personal
11 service at least 10 days before the time set for hearing. If ~~such~~ the proposed
12 ~~incompetent~~ ward or ward is in custody or confinement, a petitioner shall have notice
13 served by registered or certified mail on the proposed ~~incompetent's~~ ward's or ward's
14 custodian, who shall immediately serve it on the proposed ~~incompetent~~ ward or
15 ward. The custodian shall inform the proposed ~~incompetent~~ ward or ward of the
16 complete contents of the notice and, certify ~~thereon~~ on it that the custodian served
17 and informed the proposed ~~incompetent~~ ward or ward, and ~~returned~~ return the
18 certificate and notice to the circuit judge. The notice shall include the names of all
19 persons who are petitioning for guardianship. A copy of the petition shall be attached
20 to the notice. The court shall cause the proposed incompetent, if able to attend, to
21 be produced ward or ward shall be present at the hearing. ~~The proposed incompetent~~

ASSEMBLY BILL 785**SECTION 199**

1 is presumed able to attend unless, after a personal interview, the guardian ad litem
2 certifies in writing to the court the that the proposed ward or ward is unwilling to
3 participate or unable to participate in a meaningful way or certifies other specific
4 reasons why the ~~person~~ proposed ward or ward is unable to attend. If the ~~person~~
5 proposed ward or ward is unable to attend a hearing only because of physical
6 inaccessibility or lack of transportation, the court shall ~~hold the hearing in a place~~
7 ~~where the person may attend,~~ if requested by the proposed ward or ward, guardian
8 ad litem, adversary counsel for the proposed ward or ward, or other interested
9 person. ~~Such,~~ hold the hearing in a place where the proposed ward or ward is able
10 to attend. The notice shall also be given personally or by mail at least 10 days before
11 the hearing to the proposed ~~incompetent's~~ ward's or ward's counsel, if any, guardian
12 ad litem, presumptive adult heirs or other persons who have legal or physical custody
13 of the proposed ~~incompetent~~ ward or ward whose names and addresses are known
14 to the petitioner or can with reasonable diligence be ascertained, to any
15 governmental or private agency, charity or foundation from which the proposed
16 ~~incompetent~~ ward or ward is receiving aid and to such other persons or entities as
17 the court may require. The court shall then proceed under s. 880.33.

NOTE: Specifies that the court need not hold a hearing on appointment of a guardian for a person alleged to be incompetent in the presence of the person under certain circumstances. These provisions are identical to provisions inserted into ch. 55 by SECTION 160 of the bill.

18 **SECTION 200.** 880.24 (3) (a) of the statutes is renumbered 880.24 (3), and 880.24
19 (3) (intro.), as renumbered, is amended to read:

20 880.24 (3) (intro.) ~~Except as provided in par. (b), when~~ When a guardian is
21 appointed, the court shall award from the ward's estate payment of the petitioner's
22 reasonable attorney fees and costs, ~~including those fees and costs, if any, related to~~

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1 protective placement of the ward, unless the court finds, after considering all of the
2 following, that it would be inequitable to do so:

3 **SECTION 201.** 880.24 (3) (b) of the statutes is renumbered 880.24 (3) (cm) and
4 amended to read:

5 880.24 (3) (cm) ~~If the court finds that~~ Whether the ward had executed a durable
6 power of attorney under s. 243.07 or a power of attorney for health care under s.
7 155.05 or had engaged in other advance planning to avoid guardianship, ~~the court~~
8 ~~may not make the award specified in par. (a).~~

NOTE: Specifies that the court may consider whether the ward engaged in advance
planning to avoid guardianship when deciding whether to award payment of the
petitioner's attorney fees and costs from the ward's estate.

9 **SECTION 202.** 880.33 (1) of the statutes is amended to read:

10 880.33 (1) Whenever it is proposed to appoint a guardian on the ground of
11 incompetency, a licensed physician or licensed psychologist, or both, shall furnish a
12 written statement concerning the mental condition of the proposed ward, based upon
13 examination. The privilege under s. 905.04 shall not apply to this statement. A copy
14 of the statement shall be provided to the proposed ward, guardian ad litem, and
15 attorney. ~~Prior to the examination, under this subsection, of a person alleged to be~~
16 ~~not competent to refuse psychotropic medication under s. 880.07 (1m), the person~~
17 ~~shall be informed that his or her statements may be used as a basis for a finding of~~
18 ~~incompetency and an order for protective services, including psychotropic~~
19 ~~medication.~~ The person individual shall also be informed that he or she has a right
20 to remain silent and that the examiner is required to report to the court even if the
21 person individual remains silent. The issuance of such a warning to the person
22 individual prior to each examination establishes a presumption that the person
23 individual understands that he or she need not speak to the examiner.

ASSEMBLY BILL 785**SECTION 203**

1 **SECTION 203.** 880.33 (2) (a) 1. of the statutes is amended to read:

2 880.33 (2) (a) 1. The proposed ward has the right to counsel whether or not
3 present at the hearing on determination of competency. The court shall in all cases
4 require the appointment of an attorney as guardian ad litem in accordance with s.
5 757.48 (1) and shall in addition require representation by full legal counsel ~~whenever~~
6 ~~the petition contains the allegations under s. 880.07 (1m) or~~ if, at least 72 hours
7 before the hearing, the alleged incompetent requests; the guardian ad litem or any
8 other person states that the alleged incompetent is opposed to the guardianship
9 petition; or the court determines that the interests of justice require it. The proposed
10 ward has the right to a trial by a jury if demanded by the proposed ward, attorney,
11 or guardian ad litem, ~~except that if the petition contains the allegations under s.~~
12 ~~880.07 (1m) and if notice of the time set for the hearing has previously been provided~~
13 ~~to the proposed ward and his or her counsel, a jury trial is deemed waived unless~~
14 ~~demanded at least 48 hours prior to the time set for the hearing.~~ The number of
15 jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney, or
16 guardian ad litem shall have the right to present and cross-examine witnesses,
17 including the physician or psychologist reporting to the court under sub. (1). The
18 attorney or guardian ad litem for the proposed ward shall be provided with a copy
19 of the report of the physician or psychologist at least 96 hours in advance of the
20 hearing. Any final decision of the court is subject to the right of appeal.

21 **SECTION 204.** 880.33 (2) (a) 2. of the statutes is amended to read:

22 880.33 (2) (a) 2. If the ~~person~~ proposed ward requests but is unable to obtain
23 legal counsel, the court shall appoint legal counsel. If the ~~person~~ proposed ward is
24 represented by counsel appointed under s. 977.08 in a proceeding ~~for~~ under a petition
25 for protective placement brought under s. ~~55.06 or for the appointment of a guardian~~

ASSEMBLY BILL 785**SECTION 204**

1 under s. ~~880.07 (1m)~~ 55.075, the court shall order the counsel appointed under s.
2 977.08 to represent the ~~person~~ proposed ward.

NOTE: SECTIONS 202 to 204 replace the term "person" with "individual" or "proposed ward" as appropriate.

3 **SECTION 205.** 880.33 (2) (d) of the statutes is repealed.

4 **SECTION 206.** 880.33 (2) (e) of the statutes is repealed.

NOTE: SECTIONS 205 and 206 repeal provisions pertaining to a hearing on a petition alleging that a proposed ward is incompetent to refuse psychotropic medications, to reflect that the bill creates a new procedure for these types of petitions in s. 55.14.

5 **SECTION 207.** 880.33 (2) (f) of the statutes is created to read:

6 880.33 (2) (f) An interested person may participate in the hearing on the
7 petition at the court's discretion.

NOTE: This provision is taken from the decision of the Wisconsin Court of Appeals in *Coston v. Joseph P.*, 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. App. 1998).

8 **SECTION 208.** 880.33 (3) of the statutes is amended to read:

9 880.33 (3) In a finding of limited incompetency, guardianship of the person
10 shall be limited in accordance with the order of the court accompanying the finding
11 of incompetence. If the proposed incompetent has executed a power of attorney for
12 health care under ch. 155, the court shall give consideration to the appointment of
13 the health care agent for the individual as the individual's guardian. The court shall
14 make a specific finding as to which legal rights the ~~person~~ individual is competent
15 to exercise. Such rights include but are not limited to the right to vote, to marry, to
16 obtain a motor vehicle operator's license or other state license, to hold or convey
17 property, and the right to contract. The findings of incompetence must be based upon
18 clear and convincing evidence. The court shall determine if additional medical or
19 psychological testimony is necessary for the court to make an informed decision
20 respecting competency to exercise legal rights and may obtain assistance in the
21 manner provided in s. ~~55.06 (8)~~ 55.11 whether or not protective placement is made.

ASSEMBLY BILL 785**SECTION 208**

1 The guardian, ward, or any interested person may at any time file a petition with the
2 court requesting a restoration of any such legal right, and specifying the reasons
3 therefor. ~~Such~~ The petition may request that a guardianship of the person be
4 terminated and a guardianship of property be established.

NOTE: Replaces the term “person” with individual and amends a cross-reference
to reflect renumbering if ch. 55 in the bill.

5 **SECTION 209.** 880.33 (4m) of the statutes is repealed.

NOTE: Repeals a provision in ch. 880 authorizing a court to appoint a guardian to
consent to or refuse psychotropic medications on behalf of a ward to reflect that the bill
creates a new procedure in s. 55.14 authorizing a guardian to make these decisions.

6 **SECTION 210.** 880.33 (4r) of the statutes is repealed.

NOTE: Repeals a provision in ch. 880 under which a court may authorize a guardian
to consent to forcible administration of psychotropic medications to a ward under certain
circumstances, to reflect that the bill creates a new procedure in s. 55.14 for a court to
provide this authorization.

7 **SECTION 211.** 880.33 (6) of the statutes is amended to read:

8 880.33 (6) All court records pertinent to the finding of incompetency are closed
9 but subject to access as provided in s. ~~55.06 (17)~~ 55.22. The fact that a person an
10 individual has been found incompetent is accessible to any person who demonstrates
11 to the custodian of the records a need for that information.

NOTE: Amends a cross-reference to reflect renumbering and amendment of ch. 55
in a provision of current law pertaining to guardianship.

12 **SECTION 212.** 880.33 (7) of the statutes is amended to read:

13 880.33 (7) A finding of incompetency and appointment of a guardian under this
14 subchapter is not grounds for involuntary protective placement. ~~Such placement~~ A
15 protective placement may be made only in accordance with s. ~~55.06~~ ch. 55.

NOTE: Amends a cross-reference to reflect renumbering and amendment of ch. 55
in a provision of current law pertaining to guardianship.

16 **SECTION 213.** 880.331 (1) of the statutes is amended to read:

17 880.331 (1) APPOINTMENT. The court shall appoint a guardian ad litem
18 whenever it is proposed that the court appoint a guardian on the ground of

ASSEMBLY BILL 785

1 incompetency under s. 880.33, ~~protectively place a person~~ provide protective
2 placement to an individual or order protective services under s. ~~55.06~~ ch. 55, review
3 any protective placement or protective service order under s. ~~55.06~~ 55.18, or
4 terminate a protective placement under s. ~~55.06~~ 55.17.

NOTE: Amends a cross-reference to reflect renumbering and amendment of ch. 55 in a provision in current law that requires the court to appoint a guardian ad litem in incompetency cases.

5 **SECTION 214.** 880.331 (4) (am) and (ar) of the statutes are created to read:

6 880.331 (4) (am) Interview the proposed guardian and any other person
7 seeking appointment as guardian.

8 (ar) Make a recommendation to the court regarding the fitness of the proposed
9 guardian.

NOTE: Adds two items to the list of duties of a guardian ad litem in incompetency cases: the duty to interview the proposed guardian and any other person seeking appointment as a guardian and the duty to make a recommendation to the court regarding the fitness of the proposed guardian.

10 **SECTION 215.** 880.331 (4) (dm), (dr) and (ds) of the statutes are created to read:

11 880.331 (4) (dm) Inform the court and the petitioner or petitioner's counsel, if
12 any, if the proposed ward requests representation by counsel.

13 (dr) Attend all court proceedings related to the guardianship.

14 (ds) Notify the guardian of the right to be present at and participate in the
15 hearing, to present and cross-examine witnesses, to receive a copy of any evaluation
16 under s. 55.11 (1) (intro.) or (2), and to secure and present a report on an independent
17 evaluation under s. 880.33 (2) (b).

NOTE: Adds three items to the list of duties of a guardian ad litem in incompetency cases: the duty to inform the court and the petitioner or his or her counsel if the proposed ward requests representation by counsel; the duty to attend all court proceedings relating to the guardianship; and the duty to notify the guardian of certain rights of the guardian.

18 **SECTION 216.** 880.331 (5) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 785**SECTION 216**

1 880.331 (5) DUTIES IN PROTECTIVE SERVICES REVIEWS. (intro.) In any review of
2 a protective placement under s. ~~55.06~~ or of a protective service services order made
3 under s. ~~55.05~~ 55.12, the guardian ad litem shall do all of the following:

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55
in a provision in current law that sets forth the duties of a guardian ad litem in
incompetency cases.

4 **SECTION 217.** 880.34 (6) of the statutes is repealed.

NOTE: Repeals provisions in current law pertaining to annual review of an order
authorizing a guardian to consent to forcible administration of psychotropic medications
to a ward under certain circumstances, to reflect that the bill creates a new annual review
procedure of that type of authorization in s. 55.19.

5 **SECTION 218.** 880.38 (1) of the statutes is amended to read:

6 880.38 (1) A guardian of the person of an incompetent, upon order of the court,
7 may have custody of the ~~person~~ ward, may receive all notices on behalf of the person
8 ward, and may act in all proceedings as an advocate of the ~~person~~ ward, but may not
9 have the power to bind the ward or the ward's property, or to represent the ward in
10 any legal proceedings pertaining to the property, unless the guardian of the person
11 is also the guardian of the property. A guardian of the person of an incompetent or
12 a temporary guardian of the person of an incompetent may not make a permanent
13 protective placement of the ward unless ordered by a court under s. ~~55.06~~ 55.12 but
14 may admit a ward to certain residential facilities under s. ~~55.05 (5)~~ 55.055 or make
15 an emergency protective placement under s. ~~55.06 (11)~~ 55.135. The guardian of the
16 person ~~has the power to apply~~ may petition for protective placement under s. ~~55.06~~
17 55.075 (1) and for commitment under s. 51.20 or 51.45 (13).

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55
in a provision of current law that sets forth the rights and duties of guardians.

18 **SECTION 219.** 880.38 (2) of the statutes is amended to read:

19 880.38 (2) A guardian of the person shall endeavor to secure necessary care,
20 services, or appropriate protective placement on behalf of the ward. Subject to any

ASSEMBLY BILL 785**SECTION 219**

1 limitation imposed by the court under s. 880.33 (8) (b), a guardian may consent,
2 without further court involvement, to involuntary administration of medication,
3 other than psychotropic medication, and involuntary medical treatment that is in
4 the ward's best interest. A guardian may consent to involuntary administration of
5 psychotropic medication only under a court order under s. 55.14 or s. 880.33 (4m) or
6 (4r), 2003 stats. In determining whether medication, other than psychotropic
7 medication, or medical treatment is in the ward's best interest, the guardian shall
8 consider the invasiveness of the medication or treatment and the likely benefits and
9 side effects of the medication or treatment.

NOTE: Authorizes a guardian to consent, without further court involvement, to involuntary administration of medication, other than psychotropic medication, and involuntary medical treatment that is in the ward's best interest. In determining whether medication or medical treatment is in the ward's best interest, the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment. A guardian may not consent to involuntary administration of psychotropic medication unless the guardian has been authorized to do so under s. 55.14 (8).

10 **SECTION 220.** 880.38 (3) of the statutes is amended to read:

11 880.38 (3) A guardian of the person of an incompetent appointed under s.
12 880.33 shall make an annual report on the condition of the ward to the court that
13 ordered the guardianship and to the county department designated under s. 55.02
14 (2). That county department shall develop reporting requirements for the guardian
15 of the person. The report shall include, but not be limited to, the location of the ward,
16 the health condition of the ward, any recommendations regarding the ward, and a
17 statement of whether or not the ward is living in the least restrictive environment
18 consistent with the needs of the ward. ~~The guardian may fulfill the requirement~~
19 ~~under this subsection by submitting the report required under s. 55.06 (10).~~

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55 in a provision of current law that requires a guardian to make an annual report on the condition of the ward to the court and the county.

ASSEMBLY BILL 785**SECTION 221**

1 **SECTION 221.** 880.38 (4) of the statutes is created to read:

2 880.38 (4) (a) In this subsection, “protest” means make more than one
3 discernible negative response, other than mere silence, to the offer of,
4 recommendation for, or other proffering of voluntary receipt of psychotropic
5 medication. “Protest” does not mean a discernible negative response to a proposed
6 method of administration of the psychotropic medication.

7 (b) A guardian may, without court approval, give an informed consent to the
8 voluntary receipt by the guardian’s ward of medication, including any appropriate
9 psychotropic medication, if the guardian has first made a good-faith attempt to
10 discuss with the ward the voluntary receipt of the medication and if the ward does
11 not protest.

NOTE: Creates a definition of “protest” and creates a provision under which a guardian may provide informed consent to voluntary receipt of medication, including psychotropic medication, by a ward.

12 **SECTION 222.** 940.285 (1) (a) of the statutes is renumbered 940.285 (1) (am).

13 **SECTION 223.** 940.285 (1) (b) of the statutes is renumbered 940.285 (1) (ag) and
14 amended to read:

15 940.285 (1) (ag) “~~Infirmities of aging~~ “Degenerative brain disorder” has the
16 meaning ~~specified in s. 55.01 (3)~~ given in s. 55.01 (1v).

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” and amends cross-references to reflect renumbering and amendment of ch. 55, in the statute that establishes certain crimes related to the maltreatment of vulnerable adults.

17 **SECTION 224.** 940.285 (1) (e) (intro.) of the statutes is amended to read:

18 940.285 (1) (e) (intro.) “Vulnerable adult” means any person 18 years of age or
19 older who either is a developmentally disabled person or has ~~infirmities of aging~~
20 degenerative brain disorder, mental illness or other like incapacities and who is:

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” and amends cross-references to reflect renumbering and amendment of ch. 55,

ASSEMBLY BILL 785**SECTION 224**

in the statute that establishes certain crimes related to the maltreatment of vulnerable adults.

1 **SECTION 225.** 940.295 (1) (hm) of the statutes is renumbered 940.295 (1) (cg)

2 and amended to read:

3 940.295 (1) (cg) “~~Infirmities of aging~~ Degenerative brain disorder” has the
4 meaning given in s. 55.01 ~~(3)~~ (1v).

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” and amends a cross-reference to reflect renumbering and amendment of ch. 55, in the statute that establishes crimes related to the abuse and neglect of patients and residents of certain facilities.

5 **SECTION 226.** 940.295 (1) (t) (intro.) of the statutes is amended to read:

6 940.295 (1) (t) (intro.) “Vulnerable person” means any person who either is a
7 developmentally disabled person or has ~~infirmities of aging~~ degenerative brain
8 disorder, mental illness or other like incapacities and who is:

NOTE: Replaces the term “infirmities of aging” with the term “degenerative brain disorder” in the statute that establishes crimes related to the abuse and neglect of patients and residents of certain facilities.

9 **SECTION 227.** 971.14 (6) (b) of the statutes is amended to read:

10 971.14 ~~(6)~~ (b) When the court discharges a defendant from commitment under
11 par. (a), it may order that the defendant be taken immediately into custody by a law
12 enforcement official and promptly delivered to a facility specified in s. 51.15 (2), an
13 approved public treatment facility under s. 51.45 (2) (c), or an appropriate medical
14 or protective placement facility. Thereafter, detention of the defendant shall be
15 governed by s. 51.15, 51.45 (11), or ~~55.06 (11)~~ 55.135, as appropriate. The district
16 attorney or corporation counsel may prepare a statement meeting the requirements
17 of s. 51.15 (4) or (5), 51.45 (13) (a), or ~~55.06 (11)~~ 55.135 based on the allegations of the
18 criminal complaint and the evidence in the case. This statement shall be given to the
19 director of the facility to which the defendant is delivered and filed with the branch
20 of circuit court assigned to exercise criminal jurisdiction in the county in which the

ASSEMBLY BILL 785**SECTION 227**

1 criminal charges are pending, where it shall suffice, without corroboration by other
2 petitioners, as a petition for commitment under s. 51.20, or 51.45 (13) or ~~55.06(2)~~ a
3 petition for protective placement under s. 55.075. This section does not restrict the
4 power of the branch of circuit court in which the petition is filed to transfer the matter
5 to the branch of circuit court assigned to exercise jurisdiction under ch. 51 in the
6 county. Days spent in commitment or protective placement pursuant to a petition
7 under this paragraph shall not be deemed days spent in custody under s. 973.155.

NOTE: Amends cross-references to reflect renumbering and amendment of ch. 55
in a provision of current law pertaining to detention of a criminal defendant found to be
incompetent.

8 **SECTION 228.** 977.05 (4) (i) 8. of the statutes is created to read:

9 977.05 (4) (i) 8. Cases involving individuals who are subject to petitions for
10 protective placement under ch. 55.

NOTE: Requires the state public defender to provide legal services in cases
involving individuals who are subject to petitions for protective placement.

11 **SECTION 229. Nonstatutory provisions.**

12 (1) REVIEW OF ORDER; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.
13 For an individual who is subject to an order appointing a guardian under section
14 880.33 (4m), 2003 stats., and to an order initially issued under section 880.33 (4r),
15 2003 stats., that is in effect on the effective date of this subsection, the county
16 department of the individual's county of residence shall, no later than 9 months after
17 the effective date of this subsection, review the individual's status under the
18 requirements of section 55.19 of the statutes, as created by this act.

19 (2) TRANSITION; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.
20 Notwithstanding the treatment of sections 55.05 (2) (d) and 880.33 (4m) and (4r) of
21 the statutes by this act, all orders issued under sections 55.05 (2) (d), 2003 stats., and
22 880.33 (4m) and (4r), 2003 stats., in effect on the effective date of this subsection,

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1 remain in effect until modified or terminated by a court order under section 55.16,
2 55.17, or 55.19 of the statutes, as created by this act.

3 (3) TRANSITION; ORDERS FOR PROTECTIVE PLACEMENT AND PROTECTIVE SERVICES.
4 Notwithstanding the treatment of sections 55.05 and 55.06 of the statutes by this act,
5 all orders issued under section 55.05 (2) (d), 2003 stats., or section 55.06 (9) (a) or (11)
6 (c), 2003 stats., in effect on the effective date of this subsection, remain in effect until
7 modified or terminated by a court order under section 55.16, 55.17, 55.18, or 55.19
8 of the statutes, as created by this act or section 55.175 or 55.20 of the statutes, as
9 affected by this act.

10 (4) RULES; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION. The
11 department of health and family services shall submit in proposed form the rules
12 required under section 50.02 (2) (ad) of the statutes, as created by this act, to the
13 legislative council staff under section 227.15 (1) of the statutes no later than the first
14 day of the 6th month beginning after the effective date of this subsection.

15 **SECTION 230. Initial applicability.**

16 (1) EMERGENCY PROTECTIVE SERVICES OR EMERGENCY AND TEMPORARY PROTECTIVE
17 PLACEMENT. The treatment of sections 46.011 (2), 46.10 (2), 46.279 (4) (e) and (5),
18 49.001 (5m), 49.45 (30m) (b), 51.15 (5), 51.39, 51.40 (2) (a) 2., 51.42 (1) (b) and (3) (ar)
19 4. d., 51.437 (4) (c), 55.02 (2) (b) 4., 55.043 (4) (b), 55.05 (3), (4) (title), (a), (b), and (c),
20 and (5) (c) 2. and 3., 55.06 (1) (intro.) and (d), (11) (a), (am), (ar), (b), (c), and (d), and
21 (12), 55.13 (2) and (3), 55.135 (title), 165.85 (4) (b) 1d. b., 165.86 (2) (b), 301.01 (2)
22 (intro.), 757.69 (1) (h), 880.38 (1), and 971.14 (6) (b) of the statutes first applies to
23 emergency protective services provided and emergency and temporary protective
24 placements made on the effective date of this subsection.

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1 (2) PROTECTIVE PLACEMENT OR PROTECTIVE SERVICES. The treatment of sections
2 46.10 (2), 46.275 (4) (b) 1., 46.279 (2), (4) (c), (d), and (e), 49.001 (8), 49.45 (30m) (b),
3 50.03 (5m) (c), 51.20 (1) (am), 51.39, 51.40 (2) (a) 1., 55.001, 55.01 (1d), (4g), (4t), (6),
4 (6m), (6p), (6r), (6t), (6v), (6x), and (6y), 55.02, 55.03, 55.04 (title), (1), (2), (3), and (4),
5 55.045, 55.05 (3), and (5) (b) 2. and (c) 3., 55.055 (2), 55.06 (1) (intro.), (a), (b), (c), and
6 (d), (2) (intro.), (a), (b), (c), and (d), (3) (a), (b), and (c), (4), (5), (5m), (6), (7), (8) (intro.),
7 (a), (b), and (c), (9) (a), (11) (b) and (c), (15), (16), and (18), 55.075, 55.08, 55.09, 55.10,
8 55.11, 55.12, 609.65 (1) (intro.), 809.30 (1) (b) 5. and (3), 880.07 (2m), 880.33 (2) (a)
9 2., (3), and (7), 880.331 (1), and (5) (intro.), 971.14 (6) (b), and 977.05 (4) (i) 8. of the
10 statutes, the renumbering and amendment of section 55.01 (4) of the statutes, and
11 the creation of section 55.01 (4) (c) of the statutes first apply to petitions for protective
12 placement or protective services brought on the effective date of this subsection.

13 (3) DIAGNOSES OF SERIOUS AND PERSISTENT MENTAL ILLNESS. The treatment of
14 sections 46.27 (6r) (b) 2., 49.43 (10v), 49.45 (6m) (i) 2. and (25) (am) 2., 51.01 (3g) and
15 (3s), 51.20 (7) (d) 1. (intro.) and b., 51.35 (4m) (intro.), 51.40 (2) (intro.), 51.421 (1),
16 (2), and (3) (c), 51.67 (intro.) and (2), 55.001, 55.01 (6r) and (6v), 55.06 (2) (c), and (11)
17 (a), 55.08 (2) (b), 560.9811 (1) and (2), and 880.01 (7m) of the statutes first applies
18 to diagnoses of serious and persistent mental illness made on the effective date of this
19 subsection.

20 (4) DIAGNOSES OF DEGENERATIVE BRAIN DISORDER. The treatment of sections
21 46.286 (1) (intro.) and (3) (a) (intro.), 46.90 (1) (c) and (d), 51.01 (2g) (b), (3g), and (5)
22 (a), 55.001, 55.01 (1v), (2), (3), and (6r), 55.06 (2) (c) and (11) (a), 55.08 (2) (b), 880.01
23 (2), (4), (5), and (7m), 940.285 (1) (a), (b), and (e) (intro.), and 940.295 (1) (hm) and
24 (t) (intro.) of the statutes first applies to diagnoses of degenerative brain disorder
25 made on the effective date of this subsection.

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1 (5) REQUEST FOR VOLUNTARY PROTECTIVE SERVICES. The treatment of sections
2 55.05 (title), (2) (intro.), (a), (b), and (c), and (3) of the statutes first applies to a
3 request made on the effective date of this subsection.

4 (6) ADMISSIONS. The treatment of sections 46.10 (2), 51.10 (4m) (a) (intro.), 51.10
5 (8), 51.39, 55.05 (5) (title), (a), (b) 1. and 2., (c) (intro.), 1., 2., and 3. and (d), 55.055
6 (1) (c) and (d) and (2), 55.06 (1) (d) and (12), and 880.38 (1) of the statutes first applies
7 to admissions made on the effective date of this subsection.

8 (7) INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION. The treatment
9 of sections 55.05 (2) (d), 55.09 (3), 55.10 (4) (a), 55.14, 55.16 (2) (c) 2., 55.17 (4) (b),
10 55.18 (1) (bm), 609.65 (1) (intro.), 880.01 (7m) and (8m), 880.07 (1m), 880.33 (1), (2)
11 (a) 1. and 2., (d), (e), and (f), (4m), and (4r), 880.34 (6), and 880.38 (2) of the statutes
12 first applies to a petition for the involuntary administration of psychotropic
13 medication brought on the effective date of this subsection.

14 (8) ANNUAL REVIEW OF ORDER FOR PROTECTIVE PLACEMENTS. The treatment of
15 sections 46.279 (2), (3), and (4) (d), 49.45 (30m) (c) 2., 55.02 (2) (b) 3., 55.06 (4) and
16 (10) (a) 1. and 2., 55.18, 609.65 (1) (intro.), 808.075 (4) (c) 1., 851.72 (11), 880.331 (1)
17 and (5) (intro.), and 880.38 (3) of the statutes first applies to a review conducted on
18 the effective date of this subsection.

19 (9) PROTECTIVE PLACEMENT TRANSFER. The treatment of sections 20.435 (2) (gk),
20 51.39, 55.06 (9) (b), (c), (d), and (e), 55.15, and 808.075 (4) (c) 2. of the statutes first
21 applies to a transfer of an individual under a protective placement order made on the
22 effective date of this subsection.

23 (10) MODIFICATION OF ORDERS FOR PROTECTIVE PLACEMENT OR PROTECTIVE SERVICES.
24 The treatment of sections 55.16 and 808.075 (4) (c) 1. of the statutes first applies to

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1 a petition for modification of an order for protective placement or protective services
2 brought on the effective date of this subsection.

3 (11) TERMINATION OF PROTECTIVE PLACEMENTS OR PROTECTIVE SERVICES. The
4 treatment of sections 55.06 (10) (b) and (c) and (14), 55.17, 808.075 (4) (c) 1., and
5 880.331 (1) of the statutes first applies to a petition for termination of an order for
6 protective placement or protective services brought on the effective date of this
7 subsection.

8 (12) PETITIONS FOR GUARDIANSHIP. The treatment of sections 880.07 (1m) and
9 (2m), 880.08 (1), 880.24 (3) (a) and (b), 880.33 (2) (a) 1. and 2., (d), (e), and (f), (3), (4m),
10 (4r), (6), and (7), 880.331 (4) (am), (ar), (dm), (dr), and (ds), 880.34 (6), and 880.38 (1),
11 (2), (3), and (4) of the statutes first applies to petitions for guardianship made on the
12 effective date of this subsection.

13 (13) ADMISSIONS OF INCAPACITATED INDIVIDUALS. The treatment of section 50.06
14 (2) (c) and (d) of the statutes first applies to an admission of an incapacitated
15 individual made on the effective date of this subsection.

16 (14) INVESTIGATIONS BY COUNTY PROTECTIVE SERVICES AGENCIES. The treatment
17 of sections 55.043 (1) (a) (intro.), 1., and 3. and (b) 1. and 2. a. and b. and (4) (a) and
18 (b) and 813.123 (4) (a) (intro.) and 2., (5) (a) (intro.) and 3. b., (6) (c), (7), and (11) of
19 the statutes first applies to conduct of an investigation made on the effective date of
20 this subsection.

21 (15) RECORDS. The treatment of sections 46.21 (2m) (c), 46.215 (1m), 46.22 (1)
22 (dm), 46.23 (3) (e), 46.283 (7) (b), 46.284 (7) (b), 51.42 (3) (e), 51.437 (4r) (b), 55.06 (17),
23 55.22 (title), 767.24 (7) (b), and 880.33 (6) of the statutes first applies to a record made
24 on the effective date of this subsection.

25

(END)