

1975 Assembly Bill 573

Date published: June 8, 1976

CHAPTER 393, Laws of 1975
(Vetoed in Part)

AN ACT to repeal 55.06 (3) (b); to renumber 55.06 (3) (c) and (10) and 880.37 (4); to renumber and amend 55.06 (9); to amend 51.095, 51.22 (5), chapter 55 (title), 55.01 (1), 55.02, 55.05 (1), (2) (d) and (4) (a) and (b), 55.06 (1), (2) (intro.) and (a), (4), (5), (6), (8) (intro.), (11) to (13) and (17), 706.03 (4), 880.05, 880.08 (1), 880.09 (2), 880.295 (1), 880.31 (3) and (4), 880.33 (2) (a), (b) and (c) 2 and (3), 880.35, 880.37 (1) and (3) (intro.), 880.38 and 905.04 (4) (b); to repeal and recreate 55.05 (4) (c), 55.06 (14), 880.33 (1) and (6); and to create 51.12 (9), 55.06 (1) (a) to (c), (3) (c), (9) (b) to (e) and (10) (b) and (c), 880.33 (2) (c) 3 and (8) and 880.37 (4) of the statutes, relating to protective services and various changes in guardianship laws, and making appropriations.

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

SECTION 1. 51.095 of the statutes is amended to read:

51.095 Alternate procedure. Upon filing of an application or petition under s. 51.01 ~~or~~ 51.09 or 51.45 (13), the court may elect to treat the petition as an application for protective service or placement under ch. 55 if commitment is not warranted. At any stage in the proceedings under s. 51.01, 51.09 or 51.45 (13), the court may appoint a temporary guardian under s. 880.15, and may make a temporary placement under ch. 55 for not more than 30 days. Further proceedings shall be in accordance with the procedures prescribed in ss. 55.06 and 880.33.

SECTION 2. 51.12 (9) of the statutes is created to read:

51.12 (9) Prior to discharge from any state institute, the department shall review the possible need of a developmentally disabled, aged infirm or person with other like incapacities for protective services or placement under ch. 55 after discharge, including the necessity for appointment of a guardian or limited guardian. The department shall petition for limited or full guardianship, or for protective services or placement for the person if needed. When the department makes a petition for guardianship under this subsection, it shall not be appointed as guardian.

SECTION 3. 51.22 (5) of the statutes is amended to read:

51.22 (5) PERMANENT DISCHARGE. The department, or a board established under s. 51.42 or 51.437, with the approval of the visiting physician, may permanently discharge from custody any mentally deficient person who has been on a temporary discharge and who has continued to demonstrate fitness to ~~be at large~~ manage his own affairs. Notice of such permanent discharge shall be given to the guardian, if any, and shall be filed with the committing court or the court which ordered protective placement under ch. 55 by the department or the board. After permanent discharge, if it becomes necessary for such person to have further institutional care and treatment, a new commitment or protective placement must be obtained, following the procedure for original commitment or placement. Prior to any permanent discharge, the department shall review the possible need for protective services or placement as provided in s. 51.12 (9).

SECTION 4. Chapter 55 (title) of the statutes is amended to read:

CHAPTER 55

PROTECTIVE SERVICES SERVICE SYSTEM

SECTION 5. 55.01 (1) of the statutes is amended to read:

55.01 (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 ~~or a~~ community board established pursuant to s. 51.42 or a county board of public welfare.

SECTION 6. 55.02 of the statutes is amended to read:

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 and for persons with other like incapacities incurred at any age in accordance with regulations and standards established by the department. The protective service system shall be designed to encourage independent living and to avoid protective placement whenever possible. The system shall utilize the planning and advice of agencies as defined in s. 55.01 (1) ~~and of, including~~ the community boards under s. 51.42 or 51.437, as appropriate or county boards of public welfare. The chairman 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 such boards to have the responsibility for local planning for the protective service system. The department and such boards shall cooperate in developing a coordinated system of services. With respect to this program, the department shall provide direct services and enter into contracts with any responsible agency, public or private, for provision of protective services.

SECTION 7. 55.05 (1), (2) (d) and (4) (a) and (b) of the statutes are amended to read:

55.05 (1) PREFERENCE. The department in administering the protective services program ~~may~~ 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) (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.

(4) EMERGENCY SERVICES. (a) Emergency services may be provided for not more than 72 hours where there is ~~probable cause~~ 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 ~~or deterioration~~.

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

SECTION 7m. 55.05 (4) (c) of the statutes is repealed and recreated to read:

55.05 (4) (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.

SECTION 8. 55.06 (1) of the statutes is amended to read:

55.06 (1) A protective placement under this section is a placement of a ward aged 18 or over for the primary purpose of providing care and custody. No protective placement may be ordered unless there is a determination of incompetency in accordance with ch. 880 and 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 18th birthday.

SECTION 9. 55.06 (1) (a) to (c) of the statutes are created to read:

55.06 (1) (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.

SECTION 10. 55.06 (2) (intro.) and (a) of the statutes are amended to read:

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

(a) Has a primary need for ~~full-time~~ residential care and custody;

SECTION 11. 55.06 (3) (b) of the statutes is repealed.

SECTION 12. 55.06 (3) (c) of the statutes is renumbered 55.06 (3) (b).

SECTION 13. 55.06 (3) (c) of the statutes is created to read:

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

SECTION 14. 55.06 (4), (5), (6) and (8) (intro.) of the statutes are amended to read:

55.06 (4) A petition for guardianship under sub. (2) (b) must be heard prior to ~~application~~ 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 the informed of the complete contents of the notice. The person serving the notice shall return a certificate to the county 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 ~~parents, children or~~ 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. 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 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 such person to the court. If the person is indigent, the county of legal settlement shall be liable for guardian ad litem fees. The subject individual, his 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).

(8) (intro.) 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 department and the community boards under s. 51.42 or 51.437 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 community board under s. 51.42 or 51.437 board designated under s. 55.02 or an agency designated by it having responsibility for the place of legal settlement or residence of the individual shall make a recommendation for placement. A copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or his 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:

SECTION 15. 55.06 (9) of the statutes is renumbered 55.06 (9) (a) and amended to read:

55.06 (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. 51.01 ~~or~~ 51.09 ~~or~~ 51.45 (13). Placement may be made to such facilities as nursing homes, ~~personal~~ public medical institutions, colonies, foster care services and other home placements, or to other appropriate facilities but may not be made to ~~facilities~~ 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.

SECTION 16. 55.06 (9) (b) to (e) of the statutes are created to read:

55.06 (9) (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 to him 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 his 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 his 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 his 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. 51.01, 51.09 or 51.45 (13).

SECTION 17. 55.06 (10) of the statutes is renumbered 55.06 (10) (a).

SECTION 18. 55.06 (10) (b) and (c) of the statutes are created to read:

55.06 (10) (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) 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.

SECTION 19. 55.06 (11) to (13) of the statutes are amended to read:

55.06 (11) (a) When from personal observation of a sheriff, police officer ~~or~~ fireman, ~~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 or other like incapacities if not immediately placed, the person making such observation may take into custody and transport an individual to an appropriate medical or protective ~~services~~ placement facility.

(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 to establish probable cause to believe the grounds for protective placement under sub. (2). If the detainee is not under guardianship, a petition for guardianship shall accompany the placement petition. 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. 51.01, 51.09 or 51.45 (13).

(c) Upon a finding of probable cause under par. (b), the court may order temporary placement up to ~~44~~ 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 his 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 ~~48~~ 30 days but the court may upon application grant an additional period not to exceed ~~30~~ 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 ~~this section~~ sub. (8) shall be assumed by the ~~department from the appropriation under s. 20.435 (2) (a)~~ appropriate board making recommendations for placement subject to any reimbursement which may be available from federal or other sources. The ~~department~~ boards shall seek appropriate ~~federal~~ reimbursement for such evaluations. Payment and collections for protective placement or services provided in public facilities

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specified in s. 46.10 shall be governed in accordance with that section. ~~Where applicable by reason of the nature of the disability and county of legal settlement, the appropriate board under s. 51.42 or 51.437. The appropriate board, making a recommendation for the protective placement of a disabled person shall be charged for the local share of cost of care and custody resulting from placement under this section. Such charges shall be determined in the manner provided in s. 51.42 or 51.437, whichever is applicable. The department may require reimbursement for services based on the ability of the person to be protected to pay for such costs.~~

SECTION 20. 55.06 (14) of the statutes is repealed and recreated to read:

55.06 (14) Prior to discharge from a protective placement the board which is responsible for placement shall review the need for provision of continuing protective services or for continuation of full or limited guardianship. 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 colony, the department shall make such review under ss. 51.12 (9) and 51.22 (5).

SECTION 21. 55.06 (17) of the statutes is amended to read:

55.06 (17) Any records of the department, court or other agency pertaining to a person who is protected under this chapter or for whom application has ever been made for such protection are not open to public inspection. Information contained in such records may not be disclosed publicly in such a manner as to identify individuals, but the record shall be available on application for cause to persons approved by the court or at the request of a guardian, ward or attorney of a ward. Reports under sub. (8) (c) shall be provided to the guardian or proposed ward, the guardian ad litem and the attorney of a ward upon request.

SECTION 22. 706.03 (4) of the statutes is amended to read:

706.03 (4) ~~Conveyances by minors and incompetents are~~ A conveyance by a minor or incompetent is effective only if executed by an authorized guardian on behalf of such minor or incompetent. In this subsection, "incompetent" applies only to an individual who has been determined incompetent to make contracts under s. 880.33 (3).

SECTION 23. 880.05 of the statutes is amended to read:

880.05 Venue. All petitions for guardianship of residents of the state shall be directed to the county court of the county of residence or the county of legal settlement of the person subject to guardianship. A petition for guardianship of the person or estate of a nonresident may be directed to the county court of any county wherein he or any of his property may be found.

SECTION 24. 880.08 (1) of the statutes is amended to read:

880.08 (1) INCOMPETENTS. Notice of a petition for appointment or change of a guardian shall be served upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing, or if such proposed incompetent is in custody or confinement, such service shall be made by registered or certified mail on the proposed incompetent's custodian who shall forthwith serve the same on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that he served and informed the proposed incompetent and returned the certificate and notice to the county judge. The notice shall include the names of all persons who are petitioning for guardianship and specific allegations of the grounds of incompetency. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend. Such notice

shall also be given personally or by mail at least 10 days before the hearing to his counsel, if any, guardian ad litem, ~~parents, children~~ presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. The court shall then proceed under s. 880.33.

SECTION 25. 880.09 (2) of the statutes is amended to read:

880.09 (2) (title) PREFERENCE. If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under s. 880.35 only if no suitable individual guardian is available.

SECTION 27. 880.295 (1) of the statutes is amended to read:

880.295 (1) When a patient in any state or county hospital or mental hospital or in any state institution for the mentally deficient, or a resident of the county home or infirmary, ~~appears to have property in this state in need of a guardian,~~ and does not have a guardian, the department of health and social services by its collection and deportation counsel, ~~and in counties having a population of 100,000 or more, any or the county~~ corporation counsel or district attorney if there is no corporation counsel, may apply to the county court of the county in which such patient resided at the time of his commitment or the county court of the county in which the facility in which the patient resides is located for the appointment of a guardian of his person and estate, or either, or for the appointment of a conservator of his estate, and the court, upon such application, ~~shall may~~ appoint such guardian or conservator in the manner provided for the appointment of guardians under ~~s. ss.~~ 880.08 (1) and 880.33 or for the appointment of conservators under s. 880.31, ~~but no notice shall be required for the appointment of a successor guardian.~~ Whenever application is made by a district attorney or corporation counsel, a copy of the petition made to the court shall be filed with the department of health and social services. Where application is made by a corporation counsel or district attorney ~~if such be the case~~ for appointment of a guardian of the estate of such patient or resident, or by such patient or resident for appointment of a conservator of ~~his~~ the patient's estate, the court may designate the county as guardian or conservator if the court finds that no relative or friend is available to serve as guardian or conservator and the county ~~shall is~~ is not be required to make or file any oath or give any bond or security, except in the discretion of the court making such appointment, as similarly provided under s. 223.03 (8) in the case of the appointment of a trust company bank corporation. The court may place any limitations upon such guardianship or conservatorship as it deems to be in the best interest of the patient. Before any county employe administers the funds of a person's estate of which the county has been appointed guardian or conservator, such employe must be designated as securities agent in the classified service of the county, and such employe's designation as securities agent shall appear on all court papers which he signs in the name of the county as guardian or conservator. Such securities agent, before entering upon his duties, shall also furnish an official bond in such amount and with such sureties as the county board determines, subject to the prior approval of such amount by the judges of the probate division of the county court. Such bond shall be filed in the office of the register in probate, and a duplicate original thereof filed in the office of the county clerk. A conservatorship under this section shall be terminated by the court upon discharge of the patient unless application for continued conservatorship is made. The superintendent or director of the facility shall notify the court of the discharge of a patient for whom a guardian or conservator has been appointed under

this subsection.

SECTION 28. 880.31 (3) and (4) of the statutes are amended to read:

880.31 (3) A conservator shall have all the powers and duties of a guardian of the estate property of an incompetent person. His powers shall cease upon being removed by the court or upon death of the person whose estate is being conserved.

(4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days' notice by mail be given to the person's guardian, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, if satisfied that the applicant is competent unless it is clearly shown that the applicant is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

SECTION 29. 880.33 (1) of the statutes is repealed and recreated to read:

880.33 (1) Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. A copy of such statement shall be provided to the proposed ward, his guardian ad litem and attorney.

SECTION 30. 880.33 (2) (a), (b) and (c) 2 of the statutes are amended to read:

880.33 (2) (a) The proposed incompetent ward has the right to counsel whether or not he is present at the hearing on determination of competency. The court shall in all cases require the appointment of a guardian ad litem and may in addition require representation by full legal counsel if the guardian ad litem or the proposed incompetent requests or if the interests of justice so require. If the person requests but is unable to obtain counsel, the court shall appoint counsel ~~and if~~. If the person is indigent, the county of legal settlement shall be liable for guardian ad litem fees and attorneys fees, if any. If an attorney is appointed, he shall be allowed reasonable compensation as is customarily charged by attorneys in this state for comparable services. The person proposed ward shall have the right to a trial by a jury of 6 persons, if demanded by the such person, his attorney or his guardian ad litem. The proposed ward, his attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal to the supreme court on proper application.

(b) If requested by the person proposed ward or anyone on his behalf, the person proposed ward has the right at his own expense, or if indigent at the expense of ~~his~~ the county of legal settlement where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(c) 2. Notification to the proposed incompetent both orally and in writing, of the rights to a jury trial and appeal and the rights to counsel and an independent medical or psychological examination, at county expense if the person is indigent. Such notification shall also include the right to introduce evidence as to retention of rights under a limited guardianship.

SECTION 31. 880.33 (2) (c) 3 of the statutes is created to read:

880.33 (2) (c) 3. Recommendation of such additional medical, psychological or other evaluation and testimony to the court on behalf of any ward for whom a limited guardianship of the person or property may be appropriate.

SECTION 32. 880.33 (3) of the statutes is amended to read:

880.33 (3) ~~Any In a finding of limited incompetency shall specifically state which legal rights the person is incompetent to exercise. Guardianship, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. No person determined to be incompetent in accordance with this subchapter shall be deprived of any~~ The court shall make a specific finding as to which legal rights, including the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to testify in any judicial or administrative proceeding, to make a will, to hold or convey property and the right to contract, except upon specific finding of the court. Such ~~The findings of incompetency must be based upon clear and convincing evidence of the need for such limitations. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.~~

SECTION 33. 880.33 (6) of the statutes is repealed and recreated to read:

880.33 (6) All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 55.06 (17).

SECTION 34. 880.33 (8) of the statutes is created to read:

880.33 (8) At the time of determination of incompetency under this section, application for the appointment of a conservator or limited guardian of property may be heard by the court.

SECTION 35. 880.35 of the statutes is amended to read:

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

SECTION 36. 880.37 (1) and (3) (intro.) of the statutes are amended to read:

880.37 (1) An incompetent person who is 18 years of age or older, a guardian or any person authorized to petition for guardianship of a person may apply to a court for a limited guardianship of property. Consonant with the least restrictive limitation of rights, when ~~such the~~ person demonstrates to the satisfaction of the court that he is capable of ~~being wholly or substantially self-supporting by means of managing in whole or in part his wages or, earnings, income or assets,~~ the court may appoint a limited guardian of such person's property, or in the event one person is appointed or serving as both guardian of the person and of the property of ~~said such~~ person, a guardian of the person with limited powers as guardian of the property. Such limited guardianship shall be used until the person has established himself as reasonably capable of managing his own affairs without supervision.

(3) (intro.) ~~The~~ Unless otherwise specified by the court, the person of 18 years of

age or over for whom a limited guardian of the property has been appointed shall have the right to:

SECTION 37. 880.37 (4) of the statutes is renumbered 880.37 (5).

SECTION 38. 880.37 (4) of the statutes is created to read:

880.37 (4) Notwithstanding sub. (3), the court may place such other limitations upon the rights of a person subject to limited guardianship of his property under this section as it determines are in the best interests of the person.

SECTION 39. 880.38 of the statutes is amended to read:

880.38 Guardian of the person of incompetent. (1) A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or his property, or to represent him in any legal proceedings pertaining to his property, unless the guardian of the person is also the guardian of the property. The guardian of the person has the power to apply for placement under s. 55.06 and for commitment under s. 51.01 ~~or~~ 51.09 or 51.45 (13).

~~(2) It is the duty of the A guardian of the person to take care of the person of the ward, to treat him humanely and to obtain shall endeavor to secure necessary care, services or appropriate protective placement on his behalf of his ward.~~

SECTION 40. 905.04 (4) (b) of the statutes is amended to read:

905.04 (4) (b) *Examination by order of judge.* If the judge orders an examination of the physical, mental or emotional condition of the patient, or evaluation of the patient for purposes of protective placement, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

SECTION 41. **Appropriation increase.** (1) The appropriation to the department of health and social services under section 20.435 (2) (a) of the statutes, as affected by the laws of 1975, is increased by \$12,600 for the 1975-76 fiscal year and by \$12,600 for the 1976-77 fiscal year to provide additional funds to state institutes and colonies for the purpose of petitioning for guardianships under section 880.07 of the statutes and for protective placements under section 55.06 (2) of the statutes.

~~(2) The appropriation to the department of health and social services under section 20.435 (2) (b) of the statutes, as affected by the laws of 1975, is increased by \$4,400 for the 1975-76 fiscal year and by \$4,400 for the 1976-77 fiscal year to provide additional aids to counties as reimbursement for costs incurred in petitioning for guardianships under section 880.07 of the statutes and for protective placements under section 55.06 (2) of the statutes.~~

Vetoed
in Part