

CHAPTER 55

PROTECTIVE SERVICE SYSTEM

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55.001 Declaration of policy. The legislature recognizes that many citizens of the state, because of the infirmities of aging, chronic mental illness, mental retardation, other developmental disabilities or like incapacities incurred at any age, are in need of protective services. These services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons 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, exploitation and neglect.

History: 1973 c. 284; 1979 c. 221.

55.01 Definitions. In this chapter:

(1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a community developmental disability services board under s. 51.437, a community board established pursuant to s. 51.42 or a county board of public welfare.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the 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 a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

(3) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care or custody.

(4) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with his welfare.

(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.

(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 own care or custody.

History: 1973 c. 284; 1975 c. 393, 430; 1979 c. 221.

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

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tive service system. The department and these boards shall cooperate in developing a coordinated system of services. The department shall provide direct services and enter into contracts with any responsible public or private agency for provision of protective services. The agency designated under this section in each county shall determine the reporting requirements applicable to the county under s. 880.38 (3).

History: 1973 c. 284; 1975 c. 393; 1979 c. 221; 1981 c. 379

55.03 Status of guardian. No agency acting as a guardian appointed under ch. 880 shall be a provider of protective services or placement for its ward under this chapter. Nothing in this chapter shall be construed to prohibit the transfer of guardianship and legal custody under s. 48.427 or 48.43.

History: 1973 c. 284; 1979 c. 330

55.04 Program responsibilities. (1) The department shall have the following responsibilities in the administration of this chapter:

- (a) *Protective services.* 1. Outreach;
2. Identification of persons in need of services;
3. Counseling and referral for services;
4. Coordination of services for individuals;
5. Tracking and follow-up;
6. Provision of social services;
7. Case management;
8. Legal counseling or referral;
9. Guardianship referral; and
10. Diagnostic evaluation;
11. Such other responsibilities as the department deems appropriate.

(b) *Protective placement.* Evaluation, monitoring and provision of protective placements.

(2) All agencies providing protective services shall make such reports as the department may require.

(3) If service is obtained by order of a court, the provider of service shall make reports under sub. (2) as the court may direct.

(4) Where any responsibility or authority is created under this chapter upon or in relation to a guardian, such 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 be developmentally disabled.

History: 1973 c. 284; 1975 c. 430; 1979 c. 110 s. 60 (1)

55.05 Protective services. (1) PREFERENCE. The department in administering the protective services program shall contract with community boards under s. 51.42 or 51.437 or county boards of public welfare and other agencies as defined in s. 55.01 (1). In contracting for protective services, the department and the

community boards under s. 51.42 or 51.437 or county boards of public welfare shall give preference to agencies 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 an agency providing protective services under s. 55.04 may provide such services under any of the following conditions:

(a) The person who needs or believes he needs protective service may seek such service.

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

(c) The department may provide protective services on behalf of any person in need of such services.

(d) The court may order such services for a person who is determined to be incompetent under s. 880.33 if the person entitled to the services will incur a substantial risk of physical harm or deterioration.

(3) **VOLUNTARY SERVICES PREFERRED.** An individual shall receive protective services voluntarily unless ordered by the court, requested by a guardian or provided in accordance with sub. (4).

(4) **EMERGENCY SERVICES.** (a) Emergency services may be provided for not more than 72 hours where there is reason to believe that if the services are not provided, the person entitled to the services or others will incur a substantial risk of serious physical harm.

(b) Where it is necessary to forcibly enter a premises, the representative of an agency 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, fireman 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.

(c) Where a forcible entry is made under par. (b), a report of the exact circumstances including the date, time, place, factual basis for the need of such entry and the exact services rendered shall be made and forwarded to the court within 14 days of entry by the person making such entry.

(5) **ADMISSIONS WITHOUT COURT INVOLVEMENT.** (a) A person who is legally and actually capable of consenting may consent to enter a

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group home, foster home or community-based residential facility, as defined under s. 50.01 (1), or nursing home without protective placement under s. 55.06.

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

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

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

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

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

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

History: 1973 c. 284; 1975 c. 393; 1981 c. 379.

55.06 Protective placement. (1) A protective placement under this section is a placement of a ward for the primary purpose of providing care

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

(a) The board designated under s. 55.02 or an agency designated by it may petition for appointment of a guardian and for protective services or placement. The department shall provide for a schedule of reimbursement for the cost of such proceedings based upon the ability to pay of the proposed ward or person to be protected.

(b) If a person seeking to be the guardian of a proposed ward requests the assistance of a board designated under s. 55.02 or an agency designated by it in petitioning for guardianship or for protective service or placement, such assistance may be considered a service and may be charged for based upon the ability of such person to pay for the service.

(c) If requested by the court, the district attorney or corporation counsel shall assist in conducting proceedings under this chapter.

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

(2) The department, an agency, a guardian or any interested person may petition the circuit court to provide protective placement for an individual who:

(a) Has a primary need for residential care and custody;

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

(c) As a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities, is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to oneself or others. Serious harm may be occasioned by overt acts or acts of omission; and

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(d) Has a disability which is permanent or likely to be permanent.

(3) (a) The petition shall state with particularity the factual basis for the allegations specified in sub. (2).

(b) The petition under sub. (2) shall be based on personal knowledge of the individual alleged to need protective placement.

(c) A petition may be filed either in the county of legal settlement or the county of residence of the person to be protected.

(4) A petition for guardianship if required under sub. (2) (b) must be heard prior to placement under this section. If incompetency has been determined under s. 880.33 more than one year preceding the filing of an application for protective placement, the court shall review the finding of incompetency.

(5) Notice of a petition for placement shall be served upon the person sought to be placed by personal service at least 10 days prior to the time set for a hearing. Upon service of the notice the person sought to be protected shall be informed of the complete contents of the notice. The person serving the notice 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. Notice shall also be served personally or by mail upon the person's guardian ad litem, legal counsel, guardian, if any, presumptive adult heirs, and upon other persons who have physical custody of the person to be protected whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private body or group from whom the person to be protected is known to be receiving aid and to such other persons or entities as the court may require. Notice shall also be served personally or by mail upon the department at least 10 days prior to the time set for hearing if the person sought to be protected may be placed in a center for the developmentally disabled. The department shall be allowed to submit oral or written testimony regarding such a placement at the hearing. The incompetent or proposed incompetent is presumed able to attend the hearing unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend.

(6) Section 880.33 (2) applies to all hearings under this chapter except for transfers of placement under sub. (9) (b), (c) and (e). A person to be protected shall have a guardian ad litem who is an attorney appointed in accordance with s. 757.48 (1) present at all hearings under this chapter if the person 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 person is indigent, the county of legal settlement shall be liable for guardian ad litem fees. The subject individual, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including any person making an evaluation or review under sub. (8) (c).

(7) Except for emergency placement or temporary placement under subs. (11) and (12), before placement may be ordered under this chapter the court or jury must find by clear and convincing evidence that the individual to be placed is in need of placement as provided in sub. (2).

(8) Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The board designated under s. 55.02 or an agency designated by it shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate board designated under s. 55.02 or an agency designated by it having responsibility for the place of legal residence of the individual as provided in s. 49.10 (12) (d) shall make a recommendation for placement. If the court is considering placement of the individual in a center for the developmentally disabled, the court shall request a statement from the department regarding whether the placement is appropriate for the person's needs and whether it is consistent with the purpose of the center under s. 51.06 (1) unless testimony was provided by the department under sub. (5). A copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or attorney at least 96 hours in advance of the hearing to determine placement. 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 person is residing and the person or agency who is providing services at present, if any.

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

(c) A medical, psychological, social, vocational and educational evaluation and review, where necessary, and any recommendations for or against maintenance of partial legal rights as provided in s. 880.33. Such evaluation and

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review shall include recommendations for placement consistent with the least restrictive environment required.

(9) (a) The court may order protective services under s. 55.05 (2) (d) as an alternative to placement. When ordering placement, the court, on the basis of the evaluation and other relevant evidence shall order placement through the appropriate board designated under s. 55.02 or an agency designated by it. Placement shall be made in the least restrictive environment consistent with the needs of the person to be placed. Factors to be considered in making protective placement shall include the needs of the person to be protected for health, social or rehabilitative services and the level of supervision needed. Placement under this section does not replace commitment of a person in need of acute psychiatric treatment under s. 51.20 or 51.45 (13). Placement may be made to such facilities as nursing homes, public medical institutions, centers for the developmentally disabled, foster care services and other home placements, or to other appropriate facilities but may not be made to units for the acutely mentally ill. The prohibition of placements in units for the acutely mentally ill does not prevent placement by a court for short-term diagnostic procedures under par. (d). Placement in a locked unit shall require a specific finding of the court as to the need for such action. A placement facility may transfer a patient from a locked unit to a less restrictive environment without court approval.

(b) Transfer may be made between placement units or from a placement unit to a medical facility other than those specified in pars. (c) to (e) by a guardian or placement facility without approval by a court. When transfer is made by a placement facility, 24 hours' prior written notice of the transfer shall be provided to the guardian, when feasible. If it is not feasible to notify the guardian in advance, written notice shall be provided immediately upon transfer, and notice shall also be provided to the court and to the board designated under s. 55.02 or an agency designated by it within a reasonable time, not to exceed 48 hours from the time of the transfer. Upon petition to a court by a guardian, ward, or attorney, or other interested person specifying objections to a transfer, the court shall order a hearing, within 96 hours after filing of the petition, to determine whether there is probable cause to believe that the transfer is consistent with the requirements specified in par. (a) and is necessary for the best interests of the ward. The court shall notify the ward, guardian and petitioner of the time and place of the hearing, and a guardian ad litem shall be appointed to represent the ward. If the person

is indigent, the county of legal settlement shall be liable for guardian ad litem fees. The petitioner, ward and guardian shall have the right to attend, and to present and cross-examine witnesses.

(c) Transfer to a more restrictive placement, including a locked unit, may be made with notice to the guardian, the court and appropriate board designated under s. 55.02 or an agency designated by it in the manner prescribed in par. (b). Upon petition by a guardian, ward or attorney, or other interested person specifying objections to the transfer, the court shall order a hearing as provided in par. (b).

(d) Transfer of placement may be made by a guardian to a facility providing acute psychiatric treatment for the purpose of psychiatric diagnostic procedures for a period not to exceed 10 days. A court may order such placement following petition by the placement facility or other interested person, and a hearing in the manner provided in par. (b). Such period may not be extended for the purpose of providing psychiatric treatment except in the manner provided in par. (e).

(e) Temporary transfer of placement may be made for emergency acute psychiatric inpatient treatment with prior notice to the guardian when feasible. If it is not feasible to notify the guardian in advance, written notice shall be provided immediately upon transfer, and the court or appropriate board under s. 55.02 or an agency designated by it shall be notified within 48 hours. Upon petition by a guardian, ward or attorney, or other interested person specifying objections to a transfer, the court shall order a hearing as provided in par. (b). Such treatment period may not exceed 15 days, including any transfer under par. (d). Any application for continued psychiatric inpatient treatment requires proceedings under s. 51.20 or 51.45 (13).

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

(b) The department, an agency, a guardian or a ward, or any other interested person may at any time petition the court for termination of protective placement. The petition shall allege that the conditions which warranted placement as specified in sub. (2) are no longer present. A petition shall be heard if a hearing has not been held within the previous 6 months but a hearing may be held at any time in the discretion of the court. Such petition shall be heard within 21 days of its receipt by the court.

(c) Except in the case of a minor who is developmentally disabled and who has a parent or person in the place of a parent, termination of guardianship automatically revokes any placement made or services provided under this chapter unless the placement or services are continued on a voluntary basis. Notice to this effect shall be given to the ward by the provider of services at the time of termination. If placement is made or services are provided under this chapter to a minor who is developmentally disabled, the attainment of the age of majority by such individual automatically revokes any such placement made or services provided unless the placement or services are continued on a voluntary basis, or there is a finding of incompetency and appointment of a guardian pursuant to ch. 880.

(11) (a) If from personal observation of a sheriff, police officer, fire fighter, guardian, if any, or authorized representative of a board designated under s. 55.02 or an agency designated by it it appears probable that an individual will suffer irreparable injury or death as a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities if not immediately placed, the person making the observation may take into custody and transport the individual to an appropriate medical or protective placement facility. The person making placement shall prepare a statement at the time of detention providing specific factual information concerning the person's observations and the basis for emergency placement. The statement shall be filed with the director of the facility and shall also be filed with any petition under sub. (2). At the time of placement the individual shall be informed by the director of the facility or the director's designee, both 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. 967.06 and ch. 977, if the individual is indigent. The director or designee shall also provide the individual with a copy of the statement by the person making emergency placement.

(am) Whoever signs a statement under par. (a) knowing the information contained therein to be false may be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

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

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

(c) Upon a finding of probable cause under par. (b), the court may order temporary placement up to 30 days pending the hearing for a permanent placement, or the court may order such protective services as may be required.

(12) When a ward lives with the guardian, the guardian may make temporary placement of the ward. Placement may be made to provide the guardian with a vacation or to temporarily release the guardian for a family emergency. Such 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 such information as the court may reasonably deem necessary. When reviewing the application, the court shall provide the least restrictive placement which is consistent with the needs of the ward.

(13) Reasonable expenses for the evaluations required by sub. (8) shall be assumed by the appropriate board making recommendations for placement subject to any reimbursement which may be available from federal or other sources. The boards shall seek appropriate reimbursement for such evaluations. Payment and collections for protective placement or services provided in public facilities specified in s. 46.10 shall be governed in accordance with s. 46.10. The appropriate board shall be charged for the cost of care and custody resulting from placement under this section. The department may require reimbursement for services based

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on the ability of the person to be protected to pay for such costs.

(14) Prior to discharge from a protective placement the appropriate board which is responsible for placement shall review the need for provision of continuing protective services or for continuation of full or limited guardianship or provision for such guardianship if the individual has no guardian. Recommendation shall be made to the court if the recommendation includes a course of action for which court approval would be required. Prior to discharge from any state institute or center for the developmentally disabled, the department shall make such review under s. 51.35.

(15) A guardian of a ward placed under this section shall have the duty to take reasonable steps to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise legal rights. Notice of discharge under s. 51.35 (4) shall be given to the guardian.

(16) Placements to centers for the developmentally disabled and discharges from such institutions shall be in compliance with s. 51.35 (4).

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

1. The subject of the proceedings and the subject's guardian at all times.

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

3. Other persons only with the informed written consent of the subject as provided in s.

51.30 (2) or under an order of the court that maintains the records.

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

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

(18) An appeal may be taken to the court of appeals from a final judgment or final order under this section within the time period specified in s. 808.04 (3) and in accordance with s. 809.40 by the subject of the petition or the individual's guardian, by any petitioner or by the representative of the public.

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.

"Common sense" finding of incompetency was insufficient for placement under this section. If competent when sober, alcoholic has right to choose to continue alcoholic lifestyle. *Guardianship & Protective Placement of Shaw*, 87 W (2d) 503, 275 NW (2d) 143 (Ct. App. 1979).

Sub (17) requires the closing of all records filed with respect to ch. 55 proceedings, including index, docket and files maintained by the register in probate. 67 Atty. Gen. 130.

Under (1) (c), duty of corporation counsel is to assist court and not to act as counsel for private parties petitioning. Under (9) (a), court should order protective placement in an existing facility. 68 Atty. Gen. 97.

Protective placements discussed 72 Atty. Gen. 194.

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

History: 1977 c. 428.