CHAPTER 55

PROTECTIVE SERVICE SYSTEM

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NOTE: 2005 Wis. Act 264 made major revisions to this chapter and contains extensive explanatory notes.

Cross−reference: See s. 46.011 for definitions applicable to chs. 46, 50, 51, 54, 55, and 58.

55.001 Declaration of policy. The legislature recognizes that many citizens of the state, because of serious and persistent mental illness, degenerative brain disorder, developmental disabilities, or other like incapacities, are in need of protective services or protective placement. Except as provided in s. 49.45 (30m) (a), the protective services or protective placement should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors or the Milwaukee County mental health board, as applicable, is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from financial exploitation, abuse, neglect, and self−neglect. This chapter is designed to establish those protective services and protective placements, to assure their availability to all individuals when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, financial exploitation, neglect, and self−neglect.

History: 1973 c. 284; 1979 c. 221; 1995 a. 92; 2003 a. 33; 2005 a. 264, 388; 2009 a. 180; 2013 a. 203.

Neither a district attorney nor a corporation counsel has a duty to petition for protective placement, determination of incompetency, or otherwise intervene when an apparently competent elderly person with a life threatening illness chooses to remain at home under a doctor's and family care rather than seeking a higher level of care that might extend her life. 74 Atty. Gen. 188.

Landmark Reforms Signed Into Law: Guardianship and Adult Protective Services. Abramson & Raymond. Wis. Law. Aug. 2006.

55.01 Definitions. In this chapter:

(1) "Abuse" has the meaning given in s. 46.90 (1) (a).

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

(1e) "Adult at risk" means any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self−neglect, or financial exploitation.

(1f) "Adult−at−risk agency" means the agency designated by the county board of supervisors under s. 55.043 (1d) to receive, respond to, and investigate reports of abuse, neglect, self−neglect, and financial exploitation under s. 55.043.

(1g) "Agency" means a county department or any public or private board, corporation or association which is concerned with the specific needs and problems of developmentally disabled, mentally ill, alcoholic, drug dependent or aging persons.

(1m) "Bodily harm" has the meaning given in s. 46.90 (1) (aj).

(1p) "Caregiver" has the meaning given in s. 46.90 (1) (an).

(1r) "County department", except as otherwise provided, means a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 designated under s. 55.02.

(1v) "Degenerative brain disorder" means the loss or dysfunction of brain cells to the extent that the individual is substantially impaired in his or her ability to provide adequately for his or her own care or custody or to manage adequately his or her property or financial affairs.

(2) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, which has continued or can be expected to continue indefinitely, substantially impairs an individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include dementia that is primarily caused by degenerative brain disorder.

(2r) "False representation" includes a promise that is made with the intent not to fulfill the promise.

(2s) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).

(2t) "Great bodily harm" has the meaning given in s. 939.22 (14).

(4) "Interested person" means any of the following:

(a) An adult relative or friend of an individual sought to be protected under this chapter.

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

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

(4g) "Intermediate facility" has the meaning given in s. 46.279 (1) (b).

(4i) "Investigative agency" has the meaning given in s. 46.90 (1) (er).

(4m) "Mental illness" means mental disease to the extent that an afflicted person requires care, treatment or custody for his or her own welfare or the welfare of others or of the community.

(4r) "Neglect" has the meaning given in s. 46.90 (1) (f).

(4t) "Nursing facility" has the meaning given in s. 46.279 (1) (c).

(5) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from adequately providing for his or her care or custody.

(6) "Protective placement" means a placement that is made to provide for the care and custody of an individual.

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

(6p) "Protective placement unit" means a ward, wing, or other designated part of a protective placement facility.

(6r) "Protective services" includes any of the following:

(a) Outreach.

(b) Identification of individuals in need of services.

(c) Counseling and referral for services.

(d) Coordination of services for individuals.

(e) Tracking and follow−up.

(f) Social services.

(g) Case management.

(h) Legal counseling or referral.

(i) Guardianship referral.

(j) Diagnostic evaluation.

(k) Any services that, when provided to an individual with developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacity, keep the individual safe from abuse, financial exploitation, neglect, or self−neglect or prevent the individual from experiencing deterioration or from inflicting harm on himself or herself or another person.

(6s) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

(6t) "Residence" means the voluntary concurrence of an individual's physical presence with his or her intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.

(6u) "Self−neglect" has the meaning given in s. 46.90 (1) (g).

(6v) "Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that 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, that may lead to an inability to maintain stable adjustment and independent functioning without long−term treatment and support, and that may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

(6vm) "State governmental agency" has the meaning given for "agency" in s. 16.417 (1) (a).

(6w) "State official" has the meaning given in s. 46.90 (1) (gr).

(6x) "Treatment facility" has the meaning given in s. 51.01 (19).

(6y) "Voluntary" means according to an individual's free choice, if competent, or by choice of a guardian, if adjudicated incompetent.

History: 1973 c. 284; 1975 c. 393, 430; 1979 c. 221; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1991 a. 316; 1993 a. 445; 2003 a. 33; 2005 a. 264, 387, 388; 2007 a. 45, 96; 2011 a. 126.

Cross−reference: See also s. 46.011 for definitions applicable to chs. 46, 48 to 51, 54, 55 and 58.

The guardian ad litem is an interested person. A guardian ad litem appointed by the circuit court to represent the ward's best interest becomes an official of a public agency concerned with the person's welfare by virtue of that appointment and falls within the definition of "interested person" in the protective placement system of ch. 55. Linda L. v. Collis, 2006 WI App 105, 294 Wis. 2d 637, 718 N.W.2d 205, 05−0494.

Alzheimer's disease is one type of a degenerative brain disorder. Chapter 51 includes the definition of degenerative brain disorder only to specifically exclude it from the chapter's authority, whereas the ch. 55 definition is used to include it in the scope of authority granted under ch. 55. Rehabilitation is a necessary element of treatment under ch. 51. Because there are no techniques that can be employed to bring about rehabilitation from Alzheimer's disease, an individual with the disease cannot be rehabilitated. Accordingly, an Alzheimer's patient is not a proper subject for ch. 51 treatment. Fond du Lac County v. Helen E. F. 2011 WI App 72, 333 Wis. 2d 740, 798 N.W.2d 707, 10−2061.

Affirmed. 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179, 10−2061.

55.02 Protective services and protective placement: duties. (1) DEPARTMENT DUTIES. (a) The department shall do all of the following:

1. Cooperate with county departments to develop and operate a coordinated, statewide system for protective services and protective placement. The protective services and protective placement system shall be designed to encourage independent living and to avoid protective placement whenever possible.

2. Monitor and supervise the implementation and operation of the protective services and protective placement system.

3. Provide technical assistance to county departments providing protective services and protective placement.

4. Evaluate the protective services and protective placement system.

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

(2) COUNTY DEPARTMENT DUTIES. (a) The chairperson of each county board of supervisors shall designate a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that is providing services in the county on its own or through a joint mechanism with another county department or county to have the responsibility for planning for the provision of protective services and protective placement and for directly providing protective services, protective placement, or both, or entering into a contract under s. 46.036 with a responsible agency for the provision of protective services, protective placement, or both.

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

1. Monitor and evaluate protective services and protective placements.

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

3. Develop requirements for submittal by guardians of the person of reports to the county department under s. 54.25 (1) (a).

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

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

History: 1973 c. 284; 1975 c. 393; 1979 c. 221; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1985 a. 332 s. 251 (3); 1993 a. 445; 2001 a. 103; 2005 a. 264 ss. 80, 116; 2005 a. 387, 388; 2007 a. 45.

55.03 Status of guardian. (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting as a guardian appointed under ch. 880, 2003 stats., or ch. 54 may be a provider of protective services or protective placement for its ward under this chapter.

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

(3) GUARDIAN AUTHORITY AND RESPONSIBILITY APPLICABLE TO PARENT OF MINOR. Where any responsibility or authority is created under this chapter upon or in relation to a guardian, the responsibility or authority is deemed to apply to a parent or person in the

place of a parent in the case of a minor who is or who is alleged to have a developmental disability.

(4) GUARDIAN AUTHORITY FOR MAKING PROTECTIVE PLACEMENT. No guardian or temporary guardian may make a permanent protective placement of his or her ward unless ordered by a court under s. 55.12, but a guardian or temporary guardian may admit a ward to certain residential facilities under s. 55.055 or make an emergency protective placement under s. 55.135.

History: 1973 c. 284; 1979 c. 330; 2005 a. 264 ss. 81, 83, 117; 2005 a. 387; 2007 a. 45.

55.043 Adult−at−risk agency. (1d) ADULT−AT−RISK AGENCY DESIGNATION. Each county board shall designate an agency as the adult−at−risk agency for the purposes of this section.

(1g) ADULT−AT−RISK AGENCY DUTIES. (a) Each adult−at−risk agency shall develop a policy for notifying other investigative agencies, including law enforcement officials in appropriate cases, and shall establish an adult−at−risk abuse reporting system to carry out the purposes of this section. Each adult−at−risk agency shall enter into a memorandum of understanding regarding the operation of the system with the county department under s. 46.215 or 46.22 and with any private or public agency, including a county department under s. 51.42 or 51.437, within the county that is participating in the adult−at−risk abuse reporting system. The memorandum of understanding shall, at a minimum, identify the agencies that are responsible for the investigation of reports of abuse, financial exploitation, neglect, or self−neglect of adults at risk and for the provision of specific direct services.

(b) Each adult−at−risk agency shall receive reports of abuse, financial exploitation, neglect, or self−neglect of adults at risk.

(c) Each adult−at−risk agency shall publicize the existence of an adult−at−risk abuse reporting system in the county and shall provide a publicized telephone number that can be used by persons wishing to report suspected cases of abuse, financial exploitation, neglect, or self−neglect of adults at risk. Each adult−at−risk agency shall also provide a telephone number that can be used by persons to make reports after the adult−at−risk agency's regular business hours.

(1m) REPORTING. (a) The following persons shall file reports as specified in par. (b):

1. An employee of any entity that is licensed, certified, or approved by or registered with the department.

3. A health care provider, as defined in s. 155.01 (7).

4. A social worker, professional counselor, or marriage and family therapist certified under ch. 457.

(b) Except as provided in par. (be), a person specified in par. (a) who has seen an adult at risk in the course of the person's professional duties shall file a report with the county department, the adult−at−risk agency, a state or local law enforcement agency, the department, or the board on aging and long−term care if the adult at risk has requested the person to make the report, or if the person has reasonable cause to believe that any of the following situations exist:

1. The adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk.

2. An adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.

(be) A person specified in par. (a) to whom any of the following applies is not required to file a report as provided in par. (b):

1. If the person believes that filing a report would not be in the best interest of the adult at risk. If the person so believes, the person shall document the reasons for this belief in the case file that the person maintains on the adult at risk.

2. If a health care provider provides treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition and his or her communications with patients are required by his or her religious denomination to be held confidential.

(br) Any person, including an attorney or a person working under the supervision of an attorney, may report to the county department, adult−at−risk agency, a state or local law enforcement agency, the department, or the board on aging and long−term care that he or she believes that abuse, financial exploitation, neglect, or self−neglect of an adult at risk has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, financial exploitation, neglect, or self−neglect of an adult at risk has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.

(c) 1. a. No person may discharge or otherwise retaliate or discriminate against any person for reporting in good faith under this subsection.

b. No person may discharge or otherwise retaliate or discriminate against any individual on whose behalf another person has reported in good faith under this subsection.

d. Any discharge of a person or act of retaliation or discrimination that is taken against a person who makes a report under this subsection, within 120 days after the report is made, establishes a rebuttable presumption that the discharge or act is made in response to the report. This presumption may be rebutted by a preponderance of evidence that the discharge or act was not made in response to the report.

2. b. Any employee of an employer who is discharged or otherwise discriminated against may file a complaint with the department of workforce development under s. 106.54 (5).

c. Any person not described in subd. 2. b. who is retaliated or discriminated against in violation of subd. 1. a. or b. may commence an action in circuit court for damages incurred as a result of the violation.

(d) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for reporting in good faith under this subsection, or for filing a report with an agency not listed in par. (b) (intro.) or (br) if the person had a good faith belief that the report was filed correctly with one of the listed agencies.

(e) If a report under par. (b) or (br) is made to a state official, the state official shall refer the report to the appropriate adult−at−risk agency. The requirement under this paragraph does not apply to an employee of the board on aging and long−term care who determines that his or her referral would be in violation of 42 USC 3058g (d).

(f) Any person making a report under this subsection is presumed to have reported in good faith.

(1r) RESPONSE AND INVESTIGATION. (a) 1g. Except as otherwise provided, if an adult−at−risk agency has reason to believe that an adult at risk has been the subject of abuse, financial exploitation, neglect, or self−neglect, the adult−at−risk agency may respond, including by conducting an investigation, to determine whether the adult at risk is in need of protective services. If an adult−at−risk agency has reason to believe that there is abuse, financial exploitation, neglect, or self−neglect of an adult at risk who is a client, as defined in s. 50.065 (1) (b), of an entity, as defined in s. 50.065 (1) (c), and if the person suspected of perpetrating the alleged abuse, financial exploitation, or neglect is a caregiver or nonclient resident of the entity, the adult−at−risk agency shall refer the report within 24 hours after the report is received to the department for investigation. The department shall coordinate its investigatory efforts with other investigative agencies or authorities as appropriate. An adult−at−risk agency's response to or another investigative agency's investigation of a report of abuse, financial exploitation, neglect, or self−neglect that is not referred to the department shall be commenced within 24 hours after a report is received, excluding Saturdays, Sundays, and legal holidays.

2. If an agent or employee of an adult−at−risk agency required to refer under this subsection is the subject of a report, or if the adult−at−risk agency or an agency under contract with the county department determines that the relationship between the adult−at−risk agency and the agency under contract with the county department would not allow for an unbiased response, the adult−at−risk agency shall, after taking any action necessary to protect the adult at risk, notify the department. Upon receipt of the notice, the department or a county department under s. 46.215, 46.22, 51.42, or 51.437 designated by the department shall conduct an independent investigation. The powers and duties of a county department making the independent investigation are those given to an adult−at−risk agency under pars. (b) to (d) and sub. (6).

(b) The adult−at−risk agency's response or another investigative agency's investigation may include one or more of the following:

1. A visit to the residence of the adult at risk.

2. Observation of or an interview with the adult at risk, in private to the extent practicable, and with or without consent of his or her guardian or agent under an activated power of attorney for health care, if any.

3. An interview with the adult at risk, in private to the extent practicable, and with or without consent of his or her guardian or agent under an activated power of attorney for health care, if any.

4. An interview with the guardian or agent under an activated power of attorney for health care, if any, and with any caregiver of the adult at risk.

5. A review of the treatment and patient health care records of the adult at risk.

6. A review of any financial records of the adult at risk that are maintained by a financial institution, as defined in s. 705.01 (3); by an entity, as defined in s. 50.065 (1) (c); by any caregiver of the adult at risk; or by a member of the immediate family of the vulnerable adult at risk. The records shall be released without informed consent in either of the following circumstances:

a. To an adult−at−risk agency or other investigative agency under this section. The financial record holder may release financial record information by initiating contact with the adult−at−risk agency or other investigative agency without first receiving a request for release of the information from the adult−at−risk agency or other investigative agency.

b. Under a lawful order of a court of record.

(c) The adult−at−risk agency or other investigative agency may transport the adult at risk for performance of a medical examination by a physician if any of the following applies:

1. The adult at risk or his or her guardian or agent under an activated power of attorney for health care, if any, consents to the examination.

2. The adult at risk is incapable of consenting to the examination and one of the following applies:

a. The adult at risk has no guardian or agent under an activated power of attorney for health care.

b. The adult at risk has a guardian or agent under an activated power of attorney for health care, but that guardian or agent is the person suspected of abusing, neglecting, or financially exploiting the adult at risk.

c. The examination is authorized by order of a court.

(d) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for responding to a report or for participating in or conducting an investigation under this subsection, including the taking of photographs or conducting of a medical examination, if the response or investigation was performed in good faith and within the scope of his or her authority.

(2) LOCAL ENFORCEMENT ASSISTANCE. (a) The adult−at−risk agency may request a sheriff or police officer to accompany the adult−at−risk agency investigator or worker during visits to the residence of the adult at risk or request other assistance as needed. If the request is made, a sheriff or police officer shall accompany the adult−at−risk agency investigator or worker to the residence of the adult at risk and shall provide other assistance as requested or necessary.

(b) If the adult−at−risk agency worker or investigator or other agency investigator has reason to believe that substantial physical harm, irreparable injury, or death may occur to an adult at risk, the worker or investigator shall either initiate a protective services action under this chapter or contact law enforcement or another public agency, as appropriate.

(3) RESTRAINING ORDER; INJUNCTION. If a person interferes with the response or investigation under sub. (1r) or interferes with the delivery of protective services under this chapter to the adult at risk, the adult−at−risk agency investigator or worker may apply for an order under s. 813.123 prohibiting the interference.

(4) OFFER OF SERVICES AND REFERRAL OF CASES. (am) Upon responding to a report, the adult−at−risk agency or the investigative agency shall determine whether the adult at risk or any other individual involved in the alleged abuse, financial exploitation, neglect, or self−neglect is in need of services under this chapter or ch. 46, 47, 49, 51, or 54. If provided, direct services shall be rendered under the least restrictive conditions necessary to achieve their objective.

(b) If, after responding to a report, the adult−at−risk agency has reason to believe that the adult at risk has been the subject of abuse, financial exploitation, neglect, or self−neglect, the adult−at−risk agency may do any of the following:

1. Initiate a protective services action or contact an investigative agency, as appropriate.

2. Take appropriate emergency action, including provision of emergency protective services under s. 55.13 or emergency protective placement under s. 55.135, if the adult−at−risk agency considers that the emergency action is in the best interests of the adult at risk and the emergency action is the least restrictive appropriate intervention.

3. Refer the case to law enforcement officials, as specified in sub. (2), for further investigation or to the district attorney, if the adult−at−risk agency has reason to believe that a crime has been committed.

4. Refer the case to the licensing permitting, registration, or certification authorities of the department or to other regulatory bodies if the residence, facility, or program for the adult at risk is or should be licensed, permitted, registered, or certified or is otherwise regulated.

5. Refer the case to the department of safety and professional services or the department of agriculture, trade and consumer protection, as appropriate, if the financial exploitation, neglect, self−neglect, or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 460 or to hold a license, certification, or permit issued under s. 89.06, 89.072, or 89.073.

5g. Refer the case to the department of financial institutions if the financial exploitation, neglect, self−neglect, or abuse involves an individual who is required to be registered under s. 202.13 or 202.14.

6. Bring or refer for action to bring a petition for a guardianship and protective services or protective placement or a review of an existing guardianship if necessary to prevent financial exploitation, neglect, self−neglect, or abuse and if the adult at risk would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter, or services.

(5g) REFUSAL OF SERVICES. An adult at risk may refuse to accept services unless a guardian authorizes the services. The adult−at−risk agency or other provider agency shall notify the adult at risk of this right to refuse before providing services.

(6) RECORDS; CONFIDENTIALITY. (a) In this subsection:

1. "Departmental report form" includes documentation of an adult−at−risk agency's response to or investigation of a report

made under sub. (1r) and is the information required to be submitted to the department.

2. "Record" includes any document relating to the response, investigation, assessment, and disposition of a report made under sub. (1r).

(am) The adult−at−risk agency shall prepare a departmental report form on its response under sub. (1r) to a report of suspected abuse, financial exploitation, neglect, or self−neglect. If the adult−at−risk agency refers the report to an investigative agency, the investigative agency shall advise the adult−at−risk agency in writing of its response to the report. The adult−at−risk agency shall maintain records of suspected abuse, financial exploitation, neglect, or self−neglect.

(b) Departmental report forms are confidential and may not be released by the adult−at−risk agency or other investigative agency, except under the following circumstances:

1. To the adult at risk, any person named in a departmental report form who is suspected of abusing, neglecting, or financially exploiting an adult−at−risk, and the suspect's attorney. These persons may inspect the departmental report form, except that information identifying the person who initially reported the suspected abuse, financial exploitation, neglect, or self−neglect, or any other person whose safety might be endangered through disclosure, may not be released.

2. To the agency or other entity contacted under sub. (2) (b). Information obtained under this subdivision shall remain confidential.

3. To an individual, organization, or agency designated by the department or as required by law for the purposes of management audits or program monitoring and evaluation. Information obtained under this subdivision shall remain confidential and may not be used in any way that discloses the names of or other identifying information about the individuals involved.

4. For purposes of research, if the research project has been approved by the department or the adult−at−risk agency and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individuals involved. The information shall remain confidential. In approving the use of information under this subdivision, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

5. Under lawful order of a court of record.

6. To any agency or individual that provides direct services under sub. (4), including an attending physician for purposes of diagnosis, examination, and treatment, and within the department to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals committed to or under the supervision of the department. Information obtained under this subdivision shall remain confidential.

7. To the guardian of the adult at risk or the guardian of any person named in a report who is suspected of abusing, neglecting, or financially exploiting an adult at risk. These persons may inspect the departmental report form, except that information identifying the person who initially reported the suspected abuse, financial exploitation, neglect, or self−neglect, or any other person whose safety might be endangered through disclosure, may not be released.

8. To law enforcement officials in accordance with the policy developed under sub. (1g) (a).

9. To a federal agency, state governmental agency, agency of any other state, or local unit of government in this state or any other state that has a need for a departmental report form in order to carry out its responsibility to protect adults at risk from abuse, financial exploitation, neglect, or self−neglect.

10. To the reporter who made a report in his or her professional capacity, regarding action taken to protect or provide services to the alleged victim of abuse, financial exploitation, neglect, or self−neglect.

(bd) If a person requesting a departmental report form is not one of the persons or entities specified in par. (b), the adult−at−risk agency may release information indicating only whether or not a report was received and whether or not statutory responsibility was fulfilled.

(br) Notwithstanding par. (b) 1. to 10., an adult−at−risk agency or an investigative agency may not release departmental report forms under this section, if any of the following applies:

1. The adult−at−risk agency determines that release would be contrary to the best interests of the adult at risk who is the subject of the departmental report form or of a minor residing with the subject of the departmental report form, or the release is likely to cause mental, emotional, or physical harm to the subject of the departmental report form or to any other individual.

2. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

3. The adult−at−risk agency determines that disclosure would jeopardize ongoing or future civil investigations or proceedings or would jeopardize the fairness of such a legal proceeding.

(bt) Subject to pars. (b), (bd), (br), (bv) and (bw), records under this subsection are confidential and may not be released by the adult−at−risk agency or other investigative agency, except under the following circumstances, upon request:

1. To the adult at risk who is the alleged victim named in the record.

2. To the legal guardian, conservator, or other legal representative of the adult at risk who is the alleged victim named in the record, if the legal guardian, conservator, or other legal representative of the alleged victim is not the alleged perpetrator of the abuse, financial exploitation, or neglect.

3. To law enforcement officials and agencies in accordance with the policy developed under sub. (1g) (a) or with investigations conducted under sub. (1r), or a district attorney, for purposes of investigation or prosecution.

4. To the department, under s. 51.03 (2), or for death investigations under s. 50.04 (2t) or 50.035 (5); or to a sheriff, police department, or district attorney for death investigations under s. 51.64 (2) (a).

5. To an employee of the county department under s. 51.42 or 51.437 that is providing services to an adult at risk who is the alleged victim named in the record, or to the alleged perpetrator of abuse, to determine whether the alleged victim should be transferred to a less restrictive or more appropriate treatment modality or facility.

6. To a court, tribal court, or state governmental agency for a proceeding relating to the licensure or regulation of an individual or entity regulated or licensed by the state governmental agency, that was an alleged perpetrator of abuse, financial exploitation, or neglect.

7. To the department, for management, audit, program monitoring, evaluation, billing, or collection purposes.

8. To the attorney or guardian ad litem for the adult at risk who is the alleged victim named in the record, to assist in preparing for any proceeding under this chapter or ch. 48, 51, 54, 813, 971, or 975 pertaining to the alleged victim.

9. To a coroner, medical examiner, pathologist, or other physician investigating the cause of death of an adult at risk that is unexplained or unusual or is associated with unexplained or suspicious circumstances.

10. To staff members of the protection and advocacy agency designated under s. 51.62 and the board on aging and long−term care under s. 16.009.

11. To an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, neglect, or financial exploitation of an adult at risk.

12. To a grand jury, if it determines that access to specified records is necessary for the conduct of its official business.

13. Under a lawful order of a court of record.

(bv) The identity of a person making a report of alleged abuse, neglect, self−neglect, or financial exploitation shall be deleted from any record prior to its release under par. (bt) or from any departmental report form prior to its release under par. (b). The identity of any reporter may only be released with the written consent of the reporter or under a lawful order of a court of record.

(bw) A person to whom a departmental report form or a record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this subsection.

(by) A custodian of records or departmental report forms incurs no civil or criminal liability under this subsection and may not be found guilty of unprofessional conduct for the release or nonrelease of records or departmental report forms in accordance with this subsection while acting in good faith and within the scope of his or her authority.

(7) EXCEPTION. Nothing in this section may be construed to mean that a person is abused, financially exploited, neglected, or in need of direct or protective services solely because he or she consistently relies upon treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition.

(8) DEPARTMENT DUTIES. (a) The department shall develop a plan to assist adult−at−risk agencies in determining appropriate responses to reports of abuse, financial exploitation, neglect, or self−neglect.

(b) The department shall prepare and distribute sample departmental report forms for use by adult−at−risk agencies.

(c) The department shall collect statistical information from each county pertaining to each reported case of abuse, financial exploitation, neglect, or self−neglect. The department may require adult−at−risk agency workers or investigators to submit departmental report forms to the department that summarize the information being reported. These departmental report forms may not name or otherwise identify individuals. The department shall use this information to review the effectiveness of this section, to plan program changes, and to formulate reports.

(d) The department shall develop and disseminate information on adult−at−risk abuse and the adult−at−risk reporting system under this section. The department shall also develop informational materials to be used by adult−at−risk agencies regarding abuse of adults at risk and regarding the adult−at−risk abuse reporting system. The department shall solicit contributions of labor, materials, and expertise from private sources to assist in developing the informational materials.

(9m) PENALTIES. (a) Any person, including the state or any political subdivision of the state, violating sub. (6) is liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not less than $100 nor more than $500 for each violation and the costs and reasonable actual attorney fees that are incurred by the person damaged.

(b) In any action brought under par. (a) in which the court determines that the violator acted in a manner that was knowing and willful, the violator shall be liable for such damages as may be proved together with exemplary damages of not less than $500 nor more than $1,000 for each violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under par. (a) that the plaintiff suffer or be threatened with actual damages.

(c) An individual may bring an action to enjoin any violation of sub. (6) or to compel compliance with sub. (6), and may in the same action seek damages as provided in this subsection. The individual may recover costs and reasonable actual attorney fees incurred in the action, if he or she prevails.

(d) Whoever violates sub. (1m) (c) 1. may be fined not more than $10,000 or imprisoned for not more than 6 months or both.

(e) Whoever intentionally violates sub. (1m) (b) by failure to report as required may be fined not more than $500 or imprisoned not more than 6 months or both.

History: 1993 a. 445; 1997 a. 27; 2001 a. 74, 103; 2005 a. 264, 388; 2007 a. 45; 2011 a. 32; 2013 a. 20; 2015 a. 55, 179.

NOTE: 2005 Wis. Act 388 made major revisions to this section and contains extensive explanatory notes.

55.045 Funding. Except as provided in s. 49.45 (30m) (a), the appropriate county department shall within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, provide for the reasonable program needs of individuals who are provided protective placement or who receive protective services under this chapter, including reasonable expenses for the evaluations required by s. 55.11. Payment and collections for protective placement or protective services provided in public facilities specified in s. 46.10 shall be governed in accordance with s. 46.10. The department may require that an individual who is provided protective placement or receives protective services under this chapter provide reimbursement for services or care and custody received, based on the ability of the individual to pay for such costs.

History: 1995 a. 92; 1999 a. 32; 2003 a. 33; 2005 a. 264.

55.05 Voluntary protective services. (1) PREFERENCE. The department in administering the protective services program shall contract with county departments and other agencies. If the county department contracts for protective services, the department and the county departments shall give preference to an agency with consumer and other citizen representation. The department shall provide services only if no other suitable agency is available. Courts shall adhere to the same preferences in ordering protective services.

(2) CONDITIONS REQUIRED. The department or a county department or agency with which the county department contracts under s. 55.02 (2) that provides protective services may provide the services under any of the following conditions:

(a) An individual who needs or believes he or she needs protective services requests the services.

(b) An interested person requests protective services on behalf of an individual in need of services. A guardian may request and consent to protective services on behalf of the guardian's ward. An agent under an activated power of attorney for health care may request and consent to protective services on behalf of the agent's principal.

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

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

55.055 Admissions initially made without court involvement. (1) (a) The guardian of an individual who has been adjudicated incompetent may consent to the individual's admission to a foster home, group home, or community−based residential facility, as defined under s. 50.01 (1g), without a protective placement order under s. 55.12 if the home or facility is licensed for fewer than 16 beds. Prior to providing that consent,

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

(b) The guardian of an individual who has been adjudicated incompetent may consent to the individual's admission to a nursing home or other facility not specified in par. (a) for which protective placement is otherwise required for a period not to exceed 60 days. In order to be admitted under this paragraph, the individual 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. Prior to providing that consent, the guardian shall review the ward's right to the least restrictive residential environment and consent only to admission to a nursing home or other facility that implements that right. Following the 60−day period, the admission may be extended for an additional 60 days if a petition for protective placement under s. 55.075 has been brought, or, if no petition for protective placement under s. 55.075 has been brought, for an additional 30 days for the purpose of allowing the initiation of discharge planning for the individual. Admission under this paragraph is not permitted for an individual for whom the primary purpose of admission is for treatment or services related to the individual's mental illness or developmental disability.

(c) The guardian of a ward who has been found incompetent in a state other than this state may consent to admission of the ward under par. (a) or (b) if the ward is currently a resident of this state. A petition to transfer a foreign guardianship and, if applicable, a petition for protective placement shall be filed in this state within 60 days after the ward's admission under this paragraph.

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

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

1. A group home.

2. A foster home.

3. A community−based residential facility, as defined in s. 50.01 (1g).

4. An adult family home, as defined in s. 50.01 (1).

5. A nursing home, as defined in s. 50.01 (3).

(b) Whenever a petition for guardianship on the ground of incompetency is filed with respect to an individual who resides in a facility licensed for 16 or more beds, a petition for protective placement of the individual shall also be filed. The individual may continue to reside in the facility until the court issues a decision on the petition for guardianship and protective placement of the individual. Thereafter, the individual may continue to reside in the facility only if the court's order under s. 55.12 specifies protective placement of the individual in a facility licensed for 16 or more beds.

(3) If an individual admitted under sub. (1) verbally objects to or otherwise actively protests such an admission, the person in charge of the home, nursing home, or other facility shall immediately notify the county department for the county in which the individual is living. Representatives of that county department shall visit the individual as soon as possible, but no later than 72 hours after notification, and do the following:

(a) Determine whether the protest persists or has been voluntarily withdrawn and consult with the individual's guardian regarding the reasons for the admission.

(b) Attempt to have the individual released within 72 hours if the protest is not withdrawn and the individual does not satisfy all standards under s. 55.08 (1) or criteria under s. 55.135 (1) and provide assistance in identifying appropriate alternative living arrangements.

(c) Comply with s. 55.135, if the individual satisfies all criteria under s. 55.135 (1) and emergency placement in that home, nursing home, or other facility or another home, nursing home, or other facility is necessary, or file a petition for protective placement under s. 55.075. The court, with the permission of the home, nursing home, or other facility, may order the individual to remain in the home, nursing home, or other facility pending the outcome of the protective placement proceedings.

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

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

History: 2005 a. 264 ss. 101, 103 to 112, 150; 2005 a. 387; 2007 a. 45; 2015 a. 197 s. 51.

A guardian of a person who became incompetent after voluntarily entering a nursing home with 16 or more beds may not consent to the person's continued residence in the home. Upon the appointment of a guardian, the court must hold a protective placement hearing. Guardianship of Agnes T. 189 Wis. 2d 520, 525 N.W.2d 268 (1995). See also s. 54.34 (2m).

Under s. 55.17, the court may order a termination of a protective placement only if the standards in s. 55.08 (1) are no longer met; if they are met, the court must order a continuation, though it may change the placement if the person is not in the least restrictive setting. Nowhere does s. 55.17 provide that the court may terminate an order for protective placement if under s. 55.055 (1) the person could remain in the facility without a protective order. Jackson Co. Department of Health and Human Services v. Susan H. 2010 WI App 82, 326 Wis. 2d 246, 785 N.W.2d 677, 09−1997.

Guardianships and Protective Placements in Wisconsin After *Agnes T.* Fennell. Wis. Law. May 1995.

NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by 2005 Wis. Act 264.

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

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326; 2005 a. 253, 264, 387; 2007 a. 45.

Guardianships and Protective Placements. Viney. Wis. Law. Aug. 1991.

Guardianships and Protective Placements in Wisconsin After *Agnes T.* Fennell. Wis. Law. May 1995.

NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by 2005 Wis. Act 264.

The ch. 55 exclusion in s. 51.20 (1) (a) 2. e. includes an individual who is already subject to an order for protective placement or services, if there is another placement or additional services available under ch. 55 that would be effective in reducing the probability of the requisite harm to less than a substantial probability. This exclusion may apply to an individual who is not yet subject to a ch. 55 order but who is eligible

for one. Involuntary administration of medication under this section may be one of the additional services that would satisfy this exclusion, if the guardian consents and depending on the individual's circumstances. Dane County v. Kelly M. 2011 WI App 69, 333 Wis. 2d 719, 798 N.W.2d 697, 10−1486.

Rehabilitation is a necessary element of treatment under ch. 51. Because there are no techniques that can be employed to bring about rehabilitation from Alzheimer's disease, an individual with the disease cannot be rehabilitated. Accordingly, an Alzheimer's patient is not a proper subject for ch. 51 treatment. Fond du Lac County v. Helen E. F. 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179, 10−2061.

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

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

(2) CONTENTS OF PETITION. (a) A petition shall allege that the individual meets the standards specified in s. 55.08 (1) or (2) and state with particularity the factual basis for the allegations.

(b) The petition shall be based on personal knowledge of the individual alleged to need protective placement or protective services.

(3) PETITION FOR GUARDIANSHIP; REVIEW OF INCOMPETENCY. A petition for guardianship described in s. 55.08 (1) (b) or (2) (a) shall be heard prior to ordering protective placement or protective services. If the individual is adjudicated incompetent in this state more than 12 months before the filing of an application for protective placement or protective services on his or her behalf, the court shall review the finding of incompetency.

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

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 or services.

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

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

4. Whether the individual sought to be protectively placed or protectively served had executed a durable power of attorney for finances and property under ch. 244 or a power of attorney for health care under s. 155.05 or had provided advance consent to nursing home admission or engaged in other advance planning to avoid protective placement or protective services.

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

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

(5) WHERE A PETITION MAY BE FILED; VENUE; COUNTY OF RESPONSIBILITY. (a) A petition under sub. (1) shall be filed in the county of residence of the individual to be protected, as determined under s. 51.40 or by the individual's guardian or where the individual is physically present due to extraordinary circumstances including those specified under s. 51.22 (4). If an individual has not received services under this chapter or ch. 46 or 51 or if an individual has received services under this chapter or ch. 46 or 51 that have been terminated and has established residence in a county other than that in which the individual resided when the services were received, the court may determine the individual's county of residence. The county of residence under this paragraph is the county of responsibility.

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

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

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

55.08 Protective services or protective placement: standards. (1) PROTECTIVE PLACEMENT. A court may under s. 55.12 order protective placement for an individual who meets all of the following standards:

(a) The individual has a primary need for residential care and custody.

(b) The individual is a minor who is not alleged to have a developmental disability and on whose behalf a petition for guardianship has been submitted, or is an adult who has been determined to be incompetent by a circuit court.

(c) As a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself or herself or others. Serious harm may be evidenced by overt acts or acts of omission.

(d) The individual has a disability that is permanent or likely to be permanent.

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

(a) The individual has been determined to be incompetent by a circuit court or is a minor who is alleged to have a developmental disability and on whose behalf a petition for a guardianship has been submitted.

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

History: 2005 a. 264 ss. 119 to 122, 158; 2005 a. 387 s. 111; 2005 a. 388 s. 164; 2007 a. 45.

Under s. 55.17, the court may order a termination of a protective placement only if the standards in s. 55.08 (1) are no longer met; if they are met, the court must order a continuation, though it may change the placement if the person is not in the least restrictive setting. Nowhere does s. 55.17 provide that the court may terminate an order for protective placement if under s. 55.055 (1) the person could remain in the facility without a protective order. Jackson Co. Department of Health and Human Services v. Susan H. 2010 WI App 82, 326 Wis. 2d 246, 785 N.W.2d 677, 09−1997.

"Care" in sub. (1) (c) means that the person's incapacity to provide for his or her daily needs creates a substantial risk of serious harm to the person or others. The only reasonable construction of the "custody" alternative in sub. (1) (c) is that the person cannot provide for himself or herself the protection from abuse, financial exploitation, neglect, and self−neglect that the control and supervision by others can provide. Jackson Co. Department of Health and Human Services v. Susan H. 2010 WI App 82, 326 Wis. 2d 246, 785 N.W.2d 677, 09−1997.

55.09 Notice of petition and hearing for protective services or placement. (1) NOTICE TO INDIVIDUAL. Notice of a petition for protective placement or protective services shall be served upon the individual sought to be protected, by personal service, at least 10 days before the time set for a hearing. The person serving the notice shall inform the individual sought to be protected of the complete contents of the notice and shall return a certificate to the circuit judge verifying that the petition has been delivered and notice given. The notice shall include the names of all petitioners.

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

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

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

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

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

(e) The county department.

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

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

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

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

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

History: 2005 a. 264 ss. 127, 159; 2005 a. 387 s. 115; 2007 a. 45.

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

(2) ATTENDANCE. The petitioner shall ensure that the individual sought to be protected attends the hearing on the petition unless, after a personal interview, the guardian ad litem waives the attendance and so certifies in writing to the court the specific reasons why the individual is unable to attend. In determining whether to waive attendance by the individual, the guardian ad litem shall consider the ability of the individual to understand and meaningfully participate, the effect of the individual's attendance on his or her physical or psychological health in relation to the importance of the proceeding, and the individual's expressed desires. If the individual is unable to attend a hearing only because of residency in a nursing home or other facility, physical inaccessibility, or lack of transportation, the court shall, if requested by the individual, the individual's guardian ad litem, the individual's counsel, or other interested person, hold the hearing in a place where the individual is able to attend.

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

(4) RIGHTS. Sections 54.42, 54.44, and 54.46 and the following provisions apply to all hearings under this chapter except transfers of placement under s. 55.15 and summary hearings under ss. 55.18 (3) (d) and 55.19 (3) (d):

(a) *Counsel.* The individual sought to be protected has the right to counsel whether or not the individual is present at the hearing on the petition. The court shall require representation by full legal counsel whenever the petition alleges that the individual is not competent to refuse psychotropic medication under s. 55.14, the individual sought to be protected requested such representation at least 72 hours before the hearing, the guardian ad litem or any other person states that the individual sought to be protected is opposed to the petition, or the court determines that the interests of justice require it. If the individual sought to be protected or any other person on his or her behalf requests but is unable to obtain legal counsel, the court shall refer the individual to the state public defender as provided under s. 55.105 for appointment of legal counsel. If the individual sought to be protected is represented by counsel appointed under s. 977.08 in a proceeding for the appointment of a guardian under ch. 54, the court shall order the counsel appointed under s. 977.08 to represent under this section the individual sought to be protected.

(b) *Guardian ad litem; costs.* The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1). The responsibilities and duties of a guardian ad litem on behalf of a proposed ward or individual who is alleged incompetent specified in s. 54.40 apply to a guardian ad litem appointed in a proceeding for protective services or protective placement on behalf of an individual sought to be protected. If a guardian has been appointed for an individual who is the subject of a petition for court−ordered protective placement or protective services, the guardian ad litem shall interview the guardian. The guardian ad litem shall be present at all hearings under this chapter if the individual sought to be protected does not have full legal counsel. The court may, however, excuse a personal appearance by a guardian ad litem based on information contained in a written report by the guardian ad litem to the court. If the individual sought to be protected is an adult who is indigent, the county shall be liable for any fees due the guardian ad litem. If the individual sought to be protected is a minor, the minor's parents or the county in which the hearing is held shall be liable for any fees due the guardian ad litem as provided in s. 48.235 (8).

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

(d) *Standard of proof.* Before protective placement or protective services may be ordered under s. 55.12, the court or jury must find by clear and convincing evidence that the individual to be protected is in need of protective placement because he or she meets all of the standards under s. 55.08 (1) or is in need of protective services because he or she meets all of the standards under s. 55.08 (2).

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

History: 2005 a. 264 ss. 128, 129, 130, 160; 2005 a. 387 s. 116; 2007 a. 20, 45; 2009 a. 180.

The statutory provisions for an interested person's formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence, or raise evidentiary objections. A court could consider such participation helpful and, in its discretion, could allow an interested person to participate to the extent it considers appropriate. Coston v. Joseph P. 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. App. 1998), 97−1210.

Section 907.03 does not allow the proponent of an expert to use the expert solely as a conduit for the hearsay opinions of others. While in a civil proceeding there is no independent right to confront and cross−examine expert witnesses under the state and federal constitutions, procedures used to appoint a guardian and protectively place an individual must conform to the essentials of due process. Walworth County v. Therese B. 2003 WI App 223, 267 Wis. 2d 310, 671 N.W.2d 377, 03−0967.

NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by 2005 Wis. Act 264.

It would be unreasonable to not permit a forfeiture of the right to attend the hearing regardless of the respondent's conduct. The right may be forfeited if after having been warned by the judge that he or she will be removed if he or she continues the disruptive behavior, the respondent nevertheless insists on conducting himself or herself in a manner so disorderly, disruptive, and disrespectful of the court that the hearing cannot be carried on with him or her in the courtroom. Jefferson County v. Joseph S. 2010 WI App 160, 330 Wis. 2d 737, 795 N.W.2d 450, 09−804.

55.105 Appointment of counsel. (1) In any situation under this chapter in which an adult individual has a right to be represented by legal counsel, the individual shall be referred as soon as practicable to the state public defender, who shall appoint counsel for the individual under s. 977.08 without a determination of indigency.

(2) In any situation under this chapter in which a minor has a right to be represented by legal counsel, legal counsel for the minor shall be appointed as provided in s. 48.23 (4).

(3) Notwithstanding subs. (1) and (2), an individual subject to proceedings under this chapter is entitled to retain counsel of his or her own choosing at his or her own expense.

History: 2007 a. 20.

55.107 Reimbursement of counsel provided by the state. (1) At or after the conclusion of a proceeding under this chapter in which the state public defender has provided legal counsel for an adult individual, the court may inquire as to the individual's ability to reimburse the state for the costs of representation. If the court determines that the individual is able to make reimbursement for all or part of the costs of representation, the court may order the individual to reimburse the state an amount not to exceed the maximum amount established by the public defender board under s. 977.075 (4). Upon the court's request, the state public defender shall conduct a determination of indigency under s. 977.07 and report the results of the determination to the court.

(2) Reimbursement ordered under this section shall be made to the clerk of courts of the county where the proceedings took place. The clerk of courts shall transmit payments under this section to the county treasurer, who shall deposit 25 percent of the payment amount in the county treasury and transmit the remainder to the secretary of administration. Payments transmitted to the secretary of administration shall be deposited in the general fund and credited to the appropriation account under s. 20.550 (1) (L).

(3) By January 31st of each year, the clerk of courts for each county shall report to the state public defender the total amount of reimbursements ordered under sub. (1) in the previous calendar year and the total amount of reimbursements paid to the clerk under sub. (2) in the previous year.

History: 2007 a. 20.

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

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

(b) A resume of any professional treatment and services provided to the individual by the department or agency in connection with the problem creating the need for protective placement or protective services.

(c) A medical, psychological, social, vocational, and educational evaluation and review, if necessary, and any recommendations for or against maintenance of partial legal rights as provided in s. 54.25 (2). The evaluation and review shall include recommendations for the individual's placement that are consistent with the requirements of s. 55.12 (3), (4), and (5).

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

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

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

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

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

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

A proposed ward's rightful refusal to participate in a court−ordered evaluation will not obstruct a guardianship and protective placement proceeding. Due process requires that the examining professional, when confronted with an uncooperative individual, engage in an independent review of all records that are available. Due process prevents the examining professional from regurgitating the opinions of other physicians and psychologists, without independently confirming the facts those opinions are based upon. Walworth County v. Therese B. 2003 WI App 223, 267 Wis. 2d 310, 671 N.W.2d 377, 03−0967.

NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by 2005 Wis. Act 264.

55.12 Order for protective services or protective placement. (1) When ordering protective placement under the standards specified in s. 55.08 (1) or protective services under the standards specified in s. 55.08 (2), the court, on the basis of the evaluation and other relevant evidence, shall order the county department or agency with which it contracts under s. 55.02 (2) to provide protective placement or protective services to the individual.

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

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

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

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

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

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

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

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

(10) (a) If a court orders protective services or protective placement of an individual under this section and if an order has not been made under s. 54.10 (3) (f) for the individual, the court shall determine if, under 18 USC 922 (g) (4), the individual is prohibited from possessing a firearm. If the individual is prohibited, the court shall order the individual not to possess a firearm, order the seizure of any firearm owned by the individual, and inform the individual of the requirements and penalties under s. 941.29.

(b) 1. If a court orders under par. (a) an individual not to possess a firearm, the individual may petition that court or the court in the county where the individual resides to cancel the order.

2. The court considering the petition under subd. 1. shall grant the petition if the court determines that the circumstances regarding the protective services or protective placement order under this section and the individual's record and reputation indicate that the individual is not likely to act in a manner dangerous to public safety and that the granting of the petition would not be contrary to public interest.

3. If the court grants the petition under subd. 2., the court shall cancel the order under par. (a) and order the return of any firearm ordered seized under par. (a).

(c) In lieu of ordering the seizure under par. (a), the court may designate a person to store the firearm until the order under par. (a) is canceled under par. (b) 3.

(d) If the court orders under par. (a) an individual not to possess a firearm or cancels under par. (b) 3. an order issued under par. (a), the court clerk shall notify the department of justice of the order or cancellation and provide any information identifying the individual that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c), a background check under s. 175.60 (9g) (a), or an accurate response under s. 165.63. No other information from the individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this paragraph only to respond to a request under s. 165.63, as part of a firearms restrictions record search under s. 175.35 (2g) (c), under rules the department of justice promulgates under s. 175.35 (2g) (d), or as part of a background check under s. 175.60 (9g) (a).

History: 2005 a. 264 ss. 135, 162; 2007 a. 45; 2009 a. 258; 2013 a. 168 s. 21; 2013 a. 223.

A county's duty under former s. 55.06 (9) (a) [now sub. (1)] to provide the least restrictive environment is not limited according to funds available through state and federal funds and those that the county appropriates as matching funds. Protective Placement of D.E.R. 155 Wis. 2d 240, 455 N.W.2d 239 (1990).

A court may order an agency to do planning and implementation work necessary to fulfill the obligation to order placement conforming to former s. 55.06 (9) (a) [now sub. (1)] and s. 51.61 (1) (e). In Matter of J.G.S. 159 Wis. 2d 685, 465 N.W.2d 227 (Ct. App. 1990).

In protective placements under former s. 55.06 (9) (a) [now sub. (1)], counties must make an affirmative showing of a good faith, reasonable effort to find an appropriate placement and to secure funding to pay for an appropriate placement. Counties bear the burden of showing whether funds are available and whether appropriate placements may be developed within the limits of required funds. Dunn County v. Judy K. 2002 WI 87, 254 Wis. 2d 383, 647 N.W.2d 799, 00−3135.

NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by 2005 Wis. Act 264.

Section 752.31 (2) (d) and (3) provide that appeals in protective placement cases under ch. 55 are heard by a single court of appeals judge while the general rule under s. 752.31 (1) is that cases disposed of on the merits, including guardianship orders under ch. 54, are heard by a 3−judge panel. When an appeal is taken from a single action granting both a guardianship and protective placement petition, the appeal is to be decided by a 3−judge panel. Waukesha County v. Genevieve M. 2009 WI App 173, 322 Wis. 2d 131, 776 N.W.2d 640, 09−1755.

The Department of Workforce Development does not possess authority to independently determine, for worker's compensation purposes, the reasonableness and medical necessity of a protectively placed injured employee's court−ordered transfer to the least restrictive environment under ch. 55. The department's authority is limited to resolving disputes regarding the reasonableness or necessity of treatment provided to an injured employee, which permits the department to evaluate the treatment an employee receives within a placement, but not the placement itself. LaBeree v. LIRC, 2010 WI App 148, 330 Wis. 2d 101, 793 N.W.2d 77, 09−1628.

55.13 Emergency protective services. (1) Emergency protective services may be provided for not more than 72 hours when there is reason to believe that, if the emergency protective

services are not provided, the individual entitled to the services or others will incur a substantial risk of serious physical harm.

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

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

(4) If it is necessary to enter a premises forcibly to provide or investigate the need for emergency protective services, the staff member of a county department shall obtain a court order authorizing entry and shall make the entry accompanied by a sheriff, police officer, or member of a fire department. When it appears probable that substantial physical harm, irreparable injury, or death may occur to an individual, the police officer, fire fighter, or sheriff may enter a premises without a court order if the time required to obtain such an order would result in greater risk of physical harm to the individual.

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

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

55.135 Emergency and temporary protective placement. (1) If, from personal observation of, or a reliable report made by a person who identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if any, or authorized representative of a county department or an agency with which it contracts under s. 55.02 (2), it appears probable that an 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 disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities if not immediately placed, the individual who personally made the observation or to whom the report is made may take into custody and transport the individual to an appropriate medical or protective placement facility. The person making emergency protective placement shall prepare a statement at the time of detention providing specific factual information concerning the person's observations or reports made to the person and the basis for emergency placement. The statement shall be filed with the director of the facility and with any petition under s. 55.075. At the time of emergency protective placement the individual shall be informed by the director of the facility or the director's designee, orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family and the right to have an attorney provided at public expense, as provided under s. 55.105. The director or designee shall also provide the individual with a copy of the statement by the person making emergency protective placement.

(2) Whoever signs a statement under sub. (1) knowing the information contained in the statement to be false is guilty of a Class H felony.

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

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

(5) Upon finding probable cause under sub. (4), the court may order temporary protective placement up to 30 days pending the hearing for a permanent protective placement, or the court may order such protective services as may be required. If the court orders under this subsection an individual who has a developmental disability to receive temporary protective placement in an intermediate facility or in a nursing facility, and if at the hearing for permanent protective placement the court orders that the individual be provided protective placement, the court may, before commencement of permanent protective placement, extend the temporary protective placement order for not more than 90 days if necessary for the county department that is participating in the program under s. 46.278 or, if s. 46.279 (4m) applies, the department's contractor to develop the plan required under s. 46.279 (4).

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

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

When a placement extended past the 30−day limit under former s. 55.06 (11) (c) [now sub. (5)] before a final hearing was held, the court lost authority to extend the placement. In Matter of Guardianship of N. N. 140 Wis. 2d 64, 409 N.W.2d 388 (Ct. App. 1987).

Former s. 55.06 (11) (c) [now sub. (5)] required dismissal of the proceedings for failure to hold a permanent placement hearing within 30 days of the probable cause hearing; immediate refiling of the petition and emergency detention following dismissal without prejudice was impermissible. State ex rel. Sandra D. v. Getto, 175 Wis. 2d 490, 498 N.W.2d 893 (Ct. App. 1993).

An emergency protective placement must be based on personal observation by one of the individuals listed in former s. 55.06 (11) (a) [now sub. (1)]. Costs could not be assessed against the subject of an emergency placement proceeding that was outside the statutory guidelines. Ethelyn I.C. v. Waukesha County, 221 Wis. 2d 109, 584 N.W.2d 211 (Ct. App. 1998), 97−2236.

A circuit court loses competence if the hearing under former s. 55.06 (11) (b) [now sub. (4)] is not held within 72 hours after the person is first taken into custody. The filing of a new petition does not start the clock anew. Kindcare, Inc. v. Judith G. 2002 WI App 36, 250 Wis. 2d 817, 640 N.W.2d 839, 00−3450.

NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by 2005 Wis. Act 264.

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

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

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

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

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

(b) "Not competent to refuse psychotropic medication" means that, as a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like inca-

pacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

1. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment.

2. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her condition in order to make an informed choice as to whether to accept or refuse psychotropic medication.

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

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

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

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

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

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

(c) The individual has refused to take the psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not feasible or is not in the best interests of the individual. If the petition alleges that the individual has refused to take psychotropic medication voluntarily, the petition shall identify the reasons, if known, for the individual's refusal to take psychotropic medication voluntarily. The petition also shall provide 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 individual's willingness to take psychotropic medication voluntarily have been made and have been unsuccessful. If the petition alleges that attempting to administer psychotropic medications to the individual voluntarily is not feasible or is not in the best interests of the individual, the petition shall identify specific reasons supporting that allegation.

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

(e) Unless psychotropic medication is administered involuntarily, the individual will incur a 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 shall be evidenced by one of the following:

1. The individual's 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 individual'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).

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

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

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

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

(7) Upon the filing of a petition under this section, the court shall make a referral for appointment of legal counsel as provided under s. 55.105. A petition under this section shall be heard within 30 days after it is filed.

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

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

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

(9) If an individual who is subject to an order under this section is not in compliance with the order because he or she refuses to take psychotropic medication as ordered under the treatment plan, and it is necessary for the individual to be transported to an

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

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

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

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

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

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

55.15 Transfer of an individual under a protective placement order. (1) TRANSFERS AUTHORIZED. An individual under a protective placement order may be transferred between protective placement units, between protective placement facilities, or from a protective placement unit to a medical facility. The individual may not be transferred, under the protective placement order, to any facility for which commitment procedures are required under ch. 51.

(2) WHO MAY TRANSFER. A guardian, a county department or agency with which it contracts under s. 55.02 (2) that provided protective placement to the individual pursuant to the order of the court, the department, or a protective placement facility may transfer an individual under a protective placement order under the requirements of this section, notwithstanding the fact that a court order has named a specific facility for the protective placement of the individual.

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

(4) CONSENT OF COUNTY DEPARTMENT. No individual may be transferred under this section to a facility that is more costly to the county without the written consent of the county department, except in the case of an emergency transfer under sub. (5) (b).

(5) NOTICE OF TRANSFER. (a) *Nonemergency transfer.* A person or entity who initiates a transfer shall provide 10 days' prior written notice of a transfer to the court that ordered the protective placement and to each of the other persons and entities specified in sub. (2) who did not initiate the transfer. The notice of transfer shall include notice of the right of the individual under a protective placement, the individual's attorney, if any, or other interested person to petition the court for a hearing on the transfer.

(b) *Emergency transfer.* If an emergency makes it impossible to provide the notice specified in par. (a) or to obtain the prior written consent of the guardian specified in sub. (3), the individual may be transferred without the prior written consent of the guardian and without the notice specified in par. (a). Written notice shall be provided immediately upon transfer to each of the persons and entities specified under sub. (2) who did not initiate the transfer. Notice shall also be provided to the court that ordered the protective placement within a reasonable time, not to exceed 48 hours from the time of transfer. The notice shall include notice of the right to file with the court under sub. (6) a petition objecting to the emergency transfer.

(6) PETITION. An individual under protective placement, the individual's guardian, the individual's attorney, if any, or any other interested person may file a petition with the court objecting to a proposed transfer or to an emergency transfer made under sub. (5) (b). The petition shall specify the reasons for the person's objection to the transfer.

(7) HEARING. (a) The court shall order a hearing within 10 days after the filing of a petition under sub. (6).

(b) The court shall notify the petitioner, the individual under protective placement, the individual's guardian, the individual's attorney, if any, and the county department of the time and place of the hearing.

(c) A guardian ad litem shall be appointed to represent the individual under protective placement at the hearing. If the individual is an adult who is indigent, the county in which the hearing is held shall be liable for guardian ad litem fees. If the individual is a minor, the individual's parents or the county in which the hearing is held shall be liable for guardian ad litem fees as provided in s. 48.235 (8).

(cm) The court shall refer the individual under protective placement for appointment of legal counsel as provided under s. 55.105 if the individual, the individual's guardian ad litem, or anyone on the individual's behalf requests that counsel be appointed for the individual.

(d) The petitioner, individual under protective placement, the individual's guardian, the individual's guardian ad litem, and the individual's attorney, if any, have the right to attend the hearing and to present and cross−examine witnesses.

(8) STANDARD FOR TRANSFER. In determining whether to approve a proposed transfer or an emergency transfer made under sub. (5) (b), the court shall consider all of the following:

(a) Whether the requirements of s. 55.12 (2) and (6) are met.

(b) Whether the protective placement is in the least restrictive environment consistent with the requirements of 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, as defined in s. 46.279 (1) (bm).

(c) Whether the protective placement is in the best interests of the person under protective placement.

(9) ORDER RELATING TO TRANSFER. Following the hearing under sub. (7), the court shall do one of the following:

(a) If the court finds that the individual continues to meet the standards under s. 55.08 (1) and the individual's proposed protective placement does not meet the standards for transfer under sub. (8), the court shall issue an order prohibiting the transfer. The court shall include the information relied upon as a basis for the order and shall make findings based on the standards under sub. (8) in support of the denial of the transfer.

(b) If the court finds that the individual continues to meet the standards under s. 55.08 (1) and the proposed transfer meets the standard under sub. (8), the court shall approve the proposed transfer. The court may order protective services along with transfer of protective placement. The court shall include the information relied upon as a basis for the order and shall make findings based on the standards in s. 55.08 (1) in support of the need for continued protective placement.

(c) If the court finds that the individual no longer meets the standards under s. 55.08 (1), the court shall terminate the protective placement, as provided in s. 55.17.

History: 2005 a. 264; 2007 a. 20, 45.

Based on principles of comity and the orderly administration of justice, this case sets forth standards for Wisconsin courts to follow when confronted with the transfer of interstate guardianships. Grant County Department of Social Services v. Unified

Board of Grant and Iowa Counties, 2005 WI 106, 283 Wis. 2d 258, 700 N.W.2d 863, 03−0634.

Section 55.06 (9) (b), 2003 stats., did not authorize a guardian to move the ward out of state, change the ward's domicile, and transfer the guardianship to Connecticut, all without prior approval. Linda L. v. Collis, 2006 WI App 105, 294 Wis. 2d 637, 718 N.W.2d 205, 05−0494.

NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by 2005 Wis. Act 264.

55.16 Modification of an order for protective placement or protective services. (1) USE OF TRANSFER PROVISIONS. If a petitioner is an entity authorized under s. 55.15 (2) to transfer an individual under a protective placement and the modification sought is a transfer of an individual between protective placement units, between protective placement facilities, or from a protective placement unit to a medical facility that is not a psychiatric facility, the petitioner may utilize the procedure in s. 55.15 in lieu of the procedure under this subsection.

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

(b) *Modification of an order for protective placement; allegations.* A petition for modification of an order for protective placement shall make one of the following allegations:

1. That the protective placement is not in the least restrictive environment that is consistent with the requirements of s. 55.12 (3), (4), and (5).

2. That a protective placement in a facility with a higher level of restrictiveness would be more consistent with the requirements of s. 55.12 (3), (4), and (5).

3. That a protective placement in a different facility with the same level of restrictiveness as the current placement would be more consistent with the requirements of s. 55.12 (4) and (5) for reasons unrelated to the level of restrictiveness.

(c) *Modification of an order for protective services; allegations.* 1. A petition for modification of an order for protective services, other than an order under s. 55.14, shall allege that the protective services are not provided in the least restrictive environment or manner that is consistent with the requirements of s. 55.12 (3), (4), and (5).

2. A petition for modification of an order under s. 55.14 shall allege that modification of the order or the treatment plan for the individual would be in his or her best interests.

(d) *Residents of southern center.* The department may not file a petition under par. (a) for modification of an order for protective placement to transfer a resident of the southern center for the developmentally disabled to a less restrictive setting unless the resident's guardian provides explicit written approval and consent for the transfer under s. 51.35 (1) (dm).

(3) HEARING. (a) The court shall order a hearing within 21 days after the filing of a petition under sub. (2), except that the court is not required to order a hearing if a hearing on a court−ordered protective placement for the individual or on a petition for court−ordered protective services or transfer of protective placement with respect to the individual has been held within the previous 6 months.

(b) The court may extend the 21−day limitation in par. (a) if requested by the individual or the individual's guardian, guardian ad litem, or legal counsel.

(c) The hearing shall be subject to s. 55.10.

(4) ORDER MODIFICATION FOR INDIVIDUAL UNDER PROTECTIVE PLACEMENT. After a hearing under sub. (3) on a petition for modification of an order for protective placement, the court shall make one of the following orders and shall include in the order the information relied on as a basis for that order:

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

(b) If the court finds that the individual continues to meet the standards under s. 55.08 (1) and the protective placement of the individual is not in the least restrictive environment that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall order transfer of the individual to a protective placement that is in the least restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5). In lieu of ordering transfer of the individual to a specific facility, the court may order the county department of the individual's residence to develop or recommend a protective placement that is in the least restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5), and arrange for the individual's transfer to that protective placement within 60 days after the court's order. The court may extend this time period to permit development of a protective placement. The court may order protective services along with transfer of protective placement.

(c) If the court finds that the individual no longer meets the standards under s. 55.08 (1), the court shall terminate the protective placement, as provided in s. 55.17 (3) (c).

(5) ORDER MODIFICATION FOR INDIVIDUAL RECEIVING COURT−ORDERED PROTECTIVE SERVICES. (a) After a hearing under sub. (3) on a petition for modification of an order for protective services, other than an order under s. 55.14, the court shall make one of the following orders and shall include in the order the information relied on as a basis for that order:

1. If the court finds that the individual continues to meet the standards under s. 55.08 (2) and the current protective services are provided in the least restrictive manner that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall continue the order for protective services.

2. If the court finds that the individual continues to meet the standards under s. 55.08 (2) and the protective services ordered for the individual are not provided in the least restrictive manner that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall order protective services that are more consistent with those requirements. The services shall be provided in the least restrictive manner consistent with the requirements of s. 55.12 (3), (4), and (5).

3. If the court finds that the individual no longer meets the standards for protective services under s. 55.08 (2), the court shall terminate the order for protective services, as provided in s. 55.17 (4) (a) 3.

(b) After a hearing under sub. (3) on a petition for modification of an order under s. 55.14, the court shall make one of the orders required under s. 55.19 (3) (e) and shall include in the order the information relied on as a basis for that order.

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

55.17 Termination of an order for protective placement or protective services. (1) PETITION. An individual, the individual's guardian or guardian ad litem, the department, a county department or agency with which it contracts under s. 55.02 (2), or any other interested person may file a petition at any time for termination of an order for protective placement or protective services. The petition shall be served on the individual; the individual's guardian; the individual's attorney and guardian ad litem, if any; and the county department. The petition shall allege that the individual no longer meets the standards under s. 55.08 (1) for court−ordered protective placement or under s. 55.08 (2) for court−ordered protective services.

(2) HEARING. A hearing under this section shall comply with s. 55.16 (3).

(3) ORDER FOR INDIVIDUAL UNDER PROTECTIVE PLACEMENT. After a hearing under sub. (2) on a petition for termination of an order for protective placement, the court shall make one of the following orders and shall include in the order the information relied on as a basis for that order:

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

(b) If the court finds that the individual continues to meet the standards under s. 55.08 (1) and the protective placement of the individual is not in the least restrictive environment that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall make an order specified in s. 55.16 (4) (b).

(c) If the individual no longer meets the standards under s. 55.08 (1), the court shall terminate the protective placement. If the protective placement is terminated, all of the following shall apply:

1. The court shall review the needs of the individual with respect to protective services. If the court determines that the individual meets the standards for protective services under s. 55.08 (2), the court may order protective services. The services shall be provided in the least restrictive manner consistent with the requirements of s. 55.12 (3), (4), and (5).

2. If the court determines that the individual does not meet the standards for protective services under s. 55.08 (2), and the individual is being transferred or discharged from his or her current residential facility, the county department shall 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.

3. Any individual whose protective placement is terminated under this paragraph may reside in his or her current protective placement facility for up to 60 days after a determination under subd. 1. or 2. in order to arrange for an alternative living arrangement. If the protective placement facility has fewer than 16 beds, the individual may remain in the protective placement facility as long as the requirements of s. 55.055 are met. Admission by the individual, if an adult, to another residential facility shall be made under s. 55.055.

(4) ORDER FOR INDIVIDUAL RECEIVING COURT–ORDERED PROTECTIVE SERVICES. (a) After a hearing under sub. (2) on a petition for termination of an order for protective services, other than an order under s. 55.14, the court shall make one of the following orders and shall include in the order the information relied on as a basis for that order:

1. If the individual continues to meet the standards under s. 55.08 (2) and the protective services ordered for the individual are provided in the least restrictive manner that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall continue the order for protective services.

2. If the individual continues to meet the standards under s. 55.08 (2) and the protective services ordered for the individual are not provided in the lease restrictive manner that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall make an order for protective services as provided in s. 55.16 (5) (a) 2.

3. If the individual no longer meets the standards for protective services under s. 55.08 (2), the court shall terminate the order for protective services.

(b) After a hearing under sub. (2) on a petition for termination of an order under s. 55.14, the court shall make one of the orders required under s. 55.19 (3) (e) and shall include in the order the information relied on as a basis for that order.

History: 2005 a. 264 ss. 142, 168; 2007 a. 45.

Under s. 55.17, the court may order a termination of a protective placement only if the standards in s. 55.08 (1) are no longer met; if they are met, the court must order a continuation, though it may change the placement if the person is not in the least restrictive setting. Nowhere does s. 55.17 provide that the court may terminate an order for protective placement if under s. 55.055 (1) the person could remain in the facility without a protective order. Jackson Co. Department of Health and Human Services v. Susan H. 2010 WI App 82, 326 Wis. 2d 246, 785 N.W.2d 677, 09−1997.

55.175 Discharge from protective placement. Prior to discharge of an individual from a protective placement, the county department that is responsible for protective placement shall review the need for continuing protective services, continuation of full or limited guardianship, or, if the individual has no guardian, guardianship. If the county department's recommendation includes a course of action for which court approval would be required, the county department shall make the recommendation to the court. Prior to discharge of the individual from any mental health institute or center for the developmentally disabled, the department shall make the review under s. 51.35 (7).

History: 2005 a. 264 s. 151; 2005 a. 387 s. 119; 2007 a. 45.

55.18 Annual review of protective placement. All of the following shall be performed with respect to any individual who is subject to an order for protective placement under s. 55.12 or to an order for protective placement initially issued under s. 55.06 (9) (a), 2003 stats.:

(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW. (a) The county department of the individual's county of residence shall, except as provided in sub. (1m), annually review the status of each individual who has been provided protective placement. The review shall include a visit to the individual and a written evaluation of the physical, mental and social condition of the individual and the service needs of the individual. The review shall be made a part of the permanent record of the individual. The county department shall inform the guardian of the individual of the review at the time the review is made and shall, before completing a report of the review, invite the individual and the guardian to submit comments or information concerning the individual's need for protective placement or protective services. Not later than the first day of the 11th month after the initial order is made for protective placement for an individual and, except as provided in par. (b), annually thereafter, the county department shall do all of the following:

1. File a report of the review with the court that ordered the protective placement. The report shall include information on all of the following:

a. 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.

b. The ability of community services to provide adequate support for the individual's needs.

c. The ability of the individual to live in a less restrictive setting.

d. 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 the services, including the use of county funds.

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

f. The comments of the individual and the individual's guardian during the performance of the review, as summarized by the county department, and the response of the county department to the comments.

g. The comments, if any, of a staff member at the facility in which the individual is placed that are relevant to the review of the individual's placement.

2. File with the court under subd. 1. a petition for annual review by the court of the protective placement ordered for the individual.

3. Provide the report under subd. 1. to the individual and the guardian of the individual, and to the individual's agent under an activated power of attorney for health care, if any.

(ar) If the individual has a developmental disability and is protectively placed in an intermediate facility or a nursing facility, the agency that is responsible for the protective placement shall notify in writing the county department of the county of residence of the individual that is participating in the program under s. 46.278 or, if s. 46.279 (4m) applies to the individual, the department, at least 120 days before the review. The county department so notified or, if s. 46.279 (4m) applies, the department's contractor, shall develop a plan under s. 46.279 (4) and furnish the plan to the court that ordered the protective placement and to the individual's guardian. The court shall order that the individual be transferred to the noninstitutional community setting in accordance with the plan unless the court finds that protective placement in the intermediate facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the individual taking into account information presented by all affected parties.

(b) If, following an annual review of an individual's status under par. (a), the individual or the individual's guardian or guardian ad litem requests modification or termination of the individual's protective placement and a hearing under the requirements of s. 55.10 (2) to (4) is provided, or if a hearing under the requirements of s. 55.10 (2) to (4) is provided pursuant to a petition for modification or termination of the protective placement, the county is not required to initiate a subsequent review of the individual's status under par. (a) until the first day of the 11th month after the date that the court issues a final order after the hearing.

(bm) If the individual is subject to an order for involuntary administration of psychotropic medication under s. 55.14, the review under par. (a) shall be conducted simultaneously with the review under s. 55.19.

(c) The review under par. (a) may not be conducted by a person who is an employee of the facility in which the individual resides.

(1m) COUNTY AGREEMENT. The county of residence of an individual whose placement is in a different county may enter into an agreement with that county under which the county of the individual's placement performs all or part of the duties of the county of residence under this section.

(2) GUARDIAN AD LITEM APPOINTMENT AND REPORT. After a county department has filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the following:

(a) Review the report filed under sub. (1) (a) 1., the report required under s. 54.25 (1) (a), and any other relevant reports on the individual's condition and placement.

(b) Meet with the individual and contact the individual's guardian and orally explain to the individual and guardian all of the following:

1. The procedure for review of protective placement.

2. The right of the individual to appointment of legal counsel under sub. (3) (c).

3. The right to an evaluation under sub. (3) (b).

4. The contents of the report under sub. (1) (a) 1.

5. That a change in or termination of protective placement may be ordered by the court.

6. The right to a hearing under sub. (3) (d) and an explanation that the individual or the individual's guardian may request a hearing that meets the requirements under s. 55.10 (2) to (4).

(c) Provide the information required under par. (b) to the individual and to the individual's guardian in writing.

(d) Review the individual's condition, placement, and rights with the individual's guardian.

(e) Ascertain whether the individual wishes to exercise any of his or her rights under sub. (3) (b), (c), or (d).

(f) Within 30 days after appointment, file with the court a written report based on information obtained under this subsection and any other evaluations or records of the individual. The report shall discuss whether the individual appears to continue to meet the standards for protective placement under s. 55.08 (1) and whether the protective placement is in the least restrictive environment that is consistent with the individual's needs. The report shall also state whether any of the following apply:

1. An evaluation under sub. (3) (b) is requested by the individual or the individual's guardian ad litem or guardian.

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

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

4. The individual or the individual's guardian or guardian ad litem requests a hearing that meets the requirements of s. 55.10 (2) to (4) for the individual.

(g) Certify to the court that he or she has complied with the requirements of pars. (a) to (e).

(3) COURT REVIEW OF REPORTS; HEARING; ORDER. (a) The court that ordered protective placement for an individual under s. 55.12 shall review the report of the guardian ad litem under sub. (2) (f), the report filed under sub. (1) (a) 1., and the report required under s. 54.25 (1) (a).

(b) The court shall order an evaluation, by a person who is not an employee of the county department of the physical, mental, and social condition of the individual and the service needs of the individual that is independent of the review performed under sub. (1) (a) if any of the following apply:

1. The report required under sub. (1) (a) 1. is not timely filed, or the court determines that the report fails to meet the requirements of sub. (1) (c).

2. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that an independent evaluation for the individual is necessary.

3. The individual or the individual's guardian or guardian ad litem so requests.

(bm) If an evaluation is ordered under par. (b), it shall be performed at the expense of the individual or, if the individual is indigent, at the expense of the county under sub. (1) (a).

(br) The court shall order that the county department obtain any other necessary information with respect to the individual.

(c) The court shall refer an individual for appointment of legal counsel under s. 55.105 if any of the following apply:

1. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that legal counsel for the individual is necessary.

2. The individual or the individual's guardian or guardian ad litem so requests.

(d) The court shall order either a summary hearing or a hearing under the requirements of s. 55.10 (2) to (4). A summary hearing shall be held on the record, may be held in court or by other means, including by telephone or videoconference, is not an evidentiary hearing, and does not require attendance by the individual. The court shall hold a hearing under the requirements of s. 55.10 (2) to (4) if any of the following apply:

1. The individual or the individual's guardian or guardian ad litem so requests.

2. The report under sub. (2) (f) indicates that the individual no longer meets the standards for protective placement under s. 55.08 (1).

3. The report under sub. (2) (f) indicates that the current protective placement is not in the least restrictive environment consistent with the individual's needs.

4. The report under sub. (2) (f) indicates that the individual objects to the current protective placement.

(e) Following the hearing under par. (d), the court shall do one of the following:

1. If the court finds that the individual continues to meet the standards under s. 55.08 (1) and the protective placement of the individual is in the least restrictive environment that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall order the continuation of the protective placement in the facility in which the individual resides at the time of the hearing. The court shall include in the order the information relied upon as a basis for the order and shall make findings based on the standards under s. 55.08 (1) in support of the need for continuation of the protective placement.

2. If the court finds that the individual continues to meet the standards under s. 55.08 (1) and the protective placement of the individual is not in the least restrictive environment that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall order transfer of the individual to a protective placement that is in the least restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5). In lieu of ordering transfer of the individual to a specific facility, the court may order the county department of residence to develop or recommend a protective placement that is in the least restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5) and arrange for the individual's transfer to that protective placement within 60 days after the court's order. The court may extend this period to permit development of a protective placement. The court may order protective services as well as a transfer of protective placement. The court shall include in the order the information relied upon as a basis for the order and shall make findings based on the standards under s. 55.08 (1) in support of the need for continued protective placement.

3. If the court finds that the individual no longer meets the standards under s. 55.08 (1), the court shall terminate the protective placement. If the protective placement is terminated, s. 55.17 (3) (c) 1. to 3. shall apply.

(f) The court shall provide a copy of the order made under par. (e) to all of the following:

1. The individual.

2. The individual's guardian, guardian ad litem, and legal counsel, if any, and the individual's agent under an activated power of attorney for health care, if any.

3. The facility in which the individual resided when the petition for annual review was filed.

4. The county department under sub. (1) (a) and, if relevant, sub. (1m).

(4) ESTABLISHMENT OF COUNTY POLICY. The county department shall ensure that no later than 180 days after November 1, 2006, the county establishes a written policy that specifies procedures to be followed in the county that are designed to ensure that annual reviews of all individuals who are subject to orders for protective placement under s. 55.12 or to orders for protective placement initially issued under s. 55.06 (9) (a), 2003 stats., residing in the county are conducted as required by this section. The county department shall maintain a copy of the written policy and shall make the policy available for public inspection.

(5) REPORT BY REGISTER IN PROBATE. By the first January 31 after November 1, 2006, and by every January 31 thereafter, the register in probate of each county shall file with the chief judge of the judicial administrative district a statement indicating whether each report and petition required to be filed by the county department under sub. (1) that year has been filed. If the statement indicates that a required report or petition has not been filed, the statement shall include an explanation of the reasons the report or petition has not been filed.

History: 2005 a. 264 ss. 140, 141, 169; 2007 a. 20, 45; 2015 a. 197 s. 51.

55.19 Annual review of order authorizing involuntary administration of psychotropic medication. All of the following shall be performed annually with respect to any individual who is subject to an order under s. 55.14 or an order initially issued under s. 880.33 (4r), 2003 stats., authorizing involuntary administration of psychotropic medication:

(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW. (a) The county department of the individual's county of residence shall, except as provided in sub. (1m), review, in compliance with the requirements of this section, the status of each individual who is the subject of the order. The review shall include a visit to the individual and a written evaluation of the physical, mental, and social condition of the individual that is relevant to the issue of the continued need for the order. The review shall be made a part of the permanent record of the individual. The county department shall inform the guardian of the individual of the review at the time the review is made and shall, before completing a report of the review, invite the individual and the guardian to submit comments or information concerning the individual's need for involuntary administration of psychotropic medication or other protective services. Not later than the first day of the 11th month after the initial order is made for an individual, except as provided in par. (b), and at least annually thereafter, the county department shall do all of the following:

1. File a report of the review with the court that issued the order. The report of the review shall include information on all of the following:

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

b. Whether the individual is not competent to refuse psychotropic medication, as defined in s. 55.14 (1) (b).

c. Whether the individual continues to refuse to take psychotropic medication voluntarily; and whether attempting to administer psychotropic medication to the individual voluntarily is not feasible or is not in the best interests of the individual, including all information required to be specified under s. 55.14 (3) (c).

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

e. If the petitioner alleged under s. 55.14 (3) (e) 2. that the individual met one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e., whether the individual continues to meet the criterion.

f. The comments of the individual and the individual's guardian during the performance of the review, as summarized by the county department, and the response of the county department to the comments.

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

2. File with the court under subd. 1. a petition for annual review by the court of the order.

3. Provide the report under subd. 1. to the individual and the guardian of the individual.

(b) If, in an annual review of an individual's status under par. (a), the individual or the individual's guardian or guardian ad litem requests termination of the order and a hearing that meets the requirements of s. 55.10 is provided, or if a hearing under the requirements of s. 55.10 is provided pursuant to a petition for modification or termination of the order, the county department is

not required to initiate a subsequent review under par. (a) until the first day of the 11th month after the date that the court issues a final order after the hearing.

(bm) If the individual is subject to a protective placement order, the review under par. (a) shall be conducted simultaneously with the review under s. 55.18 of the individual's protective placement.

(c) The review under par. (a) 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.

(1m) COUNTY AGREEMENT. The county of residence of an individual who is subject to an order under s. 55.14 and is provided protective placement in a different county may enter into an agreement with that county under which the county of the individual's placement performs all or part of the duties of the county of residence under this section.

(2) GUARDIAN AD LITEM APPOINTMENT AND REPORT. After a county department has filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the following:

(a) Review the report filed under sub. (1) (a) 1., and any other relevant reports on the individual's condition and continued need for the order under s. 55.14.

(b) Meet with the individual and contact the individual's guardian and orally explain to the individual and guardian all of the following:

1. The procedure for review of an order for involuntary administration of psychotropic medication.

2. The right of the individual to appointment of legal counsel under sub. (3) (c).

3. The right to an evaluation under sub. (3) (b).

4. The contents of the report under sub. (1) (a) 1.

5. That a termination or modification of the order or modification of the treatment plan for involuntary administration of psychotropic medication may be ordered by the court.

6. The right to a hearing under sub. (3) (d) and an explanation that the individual or the individual's guardian may request a hearing that meets the requirements under s. 55.10.

(c) Provide the information required under par. (b) to the individual and to the individual's guardian in writing.

(d) Review the individual's condition and rights with the individual's guardian.

(e) Ascertain whether the individual wishes to exercise any of his or her rights under sub. (3) (b), (c), or (d).

(f) Within 30 days after appointment, file with the court a written report based on information obtained under this subsection and any other evaluations or records of the individual. The report shall discuss whether the individual appears to continue to meet the standards for an order under s. 55.14. The report shall also state whether any of the following apply:

1. An evaluation under sub. (3) (b) is requested by the guardian ad litem, the individual, or the individual's guardian.

2. The individual or the individual's guardian requests termination of the order under s. 55.14.

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

4. The individual or the individual's guardian or guardian ad litem requests a hearing that meets the requirements of s. 55.10 for the individual.

(g) Certify to the court that he or she has complied with the requirements of pars. (a) to (e).

(3) COURT REVIEW OF REPORTS; HEARING; ORDER. (a) The court that issued the order under s. 55.14 shall review the report of the guardian ad litem under sub. (2) (f) and the report filed under sub. (1) (a) 1.

(b) The court shall order an evaluation, by a person who is not an employee of the county department, of the physical, mental, and social condition of the individual that is relevant to the issue of the continued need for the order under s. 55.14 and that is independent of the review performed under sub. (1) (a) if any of the following apply:

1. The report required under sub. (1) (a) 1. is not timely filed, or the court determines that the report fails to meet the requirements of sub. (1) (c).

2. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that an independent evaluation for the individual is necessary.

3. The individual or the individual's guardian or guardian ad litem so requests.

(bm) If an evaluation is ordered under par. (b), it shall be performed at the expense of the individual or, if the individual is indigent, at the expense of the county of residence under sub. (1) (a).

(br) The court shall order that the county department obtain any other necessary information with respect to the individual.

(c) The court shall refer an individual for appointment of legal counsel under s. 55.105 if any of the following apply:

1. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that legal counsel for the individual is necessary.

2. The individual or the individual's guardian or guardian ad litem so requests.

(d) The court shall order either a summary hearing or a hearing that meets the requirements of s. 55.10. A summary hearing shall be held on the record, may be held in court or by other means, including by telephone or videoconference, is not an evidentiary hearing, and does not require attendance by the individual. The court shall hold a hearing under the requirements of s. 55.10 if any of the following apply:

1. The individual or the individual's guardian or guardian ad litem so requests.

2. The report under sub. (2) (f) indicates that the individual no longer meets the standards for an order under s. 55.14 (8).

3. The report under sub. (2) (f) indicates that the individual objects to the order.

(e) Following the hearing under par. (d), the court shall do one of the following:

1. If the court finds that the individual continues to meet the standards for an order under s. 55.14 (8), the court shall order the continuation of the order. The court shall include in the decision the information relied upon as a basis for continuation of the order and shall make findings based on the requirements for allegations of a petition under s. 55.14 (3) in support of the need for continuation of the order.

2. If the court finds that the individual continues to meet the standards for an order under s. 55.14 (8) but that modification of the order or the treatment plan would be in the best interests of the individual, the court shall modify the order, order modifications to the individual's treatment plan, or both. Any modifications to the treatment plan are subject to the approval of the guardian. The court shall include in the decision the information relied upon as a basis for continuation of the order and shall make findings based on the requirements for allegations of a petition under s. 55.14 (3) in support of the need for authorizing the guardian to consent to involuntary administration of psychotropic medication.

3. If the court finds that the individual no longer meets the standards for an order under s. 55.14 (8), the court shall terminate the order. If the order is terminated, the court shall review the needs of the individual with respect to other protective services. If the court determines that the individual meets the standards under s. 55.08 (2) for other protective services that are not currently being provided to the individual, the court may order those protective services for the individual.

(f) The court shall provide a copy of the order made under par. (e) to all of the following:

1. The individual.

2. The individual's guardian, guardian ad litem, and legal counsel, if any.

3. The facility in which the individual resided, if any, when the petition for annual review was filed.

4. The county department under sub. (1) (a) and, if relevant, sub. (1m).

History: 2005 a. 264, 387; 2007 a. 20, 45; 2009 a. 180.

55.195 Duties of guardian ad litem for protective services reviews. In any review of a protective services order made under s. 55.12, except as provided in s. 55.19 (2), the guardian ad litem shall do all of the following:

(1) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel, and the right to a hearing.

(2) Provide the information under sub. (1) to the ward in writing.

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

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

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

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

(7) Provide a summary written report to the court.

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

(9) Attend the hearing.

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

The guardian ad litem is entitled to petition for review as an interested person, which includes any official or representative of a public or private agency, corporation, or association concerned with the person's welfare. A guardian ad litem appointed by the circuit court to represent the ward's best interest becomes an official of a public agency concerned with the person's welfare by virtue of that appointment. Linda L. v. Collis, 2006 WI App 105, 294 Wis. 2d 637, 718 N.W.2d 205, 05−0494.

NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by 2005 Wis. Act 264.

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

History: 2005 a. 264 s. 155.

The guardian ad litem is entitled to petition for review as an interested person, which includes any official or representative of a public or private agency, corporation, or association concerned with the person's welfare. A guardian ad litem appointed by the circuit court to represent the ward's best interest becomes an official of a public agency concerned with the person's welfare by virtue of that appointment. Linda L. v. Collis, 2006 WI App 105, 294 Wis. 2d 637, 718 N.W.2d 205, 05−0494.

NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by 2005 Wis. Act 264.

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

History: 2005 a. 264 s. 153.

55.22 Records. (1) No records of the court pertaining to protective services or protective placement proceedings, including evaluations, reviews and recommendations prepared under s. 55.11 (1) (c), are open to public inspection but any record is available to all of the following:

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

(b) The individual's attorney or guardian ad litem, without the individual's consent and without modification of the records, in order to prepare for any court proceedings relating to the individual's protective services or protective placement or relating to the individual's guardianship.

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

(2) If the individual is a minor, consent for release of information from and access to the court records may be given only as provided in s. 51.30. If the individual is an adult who has been adjudicated incompetent in this state, consent for release of information from and access to court records may be given only as provided in s. 54.75.

(3) All treatment and service records pertaining to an individual who is protected under this chapter or for whom application has been made for protection under this chapter are confidential. Section 51.30 governs access to treatment and service records.

History: 2005 a. 264 s. 154; 2005 a. 387 s. 120; 2007 a. 45.

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

(2) A parent who has been denied periods of physical placement under s. 767.41 (4) (b) or 767.451 (4) may not have the rights of a parent or guardian with respect to access to a minor's records under this chapter.

History: 1977 c. 428; 1987 a. 355; 2005 a. 264 s. 156; Stats. 2005 s. 55.23; 2005 a. 443 s. 265.