



2005 SENATE BILL 391

October 17, 2005 – Introduced by Senators OLSEN, MILLER, ROESSLER, DARLING, ERPENBACH, RISSER, HARS DORF, PLALE and WIRCH, cosponsored by Representatives TOWNSEND, KRUSICK, KESTELL, KRAWCZYK, HINES, GIELOW, MUSSER, HAHN, OTT, BERCEAU, SHERMAN, SEIDEL, SHERIDAN and LEHMAN. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT to repeal** 32.64, 51.20 (7) (d) 1. a., 51.20 (7) (d) 1. b., 51.40 (1) (h), chapter
2 880 (title), subchapter I (title) of chapter 880 [precedes 880.01], 880.01 (intro.),
3 880.01 (4), 880.01 (5), 880.01 (6), 880.03, 880.07 (1m), 880.07 (3), 880.07 (4),
4 880.075 (title), 880.08 (1) (title), 880.08 (2), 880.08 (3) (title), 880.08 (3) (e),
5 880.09 (1) (title), 880.09 (3) (title), 880.09 (4), 880.09 (5), 880.09 (7) (title),
6 880.12, 880.125, 880.13 (3), 880.15 (title), 880.15 (1m), 880.15 (2), 880.16,
7 880.173 (title), 880.173 (2), 880.175 (title), 880.19 (title), 880.19 (1) (title),
8 880.19 (2) (title), 880.19 (3) (title), 880.19 (4) (title), 880.19 (5) (title), 880.19 (5)
9 (d), 880.19 (6), 880.191 (title), 880.192, 880.21, 880.22 (title), 880.22 (1) (title),
10 880.22 (2) (title), 880.23 (title), 880.24 (title), 880.24 (1), 880.25 (title), 880.251,
11 880.26 (title), 880.295, 880.31 (title), 880.33 (title), 880.33 (2) (d), 880.33 (3),
12 880.33 (4), 880.33 (4m) and (4r), 880.33 (8) (intro.), 880.33 (8) (a), 880.34 (3),
13 880.34 (6), 880.37, 880.38 (1), 880.39 (title), subchapter II (title) of chapter 880
14 [precedes 880.60], subchapter III (title) of chapter 880 [precedes 880.61],

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1 subchapter IV (title) of chapter 880 [precedes 880.75] and subchapter V (title)
2 of chapter 880 [precedes 880.81]; **to renumber** 880.06 (title), 880.07 (1) (a),
3 880.07 (1) (c), 880.07 (1) (e), 880.07 (1) (f), 880.07 (1) (g), 880.13 (title), 880.13
4 (2) (title), 880.157 (title), 880.18 (title), 880.24 (3) (a) 1. to 3., 880.24 (3) (a) 4.,
5 880.331 (4) (intro.), 880.331 (5) (d), 880.331 (5) (g), 880.36 (title), 880.65,
6 880.665, 880.675, 880.69, 880.75, 880.82, 880.825, 880.84, 880.85, 880.86,
7 880.865, 880.875, 880.88 and 880.885; **to renumber and amend** 51.20 (7) (d)
8 1. (intro.), 51.40 (2) (b) 2. a., 51.40 (2) (b) 2. b., 51.40 (2) (b) 2. c., 51.40 (2) (b) 2.
9 d., 880.01 (1), 880.01 (2), 880.01 (3), 880.01 (7), 880.01 (7m), 880.01 (8), 880.01
10 (9), 880.01 (10), 880.02, 880.04 (title), 880.04 (1), 880.04 (2), 880.04 (2m), 880.04
11 (3), 880.05, 880.06 (1), 880.06 (2), 880.07 (title), 880.07 (1) (intro.), 880.07 (1) (b),
12 880.07 (1) (d), 880.07 (1) (h), 880.07 (1) (i), 880.07 (1) (j), 880.07 (2), 880.075,
13 880.08 (intro.), 880.08 (1), 880.08 (3) (am) (intro.), 880.08 (3) (am) 1., 880.08 (3)
14 (am) 2., 880.08 (3) (am) 3., 880.08 (3) (am) 4., 880.08 (4), 880.09 (intro.), 880.09
15 (1), 880.09 (2), 880.09 (3), 880.09 (6), 880.09 (7), 880.10, 880.13 (1), 880.13 (2)
16 (a), 880.13 (2) (b), 880.14, 880.15 (1), 880.15 (1s), 880.15 (3), 880.155, 880.157
17 (1), 880.157 (2), 880.17, 880.173 (1), 880.175, 880.18, 880.19 (1), 880.19 (2) (a),
18 880.19 (2) (b), 880.19 (3), 880.19 (4) (a), 880.19 (4) (b), 880.19 (4) (c), 880.19 (5)
19 (a), 880.19 (5) (b), 880.19 (5) (c), 880.191 (1), 880.191 (2), 880.195, 880.215,
20 880.22 (1), 880.22 (2), 880.23, 880.24 (2), 880.24 (3) (title), 880.24 (3) (a) (intro.),
21 880.24 (3) (b), 880.245, 880.25 (1), 880.25 (2), 880.25 (3), 880.25 (4), 880.25 (5),
22 880.252, 880.253, 880.26 (1) (intro.), 880.26 (1) (a), 880.26 (1) (b), 880.26 (1) (c),
23 880.26 (2) (intro.), 880.26 (2) (a), 880.26 (2) (b), 880.26 (2) (c), 880.26 (2) (d),
24 880.26 (3), 880.27, 880.28, 880.29, 880.31 (2), 880.31 (3), 880.31 (6), 880.32,
25 880.33 (1), 880.33 (2) (a) 1., 880.33 (2) (a) 2., 880.33 (2) (a) 3., 880.33 (2) (b),

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1 880.33 (2) (e), 880.33 (5), 880.33 (5m), 880.33 (6), 880.33 (7), 880.33 (8) (b),
2 880.33 (9), 880.331 (title), 880.331 (1), 880.331 (2), 880.331 (3), 880.331 (4) (a),
3 880.331 (4) (b), 880.331 (4) (c), 880.331 (4) (d), 880.331 (4) (e), 880.331 (4) (f),
4 880.331 (5) (intro.), 880.331 (5) (a), 880.331 (5) (b), 880.331 (5) (c), 880.331 (5)
5 (e), 880.331 (5) (f), 880.331 (6), 880.331 (7), 880.331 (8), 880.34 (title), 880.34 (1),
6 880.34 (2), 880.34 (4), 880.34 (5), 880.35, 880.36 (1), 880.36 (2), 880.38 (title),
7 880.38 (2), 880.38 (3), 880.39, 880.60, 880.61, 880.615, 880.62, 880.625, 880.63,
8 880.635, 880.64, 880.645, 880.655, 880.66, 880.67, 880.68, 880.685, 880.695,
9 880.70, 880.705, 880.71, 880.715, 880.72, 880.76, 880.81, 880.815, 880.83,
10 880.835, 880.845, 880.855, 880.87, 880.89, 880.895, 880.90 and 880.905; **to**
11 **consolidate, renumber and amend** 880.31 (1) and (7) and 880.31 (4) and (5);
12 **to amend** 6.03 (1) (a), 6.03 (3), 17.03 (6), 19.32 (1m), 29.161, 29.164 (3) (e),
13 29.171 (1), 29.173 (1), 29.182 (4m), 29.184 (6) (c) 1r., 29.184 (6) (c) 2., 29.231 (1),
14 29.235 (1), 29.512 (1), 32.05 (4), 32.06 (4), 32.06 (7), 32.075 (3) (b), 32.22 (6) (b),
15 36.27 (2) (a) 5., 40.08 (9), 45.36 (1) (b), 46.011 (intro.), 46.27 (1) (e), 46.977 (1)
16 (a), 46.977 (2) (a), 46.977 (2) (b) 1., 46.977 (2) (c) 2., 48.14 (2) (b), 48.14 (11),
17 48.345 (intro.), 48.347 (intro.), 48.62 (2), 48.831 (1), 48.831 (1m) (e), 48.977 (8),
18 48.978 (7), 49.001 (8), 49.498 (3) (a) 1., 49.498 (3) (c), 50.03 (14) (c) 8. e., 50.06
19 (2) (intro.), 50.06 (2) (c), 50.09 (3), 50.94 (2) (intro.), 50.94 (6), 51.01 (5) (a), 51.01
20 (14), 51.03 (3) (a) 6., 51.05 (2), 51.10 (8), 51.22 (4), 51.30 (4) (b) 8m., 51.30 (4) (b)
21 18. a., 51.30 (4) (b) 18. c., 51.30 (4) (b) 20. (intro.), 51.30 (4) (dm) 2., 51.30 (4) (f),
22 51.30 (5) (a), 51.30 (5) (b) 1., 51.30 (5) (e), 51.35 (7), 51.40 (title), 51.40 (1) (e),
23 51.40 (1) (f), 51.40 (1) (g) 1., 51.40 (2) (intro.), 51.40 (2) (a) 1., 51.40 (2) (a) 2.,
24 51.40 (2) (b) (intro.), 51.40 (2) (b) 1., 51.40 (2) (b) 2. (intro.), 51.40 (2) (g) 1., 51.45
25 (2) (e), 51.45 (10) (a), 51.45 (10) (c), 51.45 (13) (c), 51.45 (13) (e), 51.61 (1) (o),

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1 51.61 (1) (w) 3., 55.02, 55.03, 55.05 (2) (d), 55.05 (5) (b) 1., 55.05 (5) (b) 2., 55.06
2 (1) (intro.), 55.06 (1) (a), 55.06 (2) (b), 55.06 (3) (c), 55.06 (4), 55.06 (5), 55.06 (6),
3 55.06 (8) (c), 55.06 (10) (c), 55.06 (14), 55.06 (17) (b), 58.05 (2), 66.0915 (1),
4 66.0915 (2), 71.07 (3m) (a) 1. e., 71.28 (2m) (a) 1. e., 71.47 (2m) (a) 1. e., 71.58
5 (1) (f), 75.03 (title), 75.521 (8), 75.521 (12) (b), 75.521 (13) (b), 88.04 (2), 88.10,
6 92.03 (4) (intro.), 93.11 (6) (a) 1., 114.135 (2), 115.76 (12) (b) 2., 115.797 (1) (c),
7 115.807 (intro.), 146.34 (1) (d), 146.81 (5), 146.82 (2) (a) 9. a., 146.82 (2) (a) 9.
8 c., 146.83 (4) (b), 154.07 (2), 154.13 (2) (c), 155.05 (1), 155.60 (1), 155.60 (2),
9 155.65 (2) (c), 179.65, 180.0103 (11), 181.0103 (14), 186.10 (2), 214.37 (4) (k) 1.,
10 215.14 (9) (title), 215.26 (8) (e) 1., 223.03 (6) (intro.), 223.10, 243.07 (3) (a),
11 243.07 (3) (b), 252.15 (2) (a) 4. a., 252.15 (2) (a) 4. b., 252.15 (2) (bm) (intro.),
12 252.15 (5) (a) 15., 253.10 (3) (c) 7., 343.31 (title), 343.31 (3) (a), 403.308 (1),
13 565.30 (2), 609.65 (1) (intro.), 628.10 (1), 705.04 (2), 706.03 (4), 706.09 (1) (f),
14 753.30 (1), 757.48 (1) (a), 757.48 (3), 757.69 (1) (h), 758.19 (6) (a), 758.19 (6) (d)
15 1., 758.19 (6) (d) 2., 765.11 (1), 766.51 (7), 767.29 (3) (a), 786.01, 786.02, 786.03,
16 786.04, 786.05, 786.06 (intro.), 786.06 (1), 786.06 (2), 786.07, 786.08 (1) (a),
17 786.08 (1) (b), 786.08 (2), 786.10, 786.13, 786.14, 786.15, 786.16, 786.17 (1),
18 786.18 (1), 786.19, 786.20, 786.21, 786.25 (1), 786.25 (2), 786.25 (3), 801.11 (2)
19 (intro.), 801.11 (2) (b), 802.10 (1), 803.01 (3) (title), 803.01 (3) (a), 803.01 (3) (b)
20 2., 803.01 (3) (b) 3., 803.01 (3) (b) 4., 803.01 (3) (b) 5., 803.01 (3) (b) 6., 803.01
21 (3) (c) (title), 803.01 (3) (c) 2. (intro.), 803.01 (3) (c) 2. a., 803.01 (3) (c) 2. b., 803.10
22 (2), 804.02 (1) (b), 806.04 (4) (intro.), 807.10 (title), 807.10 (1), 807.10 (2), 807.10
23 (3), 807.13 (2) (intro.), 808.075 (4) (f) (intro.), 808.075 (4) (f) 1., 808.075 (4) (f) 2.,
24 808.075 (4) (f) 3., 808.075 (4) (f) 4., 808.075 (4) (f) 5., 808.075 (4) (f) 6., 808.075
25 (4) (f) 7., 808.075 (4) (f) 8., 808.075 (4) (f) 9., 808.075 (4) (f) 11., 808.075 (4) (f) 12.,

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1 808.075 (4) (f) 13., 813.12 (5) (d), 813.123 (3) (b) 1., 814.61 (12) (a) 1., 814.66 (1)
2 (b) 2., 814.66 (1) (m), 842.25, 851.72 (2), 851.72 (3), 851.73 (1) (a), 854.08 (5)
3 (title), 854.13 (2) (f), 854.17, 857.15, 860.13, 862.03 (title), 862.03 (1), 862.03 (4),
4 863.43, 863.45, 865.02 (1) (b) 1., 865.03 (1), 867.03 (1c), 878.07 (4), 879.09,
5 879.11, 879.13, 879.15 (1), 879.19, 879.23 (1), 879.23 (4) (a), 879.23 (4) (c),
6 879.23 (5), 879.26, 879.27 (4), 879.27 (5), 879.57, 885.17, 905.04 (4) (a), 905.04
7 (4) (am), 938.02 (20m) (a) 5., 938.345 (1) (e), 949.04 (1) (b), 950.02 (4) (a) 5.,
8 968.20 (1m) (a) 1. and 992.08; **to repeal and recreate** 51.40 (2) (f); and **to**
9 **create** 29.024 (2u), 50.02 (2) (ad), 51.01 (4g), 51.01 (4r), 51.01 (14t), 51.20 (13)
10 (g) 4., 51.40 (1) (em), 51.40 (1) (hm), 51.40 (1) (m), 51.40 (2) (b) 2. g., 51.40 (2)
11 (g) 6., chapter 54, 55.01 (1v), 55.01 (6t), 55.01 (6v), 55.06 (3) (d), 55.14, 55.19,
12 55.195 (7), 55.195 (9), 155.40 (2m), 243.10 (7) (c), 343.06 (1) (L), 343.31 (2x),
13 440.121 and 814.66 (1) (n) of the statutes; **relating to:** guardianships,
14 conservatorships, and wards; involuntary administration of psychotropic
15 medication; protective placements and protective services; powers of attorney
16 for health care; durable powers of attorney; venue, residence, and county of
17 responsibility; requiring the exercise of rule-making authority; and providing
18 a penalty.

Analysis by the Legislative Reference Bureau**CURRENT GUARDIANSHIP LAW**

Current guardianship law specifies standards and procedures for determinations by courts that certain individuals are proper subjects for guardianship or conservatorship because of incompetency, spendthriftiness, or minority. For such an individual, after presentation of evidence in a hearing, the court may approve a petition for guardianship and appoint a guardian of the person or guardian of the estate, or both, may dismiss the petition, or, for small estates, order that certain payments be made on behalf of the individual without appointment of a guardian. A court may consider a petition for appointment of a temporary guardian

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and, after presentation of evidence in a hearing, appoint a temporary guardian for a period not to exceed 60 days or may consider a petition for limited guardianship of property and, after presentation of evidence in a hearing, appoint such a limited guardian of property. As an alternative to guardianship, a court may after presentation of evidence in a hearing, appoint a conservator for an adult who feels unable to manage his or her own property and has applied for a conservatorship. No adult may be protectively placed or receive protective services unless he or she has been determined incompetent under the guardianship laws.

DETERMINATION OF INCOMPETENCE AND APPOINTMENT OF GUARDIAN***Jurisdiction and venue; county of residence***

Currently, the circuit courts have jurisdiction over all petitions for guardianship; petitions must be directed to the circuit court of the county of residence of the proposed ward or of the county in which the proposed ward is physically present. For nonresidents, the petition may be directed to the circuit court of a county in which the nonresident or his or her property may be found. The court in which a petition is first filed must determine venue for a nonresident.

This bill also permits a petition for guardianship to be directed to the county in which the petitioner proposes that the proposed ward reside.

Under current law, for purposes of determining responsibility for funding the provision of social services, mental health and alcohol and other drug abuse services, and protective placements and protective services, the county of residence of individuals aged 18 or older with developmental disability or chronic mental illness in state facilities or nursing homes is determined under numerous criteria. As an exception to these criteria, the individual's county of residence is that of his or her guardian if the individual is incapable of indicating intent and has a parent or sibling who serves as his or her guardian or if the individual's guardian states that the individual is expected to return to the guardian's county of residence when the purpose of entering the state facility or nursing home has been accomplished or when needed care and services can be obtained in the guardian's county of residence. An individual, an interested person on his or her behalf, or a county may request that the Department of Health and Family Services (DHFS) make a determination of the county of responsibility of the individual. The decision is binding on the individual and on any county that received notice of the proceeding. Currently, under the laws relating to protective placements and protective services, a petition for appointment of a guardian and for protective services or protective placement for an individual must be filed in the county of residence of the individual to be protected. Currently, under the laws relating to guardianship, all petitions for guardianship must be directed to the circuit court of the county of residence of the proposed ward or of the county in which the proposed ward is physically present. For a nonresident, the petition may be directed to the circuit court of any county in which the nonresident or his or her property may be found. The court in which the petition is first filed must determine venue and must order the record certified to the proper court in another county if it is determined that venue lies in that county. If a guardian or a ward changes residence to another county, the circuit court for the county in which the

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ward resides may appoint a new guardian and may order the guardianship accounts settled and the property delivered to the new guardian.

With respect to determining a county of residence, the bill clarifies that a determination may be made for adults with developmental disabilities, serious and persistent mental illnesses, degenerative brain disorders, or other like incapacities who reside in any place, other than a hospital that is licensed, registered, certified, or approved by DHFS or a county under certain laws. The bill also clarifies that a court that issues an order for involuntary commitment or protective placement or protective services may, after notice and an opportunity for affected counties and parties to be heard have been provided, make a specific finding of a county of residence. If an affected county or party objects, the county or party may request that DHFS make a determination and a transfer of venue may be suspended until the determination of DHFS is final. The bill modifies the criteria for determining a county of residence and authorizes a guardian to declare a county of residence under certain circumstances. The bill requires that the county that is determined to be the county of residence reimburse any other county, under specified time limits, for all social services, mental health, alcohol and other drug abuse, protective placement, and protective services care, treatment, and services.

For laws relating to protective placements or protective services and to guardianship, the bill modifies requirements for filing a petition for protective placement or protective services or guardianship to require filing either in the county of residence or, under certain circumstances, where the individual to be protected is physically present. If a person has not previously received services or has established residence in a different county after receiving and terminating services, the court may determine the individual's county of residence. The bill also requires that the court in which a petition for protective placement or protective services is first filed determine venue, after notice to and an opportunity to be heard by potentially affected counties. If an affected county or party objects to the court's determination, the court may refer the issue to DHFS for determination and may suspend ruling on a motion for change of venue until the DHFS determination is final.

Petition for guardianship

Currently, any person may petition for the appointment of a guardian for an individual. Each petition must state certain information about the individual. If the petition alleges that the individual is not competent to refuse psychotropic medication, the petition must also allege certain matters concerning the necessity for involuntary administration of psychotropic medication.

The bill eliminates the petition requirements concerning the involuntary administration of psychotropic medication. The bill requires that certain additional information be included in a petition for guardianship, including whether the proposed ward is a recipient of a public benefit, the agent under any power of attorney for health care or financial power of attorney executed by the proposed ward, and whether a full or limited guardian is requested and, if limited, the specific guardian authority or limitation on the ward's rights that is sought.

SENATE BILL 391***Examination of proposed ward***

Under current law, when a guardian is proposed to be appointed for a ward on the ground of alleged incompetency, a physician or psychologist, or both, must furnish a written statement, based on an examination, concerning the proposed ward's mental condition. The proposed ward must be informed that his or her statements may be used as a basis for a finding of incompetency and for an order for protective services, including the involuntary administration of psychotropic medication, and that he or she may remain silent. The statement must be provided to the proposed ward and his or her guardian ad litem and attorney.

The bill requires that the physician or psychologist examining the proposed ward furnish a report, instead of a statement, stating his or her professional opinion regarding the presence and likely duration of any medical or other condition causing the proposed ward's incapacity. The petitioner must provide a copy of the report to the petitioner's attorney, if any, as well as to the proposed ward and his or her counsel and guardian ad litem. Either the guardian ad litem or the physician or psychologist must inform the proposed ward that, absent a court order, he or she may refuse to participate in the examination. The court must consider the recency of any such report in determining its accuracy and the weight to be given to it. The bill also authorizes submitting a petition to the court to order the proposed ward to submit to an examination and permits access by the physician or psychologist to the proposed ward's patient health care records and mental health treatment records.

Notice

Current law specifies differing requirements for provision of notice, time limits for service of notice, and required recipients of notice for the appointment of a guardian for an individual on the basis of incompetency, spendthriftiness, and minority.

The bill requires that a notice be in writing and specifies requirements and standards for the giving of notice. The bill requires that, for all notices of proposed guardian appointment on the basis of incompetency or spendthriftiness, or for rehearings, the petitioner provide notice to the proposed ward and existing guardian, if any, and to the proposed ward's counsel, guardian ad litem, presumptive adult heirs, any agent under a financial power of attorney or power of attorney for health care, custodian, and proposed guardian; any agency, charity, or foundation from which the proposed ward is receiving aid or assistance; and any other person required by the court. Special requirements apply for notice of hearing for the proposed guardianship of a minor and to a notice and hearing for temporary guardianships.

Appointment of guardian ad litem

Currently, a court must appoint a guardian ad litem when appointment of a guardian on the ground of incompetency is proposed, to protectively place or provide protective services to an individual or review a protective placement or protective services order, or to terminate a protective placement. An interested party in a proceeding, who appears as counsel in a proceeding, or who is a relative or representative of an interested person, may not be appointed as guardian ad litem in that proceeding. A guardian ad litem has numerous duties, including

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interviewing the proposed ward and explaining the hearing procedure, right to counsel, and right to request or continue a limited guardianship; advising the proposed ward of his or her rights; and presenting evidence concerning the proposed ward's best interests.

The bill expands the circumstances under which a court must appoint a guardian ad litem to include whenever a petition is brought for appointment of a guardian, to review the scope of guardianship, to expand an order of guardianship, to review incompetency and terminate a guardianship, and to review the conduct of a guardian, and any other time that a court determines it necessary. The bill expands the prohibition on appointment of an interested person, as defined in the bill, or a relative or representative of an interested person, from appointment as guardian ad litem in any proceeding that involves the same ward. The bill also expands duties of the guardian ad litem, including requiring that the guardian ad litem interview the proposed guardian, any proposed standby guardian, and any other person seeking appointment as guardian and report to the court concerning the fitness of each individual interviewed; review any power of attorney for health care or financial power of attorney executed by the proposed ward and any other advance planning for financial and health care decision making of the proposed ward; interview any agent under such a power of attorney; inform the court if the proposed ward or ward requests representation by counsel; and attend all court proceedings related to the guardianship.

Rights of the proposed ward

Currently, a proposed ward has the right to counsel, the right to a trial by jury if requested at least 72 hours before the hearing, the right to present and cross-examine witnesses, the right to receipt of the physician's or psychologist's report 96 hours in advance of the hearing, and the right to secure an independent medical or psychological evaluation. A court must appoint a guardian ad litem and require attorney representation if requested, if the involuntary administration of psychotropic medication is proposed, if the proposed ward is opposed to the guardianship, or if the interests of justice require it. If a guardian is appointed, a court may allow payment of reasonable expenses incurred by the ward in contesting the appointment.

The bill expands these rights to wards (for reviews of guardianships and other matters) and provides to the proposed ward or ward the rights to be present at any hearing regarding the guardianship and to have any such hearing conducted in a location and manner that is accessible to the proposed ward. The bill allows a request for a jury trial to be made at least 48 hours before a hearing. The bill clarifies that expenses incurred by the ward in contesting the appointment are payable from the ward's income or assets before other attorney or guardian ad litem fees.

Appointment of guardian; determination of incompetence

Under current law, a court may appoint a guardian to have care, custody, and control of, or to manage the estate of, an individual who is determined by the court to be incompetent, a spendthrift, or a minor. The standard for a finding of incompetency includes substantial incapability of managing one's property or caring for oneself by reason of infirmities of aging, developmental disabilities, or other like

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incapacities; physical disability without mental incapacity is insufficient to establish incompetence.

The bill changes the standard for a finding of incompetence and appointment of a guardian of the person or a guardian of the estate, or both, for an individual, to authorize the finding and appointment only if the court finds, by clear and convincing evidence, that the individual is aged at least 17 years and nine months; that (for purposes of appointment of a guardian of the person) because of an impairment, as defined in the bill, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety; and that (for purposes of appointment of a guardian of the estate) because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that the property will be dissipated, the individual is unable to provide for his or her support, or the individual is unable to prevent financial exploitation. Further, the individual's need for assistance in decision making or communication must be unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept. Unless the proposed ward is unable to communicate decisions effectively in any way, this determination may not be based on mere old age, eccentricity, poor judgment, or physical disability.

The bill requires that, in appointing a guardian, declaring incompetence of the individual to exercise certain rights, or in determining the powers that are appropriate for a guardian to exercise, the court consider numerous matters, including the guardian ad litem report; the medical or psychological report and any other evaluation; whether the proposed ward has engaged in any advance planning for financial and health care decision making; whether appointment of a guardian is the least restrictive means, as defined in the bill, to provide for the individual's need; and the preferences of the individual with regard to personal needs or property management. The court also must determine if additional medical, psychological, social, vocational, or educational evaluation is necessary to make an informed decision concerning the individual's competency to exercise legal rights. The court must authorize a guardian to exercise only necessary powers and to exercise them in a manner that is appropriate and that constitutes the least restrictive form of intervention.

Exceptions to appointment of guardian

Currently, if a minor or an individual who is found incompetent is, except for his or her incapacity, entitled to have personal property of \$10,000 or less, a court, without requiring the appointment of a guardian, may order the property be deposited in a bank or other financial institution or invested, make payment to the natural guardian or person having custody of the minor, make payment to the minor, or make payment to the person with actual or legal custody of the individual found incompetent or to the person providing for the care and maintenance of the individual found incompetent. Similar provisions apply for possession by a minor or

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individual found incompetent of \$5,000 or less from an estate. The bill increases to \$20,000 the dollar limitation on personal property for these types of dispositions.

Nomination of guardian

Currently, a court must consider nominations for guardian that are made by any interested person, by a minor over 14 years, by a parent in a will, and by an individual for himself or herself in an anticipatory document. The court must also consider the opinions of an individual who is alleged to be incompetent and of the members of the individual's family, potential conflicts of interest, the appointment of an individual's agent under a power of attorney for health care, and whether a nonprofit corporation is qualified to serve as guardian. The court must appoint one or both parents, if suitable and willing, of a minor or person with developmental disabilities or other like incapacity. No person, except a nonprofit corporation, may accept guardianship of the person of more than five adult wards who are unrelated to the person, unless, up to a limit of ten, the additional guardianships are approved by DHFS under rules promulgated by DHFS under the laws relating to protective placement.

The bill requires, unless the court finds that the appointment is not in the proposed ward's best interests, that the court appoint, as guardian of the estate, an agent under a proposed ward's financial power of attorney; as guardian of the person, the agent under a proposed ward's power of attorney for health care; and as guardian, one or both parents of a minor, or an individual with developmental disability or with serious and persistent mental illness, as defined in the bill. The bill limits the power of a parent to nominate by will a guardian of the person or guardian of the estate for the parent's minor child if the court finds that the appointment is not in the minor's best interests. A private nonprofit corporation or an unincorporated association that is approved by the court may be appointed as guardian if no suitable individual is available and if DHFS, under rules promulgated under the guardianship laws, finds the corporation or association suitable. The bill limits the number of adult wards for whom an individual may have guardianship to five adult wards who are unrelated to the individual, unless the limitation is waived by a court, and eliminates restrictions on the number of adult wards for which a nonprofit corporation or unincorporated association may accept guardianship. At least 96 hours before the hearing the proposed guardian must submit to the court a sworn and notarized statement as to whether, among other things, the proposed guardian is currently charged with or has been convicted of a crime, has filed for or received protection under the federal bankruptcy laws, has had a professional license suspended or revoked, or is listed on the caregiver abuse registry.

Hearing

Under current law, a hearing on a petition for guardianship must be open unless the proposed ward or his or her counsel moves that it be closed. If closed, only certain persons may be present.

This bill requires that each hearing under the guardianship laws be closed unless the proposed ward or his or her counsel moves that it be open. The bill requires that petitions for guardianship, except for temporary guardianship and petitions for protectively placed individuals in certain facilities, be heard within 90

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days after they are filed; that court determinations of incompetency or spendthriftiness be made by clear and convincing evidence; that the proposed guardian and any proposed standby guardian be physically present at the hearing unless excused by the court or unless the court permits their attendance by telephone; and that an adult proposed ward attend the hearing unless the guardian ad litem, under certain standards, waives attendance. If the proposed ward is unable to attend the hearing because he or she resides in a facility or because of physical inaccessibility or a lack of transportation, and the proposed ward, guardian ad litem, advocate counsel, or other interested person so requests, the court must hold the hearing in a place where the proposed ward may attend. A court that finds a proposed guardian to be inappropriate must require another petition proposing a suitable guardian, set a date for a subsequent hearing, and require the guardian ad litem to investigate the suitability of a new proposed guardian.

Disposition of petition

Currently, if a proposed ward has executed a power of attorney for health care, the court, in a determination of incompetency, may find that the power of attorney should remain in effect and, if so, must limit the power of the guardian from making health care decisions for the ward that the agent under the power of attorney may make, unless the guardian is also the agent. The bill requires that such a health care power of attorney remain in effect and permits a court to revoke it or limit the power of the agent only for good cause shown. Unless the court makes a revocation or limitation, the guardian is prohibited from making health care decisions for the ward that may be made by the agent.

Currently, when a guardian is appointed, the court must award from the ward's estate payment of the petitioner's reasonable attorney fees and costs, including those related to protective placement, unless the court finds it inequitable to do so after considering the petitioner's interest in the matter, including a conflict of interest, the ability of the ward's estate to pay the fees and costs, whether the guardianship was contested, and any other relevant factor. This award may not be made if the ward had engaged in advance planning (by, among other things, executing a financial power of attorney) to avoid guardianship. The bill eliminates payment, from the ward's income and assets, of the costs of a protective placement and changes a finding that the ward had engaged in advance planning for financial health care decision making to be a factor in awarding payment of the petitioner's reasonable attorney fees and costs, rather than a prohibition on that payment.

Currently, the court may require a bond from the person appointed guardian of the estate of a ward and may require a "blanket bond" from a county institutional employee who is appointed a guardian for numerous residents of county facilities. The bill requires that the court order specify the bond amount, prohibits requiring a bond for the guardian of the person of the ward, and eliminates the authority to require "blanket bonds."

The bill clarifies the grounds under which a court must dismiss a petition for guardianship. If a guardian is appointed, the bill specifies the joint decision making powers of any coguardians appointed; specifies that any financial power of attorney executed by the proposed ward remains in effect unless, only for good cause shown,

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it may be revoked or the agent's powers limited, and prohibits the guardian from making decisions for the ward that may be made by the agent; specifies that the county in which the action is pending for the guardianship proceeding is the county that is liable for guardian ad litem fees; and specifies circumstances in which the proposed ward is not liable for fees due his or her legal counsel.

Involuntary administration of psychotropic medication

Under current law relating to guardianship, a petition for appointment of a guardian may allege that the proposed ward is not competent to refuse psychotropic medication and that the medication is, under several criteria, necessary as a protective service. "Not competent to refuse psychotropic medication" is defined to mean that, because of chronic mental illness and after advantages and disadvantages of and alternatives to accepting psychotropic medication have been explained to an individual, he or she is incapable of expressing an understanding of the advantages and disadvantages or is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives in order to make an informed choice about acceptance or refusal. If, at hearing, the court finds that the individual is not competent to refuse psychotropic medication and that the medication is necessary, the court must appoint a guardian to consent to or refuse the medication on behalf of the individual and order development of a treatment plan for the person. The relevant county department must at least annually review and evaluate the individual's status and, if appropriate, recommend discharge or change in the treatment plan. The court also must annually appoint a guardian ad litem to review the county department's evaluations, inform the individual and his or her guardian of certain rights, and file a report with the court. The court must order an independent evaluation and a hearing to continue, modify, or terminate the guardianship, if requested or on the court's own motion. If the individual substantially fails to comply with the treatment plan and if certain conditions are met, the court may authorize the guardian to consent to the involuntary administration of psychotropic medication to the individual.

For purposes of the guardianship laws, the bill defines "psychotropic medication" and establishes a standard for the power of a guardian to give informed consent (subject to the power of an agent under any power of attorney for health care of the ward) to the ward's voluntary receipt of psychotropic medication.

The bill clarifies that a guardian may consent to the involuntary administration of psychotropic medication only under a court order under the laws relating to protective placement and protective services. Under these laws, the bill establishes an exclusive procedure for involuntary administration of psychotropic medication as a protective service to an individual who has been protectively placed. Under this procedure, a petition for involuntary administration of psychotropic medication must meet all requirements for a protective services petition and also allege the condition, past behavior, and numerous other matters relating to the individual's competence to refuse psychotropic medication. A guardian ad litem must be appointed for the individual and must report to the court his or her conclusions concerning the allegations, and the court must appoint legal counsel on behalf of the individual. If requested, the individual may have an independent

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medical or psychological evaluation that is relevant to his or her competency to refuse the medication, the truth of the petition's allegations, and whether involuntary administration is in the individual's best interests. After hearing, the court may authorize a guardian to consent to involuntary administration of psychotropic medication to a ward as a protective service, if the court or jury finds that, by clear and convincing evidence, the requirements for the involuntary administration are met. If the court issues such an order, the order must specify the methods of involuntary administration to which the guardian may consent; require the presence of certain medical personnel when administered; require the maintenance of records concerning the methods of administration used; and require development of a treatment plan. The bill specifies procedures for noncompliance with the order, requires annual review of the order, and requires performance of annual review of the status of the individual by the relevant county department. Further, the bill requires the court to appoint a guardian ad litem after receipt of the annual county department report and specifies responsibilities of the guardian ad litem with respect to the ward. The bill requires the court that issued the order for involuntary administration of psychotropic medication annually to review reports of the county department and the guardian ad litem and order either a summary hearing or full due process hearing, after which the court must terminate, modify, or order continuation of the order.

Duties and powers of a guardian; limitations

Currently, no guardian may lend guardianship funds to himself or herself and a guardian is limited in purchasing property of the guardian's ward. A guardian must pay just debts of the ward from the ward's estate and its income.

The bill specifies in detail numerous powers and duties of a guardian (either a guardian of the person or a guardian of the estate) and clarifies that a guardian's powers are limited to those authorized by statute or court order, that a ward retains all rights that are not assigned to the guardian or otherwise limited by statute, and that a guardian's powers are limited to those necessary to provide for the personal needs or property management of the ward in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention. Under the bill, a guardian may not lend the ward's funds to another unless the court first approves the terms, rate of interest, and any requirement for security, and may purchase property of the ward only at fair market value and with the approval of the court. The requirement to pay legally enforceable debts of the ward, including by filing tax returns and paying taxes owed is, under the bill, made a duty of a guardian of the estate.

Duties and powers of a guardian of the estate

Currently, although the title to the ward's estate remains the ward's, the guardian of the estate must take possession of and protect and preserve the ward's property; rents, income, and other benefits from the property; and any proceeds arising from the sale or other actions to the property. The bill specifies numerous duties of the guardian of the estate, and requires that the guardian of the estate, after following any applicable requirements concerning petitioning the court for the authority to sell, mortgage, pledge, lease, or exchange the ward's property, perform

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these duties so as to provide the ward with the greatest amount of independence and self-determination with respect to property management in light of the ward's functional level, understanding, and appreciation of his or her functional limitations and in light of the ward's personal wishes and preferences.

Currently, in exercising powers, the guardian of the estate must use the judgment and care exercised by persons of prudence, discretion, and intelligence in the management of their own affairs. Currently, after submittal of a petition and under court order, assets of a ward may be transferred to the trustee of an existing revocable living trust for the benefit of the ward or dependents or to the trustee of a trust for the benefit of a minor ward or, if the minor dies, to his or her estate. A guardian of the estate appointed for a married ward may exercise, with court approval, management and control rights over marital or nonmarital property and the ward's business affairs, join in a transaction for which joinder of both spouses is required, or execute a marital property agreement, but not make, amend, or revoke a will. The guardian of the estate may also, if specified in the court's order, continue the business of a ward, and may apply to the court for adjustment of claims of the ward. The guardian of the estate may, with court approval, retain real or personal property of the ward or that the ward acquires by gift or inheritance. The guardian of the estate may, without court approval, do numerous things on behalf of the ward, including entering into contracts and applying for public and private benefits.

The bill requires that the guardian of the estate, in exercising powers, consider, consistent with the functional limitations of the ward, the ward's understanding of the harm that he or she is likely to suffer as the result of his or her inability to manage property and financial affairs, the ward's personal preferences and desires, and the least restrictive form of intervention for the ward. The bill requires that certain actions specified in current law and numerous others specified in the bill may be performed by the guardian of the estate with respect to the ward's income and assets only with the court's prior written approval following any petition and upon any notice and hearing that the court requires. Further, the bill specifies a detailed procedure that a guardian of the estate must follow in order to transfer any of a ward's assets to or for the benefit of another person. The bill also specifies numerous powers, in addition to those in current law, which the guardian of the estate may perform without first receiving the court's approval.

Duties and powers of guardian of the person

Under current law, a guardian of the person of a ward must annually report on the ward's condition to the court and the relevant county department, and must endeavor to secure necessary care or services on behalf of the ward. If a court finds that an individual for whom a determination of incompetency is proposed is not capable of understanding the objective of the elective process, the court may find the individual ineligible to register to vote or to vote in an election.

The bill requires that a guardian of the person endeavor to secure care or services that are in the ward's best interests by, among other things, regular inspection, in person, of the ward's condition, surroundings, and treatment; examination of the ward's patient health care records; and inquiry into alternatives to treatment for the ward if drastic or restrictive treatment is proposed.

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The bill specifies that a guardian of the person has only those rights and powers that he or she is specifically authorized to exercise by statute, rule, or court order; any other right is retained by the ward, unless the ward has been declared by a court incompetent to exercise a right or the guardian of the person has been authorized by a court to exercise certain rights usually retained by the ward. The bill specifies numerous rights that are retained by individuals who are determined incompetent, specifies a proceeding in which a court may find, by clear and convincing evidence, that an individual has incapacity to exercise specified rights, including the right to register to vote or vote and the right to consent to organ donation. A guardian of the person may not exercise a right on behalf of a ward who is declared not competent to exercise that right, unless so authorized by a court. The bill specifies the standard under which a court may make this authorization, including the power to give informed consent, if in the ward's best interests, to voluntary or involuntary administration of psychotropic medication. Lastly, the bill specifies a standard that the guardian of the person must follow in exercising powers and duties delegated to the guardian of the person by a court.

Temporary guardianships

Currently, after considering a petition, a court may appoint a temporary guardian for a ward, including for a minor for a medical purpose, for 60 days and may extend the order for one additional 60-day period. The temporary guardian may perform duties concerning specific property or as ordered by the court. Statutory provisions concerning the powers and duties of guardians apply, except as limited by the court's order. The temporary guardian must report as directed by the court, account to the court at the termination of the temporary guardianship, and deliver the ward's estate to those entitled to it. Duties and powers of a temporary guardianship cease upon the appointment of a guardian, when a minor for whom a temporary guardianship attains the age of 18, or if the court determines that the ward's situation that was the cause of the temporary guardianship has ended.

The bill establishes a standard for the appointment of a temporary guardian; establishes procedures for appointment of a temporary guardian, including appointment of a guardian ad litem; provides for a rehearing on the issue of appointment of the temporary guardian, if requested; clarifies the duration of the temporary guardianship and the authority of the temporary guardian; and prohibits the temporary guardian from selling real estate or expending more than \$2,000 unless authorized by the court.

Standby guardianships

Under current law, a person may at any time bring a petition for the appointment of a standby guardian of the person or estate of a minor or an individual found incompetent, to assume the duty and authority of guardianship on the death, incapacity, or resignation of the guardian. If appointed, the standby guardian has the powers and duties of the guardian and must notify the court upon assuming office.

The bill clarifies that a standby guardian of the person may be appointed for a spendthrift and that appointment of a standby guardian is effective upon the unwillingness or inability to act, resignation, or court's removal of the guardian, or

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during a period when the guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. Under the bill, when a standby guardianship takes effect, the court must issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a limited standby guardianship.

Termination of limited guardianship of property

Currently, upon petition, in a procedure separate from appointment of a guardian, a court may appoint a limited guardian of property, under which the limited guardian receives, manages, disburses, and accounts for property of the ward. Unless limited by a court, an adult ward under a limited guardian of property may receive and expend wages and other earnings and may contract under certain circumstances.

This bill eliminates the appointment of a limited guardian of property as a procedure separate from appointment of a guardian.

POST-APPOINTMENT MATTERS***Inventory***

Currently, when a guardian of the estate is appointed, an inventory must be made of the ward's property under the same requirements as for the inventory of the estate of a decedent. The guardian of the estate must by oath verify that the inventory includes all the ward's property; the court may examine the guardian of the estate as to the inventory or any supposed omission. A court may order a guardian who neglects to file an inventory to do so.

The bill establishes requirements for information that the inventory must provide with respect to each asset of the ward and the time by which the guardian of the estate must file the initial inventory, specifies persons to whom the guardian of the estate must provide copies of the inventory and the fee due when the inventory is filed, and authorizes the court to order that the guardian of the estate appraise any or all of the ward's income and assets.

Accounts

Currently, every guardian except a corporate guardian must annually, before April 15, as specified by court order, or at any other time required by a court, file an account specifying the amount of the ward's property received and held or invested, the nature of the investment, receipts and expenditures, and any change in status of the surety on the guardian's bond. The guardian must produce for the court evidence of the ward's securities, deposits, and other investments. If the account is unsatisfactory, the court may appoint a guardian ad litem for the ward. The court may order any person entrusted by the guardian with part of the ward's estate to appear and render an account. Action by a court on an account is final only if notice is provided. If a guardian fails to file an account, the court may order the guardian to show cause for the failure and may issue a warrant. The guardian may be fined \$50, or imprisoned up to 10 days, or both, if the court finds that failure, refusal, or neglect to file an account under court order is willful or inexcusable.

The bill makes exceptions to the requirement for annual submittal of an account, for waiver by a court, or for income and assets of a ward that do not exceed

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\$20,000; the guardian must notify the court if the ward's income and assets exceed this amount. The bill eliminates the exception from filing for corporate guardians. The bill creates special requirements for annual accounts of married wards. Under the bill, an action by a court on an account is final only if the guardian first provides notice to the ward, any guardian ad litem of the ward, and any personal representative or special administrator of the estate of a deceased ward. For a guardian who fails to file the account as required by law or as ordered by the court, the court must direct that a copy of the court's order to the guardian to show cause be served on the guardian at least 20 days before the court-ordered court appearance date. The bill also increases the fine for guardian failure, refusal, or neglect to \$250.

Procedure to expand an order of guardianship

The bill creates a procedure by which a guardian or other person may submit to a court a request for removal of rights from a ward and transfer of powers to the guardian in addition to those specified in the order of appointment. If, after notice is provided, no objection is submitted, the court may amend the order, but if an objection to the request is submitted, the court must hold a hearing for review of the ward's incompetency.

Review of incompetency and general termination of guardianship

Currently, a guardianship of an individual who is found incompetent continues during the life of the ward or until terminated by the court. Guardianship of a minor who is found incompetent is reviewed when the minor attains age 18. The court must conduct a hearing, including a jury trial if requested, if an adult ward or his or her guardian petitions for a review of incompetency. After a hearing or on its own motion, a court may terminate or modify the ward's guardianship. Termination of guardianship of the person occurs when a formerly minor ward attains age 18, unless the minor was found incompetent; a minor marries; or the court determines that the ward is competent. Termination of guardianship of the estate occurs under these same grounds and if the ward dies. In addition, the court may terminate a guardianship for a ward whose estate is depleted to below \$5,000 if it is to the advantage of the ward to do so. For property of a nonresident ward in the possession of or due from a guardian appointed in this state, the court may, after receipt of a petition and provision of notice, order the property delivered to the ward's foreign guardian.

For a review of a ward's incompetency, the bill specifies time limits and procedures; requires the court to appoint a guardian ad litem, fix a time and place for hearing, and designate persons entitled to notice and the manner of giving notice; and specifies the right of the ward to counsel, including at county expense if the ward is indigent. For termination of a guardianship of the person, the bill clarifies that the guardianship does not terminate on attainment of age 18 years or marriage by a minor ward if the guardianship was ordered on the grounds of incompetency; and expands the grounds for termination of a guardianship of the person or a guardianship of the estate. For a depleted guardianship, the standard for depletion is increased to \$20,000. If terminating the guardianship, the court is authorized to order the guardian to make appropriate financial arrangements for the burial or other disposition of the ward's remains. Alternatively, the court may continue the

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guardianship, but waive requirements for a bond for the guardian and waive or require an accounting by the guardian.

Final accounts

Currently, if a court terminates a guardianship or a guardian resigns, is removed, or dies, the guardian or the guardian's personal representative must render a final account to the court, the former ward, the successor guardian, or the deceased ward's personal representative. After approval of the account and the filing of receipts, the guardian must be discharged and the guardian's bond released. The guardian of an estate of not more than \$1,000 must render an account only on termination of the guardian's guardianship or as ordered by the court. If a ward dies leaving an estate that may be settled under laws relating to summary settlement of small estates, the court may approve that summary settlement and distribution without appointing a personal representative.

For termination of a guardianship, the bill additionally authorizes final accounting by the guardian's special administrator and rendering of the account to the ward or the deceased ward's special administrator, as appropriate. If the ward dies and the guardian and the deceased ward's personal representative or special administrator are the same person, the personal representative or special administrator must give notice of termination and rendering of the final account to all interested persons, as defined in the bill, of the ward's estate. The bill increases to \$20,000 the value of small estates of wards for which a final account need not be filed, unless ordered by a court, and requires the guardian to provide the court with a list of the ward's assets when the guardianship terminates, including at the death of the ward.

Review of conduct of guardian

The bill specifies that the court that appointed a guardian has continuing jurisdiction over the guardian, establishes numerous causes for court action against a guardian, establishes procedures and notice requirements for a hearing to review the guardian's conduct, and establishes remedies of the court. The bill authorizes a court to remove a paid guardian if changed circumstances indicate that a previously unavailable voluntary guardian is available to serve and that the change would be in the ward's best interest. The court may require the guardian to pay any costs of the proceeding to review the guardian's conduct and authorizes a ward who petitions for review to retain legal counsel and contract for the payment of fees.

Guardian compensation and reimbursement

The bill establishes conditions under which a guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses, including factors that a court must use in deciding whether compensation is just and reasonable. The bill specifies that a court must approve compensation and reimbursement before payment is made but need not do so before charges are incurred.

Conservatorship

Under current law, any adult who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of

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his or her county of residence for appointment of a conservator of the estate. At a hearing for such an appointment, the court must personally examine the applicant and, if satisfied that the applicant desires a conservator and that the nominated fiduciary is suitable, appoint the conservator and issue letters of conservatorship after the nominee files a bond. A conservator has the powers and duties of a guardian of the estate, and these powers cease if the court removes the conservator or the conservatee dies. Anyone may apply for termination of the conservatorship, for which the court must hold a hearing. Unless it is clearly shown that the conservatee is incompetent, the court must remove the conservator and order the property restored. However, the court may order continuation of the conservatorship or appointment of a successor conservator. Appointment of a conservator does not constitute evidence of competency or incompetency of the conservatee.

The bill authorizes an individual who is unwilling to manage his or her assets or income to apply for conservatorship and clarifies that a conservatee may make gifts of his or her assets, subject to the conservator's approval. However, if the individual has executed a financial power of attorney before conservatorship, that power of attorney remains in effect, unless revoked or limited by the court for good cause, and the conservator's authority is limited by the authority expressly granted to the agent under the power of attorney. The bill authorizes appointment of a standby conservator and specifies the standard for appointment of a standby conservator. The bill clarifies that a conservatorship may be terminated only by a court after hearing and specifies standards for termination. The bill also specifies actions by a conservator that constitute cause for his or her removal by a court. The bill requires that a final account of the former conservatee's income and assets be rendered if a court terminates a conservatorship or a conservator resigns, is removed, or dies.

Other provisions

The bill makes numerous additional changes to the laws related to guardianships and conservatorships.

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

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

1 **SECTION 1.** 6.03 (1) (a) of the statutes is amended to read:

2 6.03 (1) (a) Any person who is incapable of understanding the objective of the
3 elective process or is under guardianship pursuant to the order of a court under ch.
4 880, except that when a person is under limited guardianship, unless the court may
5 determine has determined that the person is competent to exercise the right to vote;

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1 **SECTION 2.** 6.03 (3) of the statutes is amended to read:

2 6.03 (3) No person may be denied the right to register to vote or the right to vote
3 by reason that the person is alleged to be incapable of understanding the objective
4 of the elective process unless the person has been so adjudicated in a separate
5 proceeding instituted for that purpose by an elector of the municipality in accordance
6 with the procedures set forth in ch. 880 for determining incompetency incompetent
7 in this state. If a determination of incompetency of the person has already been
8 made, or if a determination of limited incompetency has been made ~~which~~ that does
9 not include a specific finding that the subject is competent to exercise the right to
10 vote, and a guardian ~~or limited guardian~~ has been appointed as a result of any such
11 determination, then no determination of incapacity of understanding the objective
12 of the elective process is required unless the guardianship is terminated or modified
13 under s. ~~880.34~~ 54.64.

14 **SECTION 3.** 17.03 (6) of the statutes is amended to read:

15 17.03 (6) A competent tribunal voids the election or appointment; or adjudges
16 the incumbent to be incapable of understanding the objective of the elective process;
17 or places the incumbent under guardianship, ~~or under limited guardianship~~ unless
18 the court finds that the incumbent is competent to exercise the right to vote.

19 **SECTION 4.** 19.32 (1m) of the statutes is amended to read:

20 19.32 (1m) "Person authorized by the individual" means the parent, guardian,
21 as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of a child, as
22 defined in s. 48.02 (2), the guardian, ~~as defined in s. 880.01 (3)~~, of an individual
23 ~~adjudged~~ adjudicated incompetent, ~~as defined in s. 880.01 (4)~~ in this state, the
24 personal representative or spouse of an individual who is deceased, or any person

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1 authorized, in writing, by the individual to exercise the rights granted under this
2 section.

3 **SECTION 5.** 29.024 (2u) of the statutes is created to read:

4 29.024 **(2u)** REVOCATION OF HUNTING LICENSES BASED ON INCOMPETENCY. The
5 department shall revoke any license authorizing hunting issued to an individual for
6 whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d.
7 stating that the individual is incompetent to apply for a hunting license under this
8 chapter.

9 **SECTION 6.** 29.161 of the statutes is amended to read:

10 **29.161 Resident small game hunting license.** A resident small game
11 hunting license shall be issued subject to ~~s. ss.~~ ss. 29.024 and 54.25 (2) (c) 1. d. by the
12 department to any resident applying for this license. The resident small game
13 hunting license does not authorize the hunting of bear, deer, elk, or wild turkey.

14 **SECTION 7.** 29.164 (3) (e) of the statutes is amended to read:

15 29.164 **(3)** (e) *Notification; issuance; payment.* The department shall issue a
16 notice of approval to those qualified applicants selected to receive a wild turkey
17 hunting license. A person who receives a notice of approval and who pays the fee in
18 the manner required by the department shall be issued a wild turkey hunting license
19 subject to ss. 29.024 and 54.25 (2) (c) 1. d.

20 **SECTION 8.** 29.171 (1) of the statutes is amended to read:

21 29.171 **(1)** A resident archer hunting license shall be issued subject to ~~s. ss.~~
22 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this
23 license.

24 **SECTION 9.** 29.173 (1) of the statutes is amended to read:

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1 29.173 (1) ISSUANCE. A resident deer hunting license shall be issued subject to
2 ~~s. ss. 29.024 and 54.25 (2) (c) 1. d.~~ by the department to any resident applying for this
3 license.

4 **SECTION 10.** 29.182 (4m) of the statutes is amended to read:

5 29.182 (4m) LIMITATION OF ONE LICENSE. A person may be issued, or transferred
6 under sub. (4) (g), only one resident elk hunting license in his or her lifetime, and the
7 resident elk hunting license shall be valid for only one elk hunting season. The
8 issuance, or transfer under sub. (4) (g), of the license to the person is subject to ~~s. ss.~~
9 29.024 (2g) and 54.25 (2) (c) 1. d.

10 **SECTION 11.** 29.184 (6) (c) 1r. of the statutes is amended to read:

11 29.184 (6) (c) 1r. The department shall issue a notice of approval to those
12 qualified applicants selected to receive a Class A bear license. A person who receives
13 a notice of approval and who pays the fees required for the license shall be issued the
14 license subject to ~~s. ss. 29.024 (2g) and 54.25 (2) (c) 1. d.~~

15 **SECTION 12.** 29.184 (6) (c) 2. of the statutes is amended to read:

16 29.184 (6) (c) 2. A Class B bear license shall be issued subject to ~~s. ss. 29.024~~
17 ~~(2g) and 54.25 (2) (c) 1. d.~~ by the department to any resident who applies for this
18 license.

19 **SECTION 13.** 29.231 (1) of the statutes is amended to read:

20 29.231 (1) A resident sports license shall be issued subject to ~~s. ss. 29.024 and~~
21 ~~54.25 (2) (c) 1. d.~~ by the department to any resident who applies for this license, and
22 a nonresident sports license shall be issued subject to s. 29.024 by the department
23 to any person who is not a resident and who applies for the license.

24 **SECTION 14.** 29.235 (1) of the statutes is amended to read:

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1 29.235 (1) ISSUANCE. A resident conservation patron license shall be issued
2 subject to ~~s. ss. 29.024 and 54.25 (2) (c) 1. d.~~ by the department to any resident 14
3 years old or older who applies for the license. A nonresident conservation patron
4 license shall be issued subject to s. 29.024 by the department to any person 14 years
5 old or older who is not a resident and who applies for the license.

6 **SECTION 15.** 29.512 (1) of the statutes is amended to read:

7 29.512 (1) No person may engage or be employed for any compensation or
8 reward to guide, direct or assist any other person in hunting, fishing or trapping
9 unless the person is issued a guide license by the department subject to ~~s. ss. 29.024~~
10 ~~and 54.25 (2) (c) 1. d.~~ No guide license for hunting or trapping may be issued to or
11 obtained by any person who is not a resident of this state. No guide license may be
12 issued to any person under the age of 18 years. The holder of a guide license shall
13 comply with all of the requirements of this chapter.

14 **SECTION 16.** 32.05 (4) of the statutes is amended to read:

15 32.05 (4) HOW NOTICE OF JURISDICTIONAL OFFER IS GIVEN. The giving of such
16 notice is a jurisdictional requisite to a taking by condemnation. Such notice may be
17 given by personal service in the manner of service of a circuit court summons, or it
18 may be transmitted by certified mail. If service is by mail, service of the papers shall
19 be deemed completed on the date of mailing and the use of mail service shall not
20 increase the time allowed to act in answer to or in consequence of such service. If such
21 owner or mortgagee is unknown or cannot be found there shall be published in the
22 county wherein the property is located a class 1 notice, under ch. 985. If such owner
23 is a minor, or an ~~incompetent person~~ individual adjudicated incompetent, the
24 condemnor shall serve such notice upon the legal guardian of such the minor or
25 ~~incompetent individual~~, and if there is no such guardian the condemnor shall

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1 proceed under s. 32.15 to have a special guardian appointed to represent ~~such~~ the
2 minor or ~~incompetent~~ individual in ~~such~~ the proceeding. The reasonable fees of ~~such~~
3 any special guardian as approved by the court shall be paid by the condemnor. ~~Such~~
4 The notice shall be called the "jurisdictional offer". The condemnor shall file a lis
5 pendens on or within 14 days of the date of service or mailing of the jurisdictional
6 offer or within 14 days of the date of publication if publication is necessary. The lis
7 pendens shall include a copy of the jurisdictional offer. From the time of such filing
8 every purchaser or encumbrancer whose conveyance or encumbrance is not recorded
9 or filed shall be deemed a subsequent purchaser or encumbrancer and shall be bound
10 by the terms of the jurisdictional offer and it shall not be necessary to serve other
11 jurisdictional offers on such subsequent purchaser or encumbrancer. In the award
12 the condemnor may name and make payment to parties who were owners or
13 mortgagees at the time of the filing of the lis pendens unless subsequent purchasers
14 or encumbrancers give written notice to the condemnor of their subsequently
15 acquired interests in which event such parties shall be named in the award as their
16 interests may appear.

17 **SECTION 17.** 32.06 (4) of the statutes is amended to read:

18 32.06 (4) RIGHT OF MINORS AND INCOMPETENTS INDIVIDUALS ADJUDICATED
19 INCOMPETENT. If any person having an ownership interest in the property proposed
20 to be condemned is a minor or ~~an~~ is adjudicated incompetent ~~person~~, a special
21 guardian shall be appointed for the person pursuant to s. 32.05 (4).

22 **SECTION 18.** 32.06 (7) of the statutes is amended to read:

23 32.06 (7) PETITION FOR CONDEMNATION PROCEEDINGS. If the jurisdictional offer
24 is not accepted within the periods limited in sub. (6) or the owner fails to consummate
25 an acceptance as provided in sub. (6), the condemnor may present a verified petition

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1 to the circuit court for the county in which the property to be taken is located, for
2 proceedings to determine the necessity of taking, where such determination is
3 required, and the amount of just compensation. The petition shall state that the
4 jurisdictional offer required by sub. (3) has been made and rejected; that it is the
5 intention of the condemnor in good faith to use the property or right therein for the
6 specified purpose. It shall name the parties having an interest of record in the
7 property as near as may be and shall name the parties who are minors ~~or persons of~~
8 ~~unsound mind, who are adjudicated incompetent, or whose location is~~ unknown. The
9 petition may not disclose the amount of the jurisdictional offer, and if it does so it is
10 a nullity. The petition shall be filed with the clerk of the court. Notice of the petition
11 shall be given as provided in s. 32.05 (4) to all persons having an interest of record
12 in the property, including the special guardian appointed for minors or individuals
13 adjudicated incompetent persons. A lis pendens shall be filed on the date of filing
14 the petition. The date of filing the lis pendens is the "date of evaluation" of the
15 property for the purpose of fixing just compensation, except that if the property is to
16 be used in connection with the construction of a facility, as defined under s. 196.491
17 (1), the "date of evaluation" is the date that is 2 years prior to the date on which the
18 certificate of public convenience and necessity is issued for the facility. The hearing
19 on the petition may not be earlier than 20 days after the date of its filing unless the
20 petitioner acquired possession of the land under s. 32.12 (1) in which event this
21 hearing is not necessary. If the petitioner is entitled to condemn the property or any
22 portion of it, the judge immediately shall assign the matter to the chairperson of the
23 county condemnation commissioners for hearing under s. 32.08. An order by the
24 judge determining that the petitioner does not have the right to condemn or refusing

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1 to assign the matter to the chairperson of the county condemnation commissioners
2 may be appealed directly to the court of appeals.

3 **SECTION 19.** 32.075 (3) (b) of the statutes is amended to read:

4 32.075 (3) (b) If the person is a minor or an individual adjudicated incompetent,
5 the notice under par. (a) shall be to the special guardian appointed for ~~the person~~ him
6 or her. The notice under par. (a) shall state that the person, or, if the person is
7 deceased, the person's heirs, may petition the circuit court of the county in which the
8 property is located, within 90 days after receipt of the notice, for an order to require
9 the public utility to return the interest in the property to the petitioner. The circuit
10 court shall grant the petition and shall make a formal order returning the
11 petitioner's interest in the property. The order shall operate to divest any title of the
12 public utility to the property subject to the petition and to automatically discharge
13 any lis pendens filed in relation to the condemnation of the property.

14 **SECTION 20.** 32.22 (6) (b) of the statutes is amended to read:

15 32.22 (6) (b) If any owner is a minor or an individual adjudicated incompetent
16 ~~person~~, a special guardian shall be appointed under s. 32.05 (4).

17 **SECTION 21.** 32.64 of the statutes is repealed.

18 **SECTION 22.** 36.27 (2) (a) 5. of the statutes is amended to read:

19 36.27 (2) (a) 5. Any minor student under guardianship in this state ~~pursuant~~
20 ~~to ch. 48 or 880~~ whose legal guardian has been a bona fide resident of this state for
21 at least 12 months next preceding the beginning of any semester or session for which
22 such student registers at an institution.

23 **SECTION 23.** 40.08 (9) of the statutes is amended to read:

24 40.08 (9) PAYMENTS OF BENEFITS TO MINORS AND INCOMPETENTS INDIVIDUALS FOUND
25 INCOMPETENT. In any case in which a benefit amount becomes payable to a minor or

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1 to ~~a person adjudged mentally~~ an individual adjudicated incompetent, the
2 department may waive guardianship proceedings, and pay the benefit to the person
3 providing for or caring for the minor, or to the spouse ~~or the~~ parent, or other relative
4 by blood or adoption providing for or caring for the individual adjudicated
5 incompetent ~~person~~.

6 **SECTION 24.** 45.36 (1) (b) of the statutes is amended to read:

7 45.36 (1) (b) "Duly authorized representative" means any person authorized
8 in writing by the veteran to act for the veteran, or a legally constituted representative
9 if the veteran is adjudicated incompetent or deceased. Where for proper reason no
10 representative has been or will be appointed, the veteran's spouse, an adult child, or,
11 if the veteran is unmarried, either parent shall be recognized as the duly authorized
12 representative.

13 **SECTION 25.** 46.011 (intro.) of the statutes is amended to read:

14 **46.011 Definitions.** (intro.) In chs. 46, 48, 50, 51, 54, 55 and 58:

15 **SECTION 26.** 46.27 (1) (e) of the statutes is amended to read:

16 46.27 (1) (e) "Voluntary" means according to ~~a person's~~ an individual's free
17 choice, if competent, or by choice of ~~a~~ his or her guardian, if the individual is
18 adjudicated incompetent.

19 **SECTION 27.** 46.977 (1) (a) of the statutes is amended to read:

20 46.977 (1) (a) "Guardian" has the meaning ~~provided~~ given in s. 880.01 ~~(3)~~ 54.01
21 (10).

22 **SECTION 28.** 46.977 (2) (a) of the statutes is amended to read:

23 46.977 (2) (a) Annually, prior to April 30, an organization may apply to the
24 department for a grant under this section for the purpose of recruiting, training,
25 monitoring and assisting guardians for ~~persons determined to be~~ individuals found

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1 incompetent under ch. 880 54. By June 30, the department shall determine which
2 organizations will receive a grant during the following fiscal year based on the
3 criteria under par. (c). No grant may be awarded unless the applicant provides
4 matching funds equal to 10% of the amount of the award. The department shall
5 make grants under this section from the appropriation under s. 20.435 (7) (cg).

6 **SECTION 29.** 46.977 (2) (b) 1. of the statutes is amended to read:

7 46.977 (2) (b) 1. Recruit individuals or organizations to act as guardians for
8 ~~persons determined to be~~ individuals found incompetent under ch. 880 54.

9 **SECTION 30.** 46.977 (2) (c) 2. of the statutes is amended to read:

10 46.977 (2) (c) 2. The extent to which the proposed program will effectively
11 recruit, train, monitor and assist guardians for ~~persons determined to be~~ individuals
12 found incompetent under ch. 880 54.

13 **SECTION 31.** 48.14 (2) (b) of the statutes is amended to read:

14 48.14 (2) (b) The appointment and removal of a guardian of the person for a
15 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977, and
16 48.978 and ch. 880 54 and for a child found to be in need of protection or services
17 under s. 48.13 because the child is without parent or guardian.

18 **SECTION 32.** 48.14 (11) of the statutes is amended to read:

19 48.14 (11) Granting visitation privileges under s. ~~880.155~~ 54.56.

20 **SECTION 33.** 48.345 (intro.) of the statutes is amended to read:

21 **48.345 Disposition of child or unborn child of child expectant mother**
22 **adjudged in need of protection or services.** (intro.) If the judge finds that the
23 child is in need of protection or services or that the unborn child of a child expectant
24 mother is in need of protection or services, the judge shall enter an order deciding one
25 or more of the dispositions of the case as provided in this section under a care and

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1 treatment plan, except that the order may not place any child not specifically found
2 under chs. 46, 49, 51, 54, or 115 and 880 to be developmentally disabled, mentally
3 ill, or to have a disability specified in s. 115.76 (5) in facilities ~~which~~ that exclusively
4 treat those categories of children, and the court may not place any child expectant
5 mother of an unborn child in need of protection or services outside of the child
6 expectant mother's home unless the court finds that the child expectant mother is
7 refusing or has refused to accept any alcohol or other drug abuse services offered to
8 her or is not making or has not made a good faith effort to participate in any alcohol
9 or other drug abuse services offered to her. The dispositions under this section are
10 as follows:

11 **SECTION 34.** 48.347 (intro.) of the statutes is amended to read:

12 **48.347 Disposition of unborn child of adult expectant mother**
13 **adjudged in need of protection or services.** (intro.) If the judge finds that the
14 unborn child of an adult expectant mother is in need of protection or services, the
15 judge shall enter an order deciding one or more of the dispositions of the case as
16 provided in this section under a care and treatment plan, except that the order may
17 not place any adult expectant mother of an unborn child not specifically found under
18 ch. 51, 54, or 55 or 880 to be developmentally disabled or mentally ill in a facility
19 ~~which~~ that exclusively treats those categories of individuals, and the court may not
20 place any adult expectant mother of an unborn child in need of protection or services
21 outside of the adult expectant mother's home unless the court finds that the adult
22 expectant mother is refusing or has refused to accept any alcohol or other drug abuse
23 services offered to her or is not making or has not made a good faith effort to
24 participate in any alcohol or other drug abuse services offered to her. If the judge
25 finds that the unborn child of a child expectant mother is in need of protection or

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1 services, the judge shall enter an order deciding one or more of the dispositions of the
2 case as provided in s. 48.345 under a care and treatment plan. The dispositions
3 under this section are as follows:

4 **SECTION 35.** 48.62 (2) of the statutes is amended to read:

5 48.62 (2) A relative, as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a),
6 or a guardian of a child, who provides care and maintenance for a child, is not
7 required to obtain the license specified in this section. The department, county
8 department, or licensed child welfare agency as provided in s. 48.75 may issue a
9 license to operate a foster home or a treatment foster home to a relative who has no
10 duty of support under s. 49.90 (1) (a) and who requests a license to operate a foster
11 home or treatment foster home for a specific child who is either placed by court order
12 or who is the subject of a voluntary placement agreement under s. 48.63. The
13 department, a county department, or a licensed child welfare agency may, at the
14 request of a guardian appointed under s. 48.977 or 48.978, ch. 54, or ch. 880, 2003
15 stats., license the guardian's home as a foster home or treatment foster home for the
16 guardian's minor ward who is living in the home and who is placed in the home by
17 court order. Relatives with no duty of support and guardians appointed under s.
18 48.977 or 48.978, ch. 54, or ch. 880, 2003 stats., who are licensed to operate foster
19 homes or treatment foster homes are subject to the department's licensing rules.

20 **SECTION 36.** 48.831 (1) of the statutes is amended to read:

21 48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment
22 of a guardian of a child who does not have a living parent if a finding as to the
23 adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ch. 880
24 54 applies to the appointment of a guardian for a child who does not have a living
25 parent for all other purposes. An appointment of a guardian of the estate of a child

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1 who does not have a living parent shall be conducted in accordance with the
2 procedures specified in ch. 880 54.

3 **SECTION 37.** 48.831 (1m) (e) of the statutes is amended to read:

4 48.831 (**1m**) (e) A guardian appointed under ch. 54 or ch. 880, 2003 stats.,
5 whose resignation as guardian has been accepted by a court under s. 54.54 (1) or s.
6 880.17 (1), 2003 stats.

7 **SECTION 38.** 48.977 (8) of the statutes is amended to read:

8 48.977 (**8**) (title) RELATIONSHIP TO CH. 54 AND CH. 880, 2003 STATS. (a) This section
9 does not abridge the duties or authority of a guardian appointed under ch. 54 or ch.
10 880, 2003 stats.

11 (b) Nothing in this section prohibits an individual from petitioning a court
12 under ch. 880 54 for appointment of a guardian.

13 **SECTION 39.** 48.978 (7) of the statutes is amended to read:

14 48.978 (**7**) RELATIONSHIP TO CH. 880 54. (a) Except when a different right, remedy
15 or procedure is provided under this section, the rights, remedies, and procedures
16 provided in ch. 880 54 shall govern a standby guardianship created under this
17 section.

18 (b) This section does not abridge the duties or authority of a guardian appointed
19 under ch. 54 or ch. 880, 2003 stats.

20 (c) Nothing in this section prohibits an individual from petitioning a court for
21 the appointment of a guardian under ch. 880 54.

22 **SECTION 40.** 49.001 (8) of the statutes is amended to read:

23 49.001 (**8**) “Voluntary” means according to ~~a person’s~~ an individual’s free
24 choice, if competent, or by choice of ~~a~~ his or her guardian if the individual is
25 adjudicated incompetent.

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1 **SECTION 41.** 49.498 (3) (a) 1. of the statutes is amended to read:

2 49.498 (3) (a) 1. The right to choose a personal attending physician, to be fully
3 informed in advance about care and treatment, to be fully informed in advance of any
4 changes in care or treatment that may affect the resident's well-being, and, except
5 with respect to a resident found who is adjudicated incompetent under s. 880.33 in
6 this state, to participate in planning care and treatment or changes in care and
7 treatment.

8 **SECTION 42.** 49.498 (3) (c) of the statutes is amended to read:

9 49.498 (3) (c) For a resident who is found adjudicated incompetent under s.
10 880.33 in this state, the rights of a resident under this subsection devolve upon and,
11 to the extent determined necessary by a court of competent jurisdiction, are exercised
12 by the resident's guardian appointed under s. 880.33.

13 **SECTION 43.** 50.02 (2) (ad) of the statutes is created to read:

14 50.02 (2) (ad) The department shall promulgate rules that require each facility
15 licensed under this subchapter to provide information necessary for the department
16 to assess the facility's compliance with s. 55.14.

17 **SECTION 44.** 50.03 (14) (c) 8. e. of the statutes is amended to read:

18 50.03 (14) (c) 8. e. A list of the residents whom the facility believes to be
19 incompetent meet the requirements of s. 54.10 (3).

20 **SECTION 45.** 50.06 (2) (intro.) of the statutes is amended to read:

21 50.06 (2) (intro.) An individual under sub. (3) may consent to admission,
22 directly from a hospital to a facility, of an incapacitated individual who does not have
23 a valid power of attorney for health care and who has not been adjudicated
24 incompetent under ch. 880 in this state, if all of the following apply:

25 **SECTION 46.** 50.06 (2) (c) of the statutes is amended to read:

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1 50.06 (2) (c) A petition for guardianship for the individual under s. ~~880.07~~ 54.34
2 and a petition for protective placement of the individual under s. 55.06 (2) are filed
3 prior to the proposed admission.

4 **SECTION 47.** 50.09 (3) of the statutes is amended to read:

5 50.09 (3) If the resident is ~~adjudged to be~~ adjudicated incompetent under ~~ch.~~
6 ~~51 or 880~~ in this state and not restored to legal capacity, the rights and
7 responsibilities established under this section which the resident is not competent
8 to exercise shall devolve upon the resident's guardian.

9 **SECTION 48.** 50.94 (2) (intro.) of the statutes is amended to read:

10 50.94 (2) (intro.) A person who is determined to be incapacitated under the
11 requirements of sub. (8), does not have a valid living will or valid power of attorney
12 for health care, and has not been adjudicated incompetent ~~under ch. 880~~ in this state
13 may be admitted to a hospice under this section only if all of the following
14 requirements are met:

15 **SECTION 49.** 50.94 (6) of the statutes is amended to read:

16 50.94 (6) A person who disagrees with a hospice decision made under this
17 section may apply under ~~ch. 880~~ s. 54.50 for temporary guardianship of the person
18 who is incapacitated. In applying for the temporary guardianship, such a person has
19 the burden of proving that the person who is incapacitated would not have consented
20 to admission to a hospice or hospice care.

21 **SECTION 50.** 51.01 (4g) of the statutes is created to read:

22 51.01 (4g) "County of residence" means the county that is determined under
23 s. 51.40 to be the county of residence.

24 **SECTION 51.** 51.01 (4r) of the statutes is created to read:

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1 51.01 (4r) “Degenerative brain disorder” means the loss or dysfunction of brain
2 cells to the extent that the individual is substantially impaired in his or her ability
3 to provide adequately for his or her own care or custody or to manage adequately his
4 or her property or financial affairs.

5 **SECTION 52.** 51.01 (5) (a) of the statutes is amended to read:

6 51.01 (5) (a) “Developmental disability” means a disability attributable to
7 brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, mental
8 retardation, or another neurological condition closely related to mental retardation
9 or requiring treatment similar to that required for mental retardation, which has
10 continued or can be expected to continue indefinitely and constitutes a substantial
11 handicap to the afflicted individual. “Developmental disability” does not include
12 senility which ~~that~~ is primarily caused by the process of aging or the infirmities of
13 aging ~~degenerative brain disorder, as defined in s. 55.01 (1v).~~

14 **SECTION 53.** 51.01 (14) of the statutes is amended to read:

15 51.01 (14) “Residence”, ~~“legal residency” or “county of residence”~~ has the
16 meaning given under s. 49.001 (6).

17 **SECTION 54.** 51.01 (14t) of the statutes is created to read:

18 51.01 (14t) “Serious and persistent mental illness” means a mental illness that
19 is severe in degree and persistent in duration, that causes a substantially diminished
20 level of functioning in the primary aspects of daily living and an inability to cope with
21 the ordinary demands of life, that may lead to an inability to maintain stable
22 adjustment and independent functioning without long-term treatment and support,
23 and that may be of lifelong duration. “Serious and persistent mental illness” includes
24 schizophrenia as well as a wide spectrum of psychotic and other severely disabling

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1 psychiatric diagnostic categories, but does not include degenerative brain disorder
2 or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

3 **SECTION 55.** 51.03 (3) (a) 6. of the statutes is amended to read:

4 51.03 (3) (a) 6. The number of persons authorized to consent to involuntary
5 administration of psychotropic medication under s. 55.14 (8) or for whom guardians
6 are were appointed under s. 880.33 (4m), 2003 stats.

7 **SECTION 56.** 51.05 (2) of the statutes is amended to read:

8 51.05 (2) ADMISSIONS AUTHORIZED BY COUNTIES. The department may not accept
9 for admission to a mental health institute any resident person, except in an
10 emergency, unless the county department under s. 51.42 in the county where the
11 person has ~~legal residency~~ residence authorizes the care, as provided in s. 51.42 (3)
12 (as). Patients who are committed to the department under s. 975.01, 1977 stats., or
13 s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06 or 980.06, admitted by the
14 department under s. 975.17, 1977 stats., or are transferred from a secured
15 correctional facility, a secured child caring institution or a secured group home to a
16 state treatment facility under s. 51.35 (3) or from a jail or prison to a state treatment
17 facility under s. 51.37 (5) are not subject to this section.

18 **SECTION 57.** 51.10 (8) of the statutes is amended to read:

19 51.10 (8) An adult for whom a guardian of the person has been appointed ~~under~~
20 ~~ch. 880~~ in this state because of the subject's incompetency may be voluntarily
21 admitted to an inpatient treatment facility under this section only if the guardian
22 and the ward consent to such admission.

23 **SECTION 58.** 51.20 (7) (d) 1. (intro.) of the statutes is renumbered 51.20 (7) (d)
24 1. and amended to read:

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1 51.20 (7) (d) 1. If the court determines after hearing that there is probable cause
2 to believe that the subject individual is a fit subject for guardianship and protective
3 placement or services, the court may, without further notice, appoint a temporary
4 guardian for the subject individual and order temporary protective placement or
5 services under ch. 55 for a period not to exceed 30 days, and shall proceed as if
6 petition had been made for guardianship and protective placement or services. If the
7 court orders only temporary protective services for a subject individual under this
8 paragraph, the individual shall be provided care only on an outpatient basis. The
9 court may order involuntary administration of psychotropic medication as a
10 temporary protective service ~~under this paragraph if it finds that there is probable~~
11 ~~cause to believe that the allegations under s. 880.07 (1m) (c) and (cm) apply, that the~~
12 ~~individual is not competent to refuse psychotropic medication and that the~~
13 ~~medication ordered will have therapeutic value and will not unreasonably impair the~~
14 ~~ability of the individual to prepare for and participate in subsequent legal~~
15 ~~proceedings. An individual is not competent to refuse psychotropic medication if,~~
16 ~~because of chronic mental illness, and after the advantages and disadvantages of and~~
17 ~~alternatives to accepting the particular psychotropic medication have been~~
18 ~~explained to the individual, one of the following is true: only under the requirements~~
19 of s. 55.14.

20 **SECTION 59.** 51.20 (7) (d) 1. a. of the statutes is repealed.

21 **SECTION 60.** 51.20 (7) (d) 1. b. of the statutes is repealed.

22 **SECTION 61.** 51.20 (13) (g) 4. of the statutes is created to read:

23 51.20 (13) (g) 4. The county department under s. 51.42 or 51.437 to which the
24 individual is committed under par. (a) 3. retains financial responsibility for the
25 individual if the individual voluntarily moves to another county until venue for the

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1 individual is transferred to the county in which the individual is physically present
2 or until the individual is no longer a proper subject of continued commitment.

3 **SECTION 62.** 51.22 (4) of the statutes is amended to read:

4 51.22 (4) If a patient is placed in a facility authorized by a county department
5 under s. 51.42 or 51.437 and ~~such~~ the placement is outside the jurisdiction of that
6 county department under s. 51.42 or 51.437, the placement does not transfer the
7 patient's legal residence to the county of the facility's location while such patient is
8 under commitment or placement.

9 **SECTION 63.** 51.30 (4) (b) 8m. of the statutes is amended to read:

10 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
11 54.36 (3), 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) or 980.08 (3). The recipient of
12 any information from the records shall keep the information confidential except as
13 necessary to comply with s. 971.17 or ch. 980.

14 **SECTION 64.** 51.30 (4) (b) 18. a. of the statutes is amended to read:

15 51.30 (4) (b) 18. a. In this subdivision, "abuse" has the meaning given in s. 51.62
16 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the
17 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a
18 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),
19 or for whom a guardian is appointed under s. 54.10 or s. 880.33, 2003 stats.

20 **SECTION 65.** 51.30 (4) (b) 18. c. of the statutes is amended to read:

21 51.30 (4) (b) 18. c. If the patient, regardless of age, has a guardian appointed
22 under s. 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with developmental
23 disability who has a parent or has a guardian appointed under s. 48.831 and does not
24 have a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., information
25 concerning the patient that is obtainable by staff members of the agency or nonprofit

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1 corporation with which the agency has contracted is limited, except as provided in
2 subd. 18. e., to the nature of an alleged rights violation, if any; the name, birth date
3 and county of residence of the patient; information regarding whether the patient
4 was voluntarily admitted, involuntarily committed or protectively placed and the
5 date and place of admission, placement or commitment; and the name, address and
6 telephone number of the guardian of the patient and the date and place of the
7 guardian's appointment or, if the patient is a minor with developmental disability
8 who has a parent or has a guardian appointed under s. 48.831 and does not have a
9 guardian appointed under s. 54.10 or s. 880.33, 2003 stats., the name, address and
10 telephone number of the parent or guardian appointed under s. 48.831 of the patient.

11 **SECTION 66.** 51.30 (4) (b) 20. (intro.) of the statutes is amended to read:

12 51.30 (4) (b) 20. (intro.) Except with respect to the treatment records of a
13 subject individual who is receiving or has received services for alcoholism or drug
14 dependence, to the spouse, parent, adult child or sibling of a subject individual, if the
15 spouse, parent, adult child or sibling is directly involved in providing care to or
16 monitoring the treatment of the subject individual and if the involvement is verified
17 by the subject individual's physician, psychologist or by a person other than the
18 spouse, parent, adult child or sibling who is responsible for providing treatment to
19 the subject individual, in order to assist in the provision of care or monitoring of
20 treatment. Except in an emergency as determined by the person verifying the
21 involvement of the spouse, parent, adult child or sibling, the request for treatment
22 records under this subdivision shall be in writing, by the requester. Unless the
23 subject individual has been ~~adjudged~~ adjudicated incompetent ~~under ch. 880 in this~~
24 state, the person verifying the involvement of the spouse, parent, adult child or
25 sibling shall notify the subject individual about the release of his or her treatment

SENATE BILL 391**SECTION 66**

1 records under this subdivision. Treatment records released under this subdivision
2 are limited to the following:

3 **SECTION 67.** 51.30 (4) (dm) 2. of the statutes is amended to read:

4 51.30 (4) (dm) 2. Conceal or withhold a treatment record with intent to prevent
5 its release to the subject individual under par. (d), to his or her guardian appointed
6 ~~under ch. 880,~~ or to persons with the informed written consent of the subject
7 individual or with intent to prevent or obstruct an investigation or prosecution.

8 **SECTION 68.** 51.30 (4) (f) of the statutes is amended to read:

9 51.30 (4) (f) *Correction of information.* A subject individual, or the parent,
10 guardian, or person in the place of a parent of a minor, or the guardian of an
11 individual adjudicated incompetent may, after having gained access to treatment
12 records, challenge the accuracy, completeness, timeliness, or relevance of factual
13 information in his or her treatment records and request in writing that the facility
14 maintaining the record correct the challenged information. ~~Such~~ The request shall
15 be granted or denied within 30 days by the director of the treatment facility, the
16 director of the county department under s. 51.42 or 51.437, or the secretary
17 depending upon which person has custody of the record. Reasons for denial of the
18 requested changes shall be given by the responsible officer and the individual shall
19 be informed of any applicable grievance procedure or court review procedure. If the
20 request is denied, the individual, parent, guardian, or person in the place of a parent
21 shall be allowed to insert into the record a statement correcting or amending the
22 information at issue. The statement shall become a part of the record and shall be
23 released whenever the information at issue is released.

24 **SECTION 69.** 51.30 (5) (a) of the statutes is amended to read:

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1 51.30 (5) (a) *Consent for release of information.* The parent, guardian, or person
2 in the place of a parent of a minor or the guardian of an adult ~~adjudged~~ adjudicated
3 incompetent ~~under ch. 880 in this state~~ may consent to the release of confidential
4 information in court or treatment records. A minor who is aged 14 or more may
5 consent to the release of confidential information in court or treatment records
6 without the consent of the minor's parent, guardian or person in the place of a parent.
7 Consent under this paragraph must conform to the requirements of sub. (2).

8 **SECTION 70.** 51.30 (5) (b) 1. of the statutes is amended to read:

9 51.30 (5) (b) 1. The guardian of an individual who is ~~adjudged~~ adjudicated
10 incompetent ~~under ch. 880 in this state~~ shall have access to the individual's court and
11 treatment records at all times. The parent, guardian or person in the place of a
12 parent of a developmentally disabled minor shall have access to the minor's court and
13 treatment records at all times except in the case of a minor aged 14 or older who files
14 a written objection to such access with the custodian of the records. The parent,
15 guardian or person in the place of a parent of other minors shall have the same rights
16 of access as provided to subject individuals under this section.

17 **SECTION 71.** 51.30 (5) (e) of the statutes is amended to read:

18 51.30 (5) (e) *Temporary guardian for adult alleged to be incompetent.* If an
19 adult is ~~believed~~ alleged to be incompetent, under the requirements of s. 54.10 (3),
20 to consent to the release of records under this section, but no guardian has been
21 appointed for ~~such~~ the individual, consent for the release of records may be given by
22 a temporary guardian who is appointed for the purpose of deciding upon the release
23 of records.

24 **SECTION 72.** 51.35 (7) of the statutes is amended to read:

SENATE BILL 391**SECTION 72**

1 51.35 (7) GUARDIANSHIP AND PROTECTIVE SERVICES. Prior to discharge from any
2 state treatment facility, the department shall review the possible need of a
3 developmentally disabled individual, aged infirm individual, or ~~person~~ individual
4 with other like incapacities for protective services or protective placement under ch.
5 55 after discharge, including the necessity for appointment of a guardian ~~or limited~~
6 guardian. The department shall petition for ~~limited or full~~ guardianship, or for
7 protective services or protective placement for the person if needed. When the
8 department makes a petition for guardianship under this subsection, it shall not be
9 appointed as guardian.

10 **SECTION 73.** 51.40 (title) of the statutes is amended to read:

11 **51.40** (title) ~~Residence of developmentally disabled or chronically~~
12 ~~mentally ill~~ **Determination of residence for certain adults; county of**
13 **responsibility.**

14 **SECTION 74.** 51.40 (1) (e) of the statutes is amended to read:

15 51.40 (1) (e) “County of responsibility” means the county responsible for
16 funding the provision of care, treatment, or services under this chapter or ch. 46 or
17 55 to an individual.

18 **SECTION 75.** 51.40 (1) (em) of the statutes is created to read:

19 51.40 (1) (em) “Facility” means a place, other than a hospital, that is licensed,
20 registered, certified, or approved by the department or a county under ch. 50 or 51.

21 **SECTION 76.** 51.40 (1) (f) of the statutes is amended to read:

22 51.40 (1) (f) “Guardian” means a guardian of the person appointed by a court
23 under ch. 54 or ch. 880, 2003 stats.

24 **SECTION 77.** 51.40 (1) (g) 1. of the statutes is amended to read:

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1 51.40 (1) (g) 1. The status of an individual who has had a guardian appointed
2 under ch. 880, unless the court made a specific finding under s. 880.33 (3) that the
3 individual is competent to make an informed choice of a place to live.

4 **SECTION 78.** 51.40 (1) (h) of the statutes is repealed.

5 **SECTION 79.** 51.40 (1) (hm) of the statutes is created to read:

6 51.40 (1) (hm) "Other like incapacities" has the meaning given in s. 55.01 (5).

7 **SECTION 80.** 51.40 (1) (m) of the statutes is created to read:

8 51.40 (1) (m) "Voluntary" has the meaning given in s. 49.001 (8).

9 **SECTION 81.** 51.40 (2) (intro.) of the statutes is amended to read:

10 51.40 (2) DETERMINATION OF COUNTY OF RESIDENCE. (intro.) ~~For purposes of~~
11 ~~determining responsibility for funding the provision of services under chs. 46, 51 and~~
12 ~~55, the~~ The county of residence of individuals an individual aged 18 or older with
13 developmental disability or chronic serious and persistent mental illness in state
14 facilities or nursing homes, degenerative brain disorder, or other like incapacity who
15 is residing in a facility is the county of responsibility for the individual. The county
16 of residence shall be determined as follows:

17 **SECTION 82.** 51.40 (2) (a) 1. of the statutes is amended to read:

18 51.40 (2) (a) 1. 'Commitment or protection protective placement or protective
19 services.' If an individual is under a court order of commitment under this chapter
20 or protective placement or protective services under s. 55.06, the individual remains
21 a resident of the county in which he or she has residence at the time the initial
22 commitment or initial order for protective placement or protective services is made.
23 If the court makes no specific finding of a county of residence, the individual is a
24 resident of the county in which the court is located. After notice, including notice to
25 the corporation counsel of each affected county by certified mail, after opportunity

SENATE BILL 391**SECTION 82**

1 to be heard has been provided to all affected counties and parties, and if there is no
2 objection, the court may make a specific finding of a county of residence. If any
3 affected county or party objects to the court's proposed finding, the county or party
4 may request the department to make a determination under par. (g). Any transfer
5 of venue may be suspended until the department's determination is final.

6 **SECTION 83.** 51.40 (2) (a) 2. of the statutes is amended to read:

7 51.40 (2) (a) 2. 'Placement by a county.' Except for the provision of emergency
8 services under s. 51.15, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12) or 55.06 (11),
9 if a county department or an agency of a county department arranges places or
10 makes arrangements for placement of the individual into a state facility or nursing
11 home, the individual is a resident of the county of that county department. Any
12 agency of the county department is deemed to be acting on behalf of the county
13 department in arranging placing or making arrangements for placement.
14 Placement of an individual by a county department or an agency of a county
15 department in a facility outside the jurisdiction of the county department or agency
16 does not transfer the individual's legal residence to the county in which the facility
17 is located. If a resident of a county is physically present in another county and is in
18 need of immediate care, the county in which the individual is present may provide
19 for his or her immediate needs under s. 51.15, 51.20, 51.42 (1) (b), 51.437 (4) (c), or
20 51.45 (11) or (12), or ch. 54 or 55, without becoming the individual's county of
21 residence.

22 **SECTION 84.** 51.40 (2) (b) (intro.) of the statutes is amended to read:

23 51.40 (2) (b) *Other admissions.* (intro.) If par. (a) does not apply, ~~one of the~~
24 following shall apply the county of residence shall be determined as follows:

25 **SECTION 85.** 51.40 (2) (b) 1. of the statutes is amended to read:

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1 51.40 (2) (b) 1. 'Individuals in state facilities.' An individual who is in a state
2 facility is a resident of the county in which he or she was a resident at the time the
3 admission to the state facility was made. This subdivision may not be applied to
4 change residence from a county, other than the county in which the facility is located,
5 which that has accepted responsibility for or provided services to the individual prior
6 to August 1, 1987 before the effective date of this subdivision [revisor inserts date].

7 **SECTION 86.** 51.40 (2) (b) 2. (intro.) of the statutes is amended to read:

8 51.40 (2) (b) 2. 'Individuals in nursing homes.' (intro.) The following are
9 presumptions regarding the county of residence of an individual in a nursing home
10 that may be overcome by substantial evidence that clearly establishes other county
11 residence:

12 ag. An individual in a nursing home who was admitted under s. 50.04 (2r) to
13 the nursing home on or after August 1, 1987 the effective date of this subd. 2. ag.
14 [revisor inserts date], is a resident of the county which that approved the admission
15 under s. 50.04 (2r).

16 bg. An individual residing in a nursing home on August 1, 1987 the effective
17 date of this subd. 2. bg. [revisor inserts date], is presumed to be a resident of the
18 county in which the individual is physically present unless another county accepts
19 the individual as a resident. The presumption of residence may be overcome by
20 substantial evidence which clearly establishes residence in another county in one of
21 the following ways:

22 **SECTION 87.** 51.40 (2) (b) 2. a. of the statutes is renumbered 51.40 (2) (b) 2. cg.
23 and amended to read:

24 51.40 (2) (b) 2. cg. The If the individual had an established residence in another
25 county prior to entering the nursing home; the individual or the individual's

SENATE BILL 391**SECTION 87**

1 guardian, if any, indicates an intent that the individual will return to that county
2 when the purpose of entering the nursing home has been accomplished or when
3 needed care and services can be obtained in ~~the other~~ that county; and the individual,
4 when capable of indicating intent, or a guardian for the individual, has made no
5 clearly documented expression to a court or county department of an intent to
6 establish residence elsewhere since leaving that county, the individual is a resident
7 of that county.

8 **SECTION 88.** 51.40 (2) (b) 2. b. of the statutes is renumbered 51.40 (2) (b) 2. dg.
9 and amended to read:

10 51.40 (2) (b) 2. dg. ~~The~~ If the individual is incapable of indicating intent as
11 determined by the county department, has no guardian, ordinarily resides in
12 another county, and is expected to return to that county within one year, the
13 individual is a resident of that county.

14 **SECTION 89.** 51.40 (2) (b) 2. c. of the statutes is renumbered 51.40 (2) (b) 2. eg.
15 and amended to read:

16 51.40 (2) (b) 2. eg. ~~Another~~ If another county has accepted responsibility for or
17 provided services to the individual prior to ~~August 1, 1987~~ the effective date of this
18 subd. 2. eg. [revisor inserts date], the individual is a resident of that county.

19 **SECTION 90.** 51.40 (2) (b) 2. d. of the statutes is renumbered 51.40 (2) (b) 2. fg.
20 and amended to read:

21 51.40 (2) (b) 2. fg. ~~The~~ If the individual is incapable of indicating intent; the
22 individual was living in another county outside of a nursing home or state facility on
23 ~~December 1, 1982~~ the effective date of this subd. 2. fg. [revisor inserts date], or
24 under circumstances ~~which~~ that established residence in that county after ~~December~~
25 ~~1, 1982~~ the effective date of this subd. 2. fg. [revisor inserts date]; and that county

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1 was the last county in which the individual had residence while living outside of a
2 nursing home or state facility, the individual is a resident of that county.

3 **SECTION 91.** 51.40 (2) (b) 2. g. of the statutes is created to read:

4 51.40 (2) (b) 2. g. If subd. 2. ag. to fg. does not apply, an individual who is
5 incapable of indicating intent and is residing in a facility is a resident of the county
6 in which the individual resided before admittance to the facility.

7 **SECTION 92.** 51.40 (2) (f) of the statutes is repealed and recreated to read:

8 51.40 (2) (f) *Guardian's authority to declare county of residence.* A guardian
9 may declare any of the following, under any of the following conditions:

10 1. The ward is a resident of the guardian's county of residence, if pars. (a) and
11 (b) do not apply, if the guardian's ward is in a facility and is incapable of indicating
12 intent, and if the guardian is a resident of the county in which the facility is located
13 or states in writing that the ward is expected to return to the guardian's county of
14 residence when the purpose of entering the facility has been accomplished or when
15 needed care and services can be obtained in the guardian's county of residence.

16 2. The ward is a resident of the county in which the ward is physically present,
17 if pars. (a) and (b) do not apply and if all of the following apply:

18 a. The ward's presence in the county is voluntary.

19 b. There is no current order under ch. 55 in effect with respect to the ward, and
20 the ward is not under an involuntary commitment order to the department of
21 corrections or to a county other than the county in which the ward is physically
22 present.

23 c. The ward is living in a place of fixed habitation.

24 d. The guardian states in writing that it is the ward's intent to remain in the
25 county for the foreseeable future.

SENATE BILL 391**SECTION 92**

1 3. The ward is a resident of the county specified by the guardian, regardless if
2 a previous determination of county of residence has been made, notwithstanding
3 pars. (a) and (b) for good cause shown, if, in the ward's best interest, the guardian files
4 with the probate court having jurisdiction of the guardianship and protective
5 placement a written statement declaring the ward's domiciliary intent, subject to
6 court approval, and if notice and opportunity to be heard are provided to all affected
7 counties and parties. Notice under this subdivision shall be sent to the corporation
8 counsel of each affected county by certified mail.

9 **SECTION 93.** 51.40 (2) (g) 1. of the statutes is amended to read:

10 51.40 (2) (g) 1. An individual, an interested person on behalf of the individual,
11 or any county may request that the department make a determination of the county
12 of responsibility of the individual. Any motion for change of venue pending before
13 the court of jurisdiction may be stayed until the determination under this paragraph
14 is final. Within 10 days after receiving the request, the department shall provide
15 written notice to the individual,; to the individual's guardian, guardian ad litem, and
16 counsel, if any; to the individual's immediate family, if they can be located; and to all
17 potentially responsible counties that a determination of county of responsibility
18 shall be made and that written information and comments may be submitted within
19 30 days after the date on which the notice is sent.

20 **SECTION 94.** 51.40 (2) (g) 6. of the statutes is created to read:

21 51.40 (2) (g) 6. The county that is determined to be the county of responsibility
22 shall reimburse any other county for all care, treatment, and services provided by the
23 other county to the individual under ch. 46, 51, or 55. Full reimbursement by the
24 county that is determined to be the county of responsibility shall be made within 120
25 days after the date of the department's determination of the county of responsibility

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1 or within 120 days after the date of the outcome of any appeal of the department's
2 determination that is brought under ch. 227, or by a date or under a schedule of 2 or
3 more payments that is agreed to by both counties.

4 **SECTION 95.** 51.45 (2) (e) of the statutes is amended to read:

5 51.45 (2) (e) "Incompetent person" means a person who has been adjudged
6 incompetent by the circuit court, as defined in s. 54.01 (4).

7 **SECTION 96.** 51.45 (10) (a) of the statutes is amended to read:

8 51.45 (10) (a) An adult alcoholic may apply for voluntary treatment directly to
9 an approved public treatment facility. If the proposed patient is an individual
10 adjudicated incompetent person in this state who has not been deprived by a court
11 of the right to contract under subch. I of ch. 880, the person individual or a legal his
12 or her guardian or other legal representative may make the application. If the
13 proposed patient is an individual adjudicated incompetent person in this state who
14 has been deprived by a court of the right to contract under subch. I of ch. 880, a legal,
15 the individual's guardian or other legal representative may make the application.

16 **SECTION 97.** 51.45 (10) (c) of the statutes is amended to read:

17 51.45 (10) (c) If a patient receiving inpatient care leaves an approved public
18 treatment facility, the patient shall be encouraged to consent to appropriate
19 outpatient or intermediate treatment. If it appears to the superintendent in charge
20 of the treatment facility that the patient is an alcoholic or intoxicated person who
21 requires help, the county department shall arrange for assistance in obtaining
22 supportive services and residential facilities. If the patient is an individual who is
23 adjudicated incompetent person, the request for discharge from an inpatient facility
24 shall be made by a legal guardian or other legal representative or by the individual
25 who is adjudicated incompetent if he or she was the original applicant.

SENATE BILL 391**SECTION 98**

1 **SECTION 98.** 51.45 (13) (c) of the statutes is amended to read:

2 51.45 (13) (c) Effective and timely notice of the preliminary hearing, together
3 with a copy of the petition and supporting affidavits under par. (a), shall be given to
4 the person unless he or she has been taken into custody under par. (b), the spouse
5 or legal guardian if the person is adjudicated incompetent, the person's counsel, and
6 the petitioner. The notice shall include a written statement of the person's right to
7 an attorney, the right to trial by jury, the right to be examined by a physician, and
8 the standard under which he or she may be committed under this section. If the
9 person is taken into custody under par. (b), upon arrival at the approved public
10 treatment facility, the person shall be advised both orally and in writing of the right
11 to counsel, the right to consult with counsel before a request is made to undergo
12 voluntary treatment under sub. (10), the right not to converse with examining
13 physicians, psychologists or other personnel, the fact that anything said to
14 examining physicians, psychologists or other personnel may be used as evidence
15 against him or her at subsequent hearings under this section, the right to refuse
16 medication under s. 51.61 (6), the exact time and place of the preliminary hearing
17 under par. (d), the right to trial by jury, the right to be examined by a physician and
18 of the reasons for detention, and the standards under which he or she may be
19 committed prior to all interviews with physicians, psychologists, or other personnel.
20 Such notice of rights shall be provided to the person's immediate family if they can
21 be located and may be deferred until the person's incapacitated condition, if any, has
22 subsided to the point where the person is capable of understanding the notice. Under
23 no circumstances may interviews with physicians, psychologists, or other personnel
24 be conducted until such notice is given, except that the person may be questioned to
25 determine immediate medical needs. The person may be detained at the facility to

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1 which he or she was admitted or, upon notice to the attorney and the court,
2 transferred by the county department to another appropriate public or private
3 treatment facility, until discharged under this subsection. A copy of the petition and
4 all supporting affidavits shall be given to the person at the time notice of rights is
5 given under this paragraph by the superintendent, who shall provide a reasonable
6 opportunity for the patient to consult counsel.

7 **SECTION 99.** 51.45 (13) (e) of the statutes is amended to read:

8 51.45 (13) (e) Upon a finding of probable cause under par. (d), the court shall
9 fix a date for a full hearing to be held within 14 days. An extension of not more than
10 14 days may be granted upon motion of the person sought to be committed upon a
11 showing of cause. Effective and timely notice of the full hearing, the right to counsel,
12 the right to jury trial, and the standards under which the person may be committed
13 shall be given to the person, the immediate family other than a petitioner under par.
14 (a) or sub. (12) (b) if they can be located, the spouse or legal guardian if the person
15 is adjudicated incompetent, the superintendent in charge of the appropriate
16 approved public treatment facility if the person has been temporarily committed
17 under par. (b) or sub. (12), the person's counsel, unless waived, and to the petitioner
18 under par. (a). Counsel, or the person if counsel is waived, shall have access to all
19 reports and records, psychiatric and otherwise, which have been made prior to the
20 full hearing on commitment, and shall be given the names of all persons who may
21 testify in favor of commitment and a summary of their proposed testimony at least
22 96 hours before the full hearing, exclusive of Saturdays, Sundays and legal holidays.

23 **SECTION 100.** 51.61 (1) (o) of the statutes is amended to read:

24 51.61 (1) (o) Except as otherwise provided, have a right not to be filmed or
25 taped, unless the patient signs an informed and voluntary consent that specifically

SENATE BILL 391**SECTION 100**

1 authorizes a named individual or group to film or tape the patient for a particular
2 purpose or project during a specified time period. The patient may specify in such
3 the consent periods during which, or situations in which, the patient may not be
4 filmed or taped. If a patient is legally adjudicated incompetent, such the consent
5 shall be granted on behalf of the patient by the patient's guardian. A patient in
6 Goodland Hall at the Mendota Mental Health Institute, or a patient detained or
7 committed under ch. 980 and placed in a facility specified under s. 980.065, may be
8 filmed or taped for security purposes without the patient's consent, except that such
9 a patient may not be filmed in patient bedrooms or bathrooms for any purpose
10 without the patient's consent.

11 **SECTION 101.** 51.61 (1) (w) 3. of the statutes is amended to read:

12 51.61 (1) (w) 3. A patient, a patient's relative who may be liable for the cost of
13 the patient's care and treatment, or a patient's guardian may request information
14 about charges for care and treatment services at the treatment facility or community
15 mental health program. If a treatment facility or community mental health program
16 receives such a request, the treatment facility or community mental health program
17 shall promptly provide to the individual making the request written information
18 about the treatment facility's or community mental health program's charges for
19 care and treatment services. Unless the request is made by the patient, the guardian
20 of a patient ~~adjudged~~ adjudicated incompetent under ~~ch. 880 in this state~~, the parent
21 or guardian of a minor who has access to the minor's treatment records under s. 51.30
22 (5) (b) 1., or a person designated by the patient's informed written consent under s.
23 51.30 (4) (a) as a person to whom information may be disclosed, information released
24 under this subdivision is limited to general information about the treatment facility's

SENATE BILL 391**SECTION 101**

1 or community mental health program's charges for care and treatment services and
2 may not include information which may not be disclosed under s. 51.30.

3 **SECTION 102.** Chapter 54 of the statutes is created to read:

4 **CHAPTER 54**

5 **GUARDIANSHIPS AND CONSERVATORSHIPS**

6 **SUBCHAPTER I**

7 **DEFINITIONS**

8 **54.01 Definitions.** In subchs I to VI:

9 (1) "Activities of daily living" means activities relating to the performance of
10 self care, work, and leisure activities, including dressing, eating, grooming, mobility,
11 and object manipulation.

12 (3) "Conservator" means a person who is appointed by a court at an individual's
13 request under s. 54.76 (2) to manage the estate of the individual.

14 (4) "Court" means the circuit court or judge assigned to exercise probate
15 jurisdiction or the assignee of the judge under s. 757.68 (4m) or 851.73 (1) (g) who is
16 assigned relevant authority.

17 (5) "Decedent" means the deceased individual whose estate is subject to
18 administration.

19 (6) "Degenerative brain disorder" means the loss or dysfunction of an
20 individual's brain cells to the extent that he or she is substantially impaired in his
21 or her ability to provide adequately for his or her own care or custody or to manage
22 adequately his or her property or financial affairs.

23 (7) "Depository account" has the meaning given in s. 815.18 (2) (e).

24 (9) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

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1 **(11)** “Guardian of the estate” means a guardian appointed to comply with the
2 duties specified in s. 54.19 and to exercise any of the powers specified in s. 54.20.

3 **(12)** “Guardian of the person” means a guardian appointed to comply with the
4 duties specified in s. 54.25 (1) and to exercise any of the powers specified in s. 54.25
5 (2).

6 **(13)** “Heir” means any person, including the surviving spouse, who is entitled
7 under the statutes of intestate succession to an interest in property of a decedent.
8 The state is an heir of the decedent and a person interested under s. 45.37 (10) and
9 (11) when the decedent was a member of the Wisconsin Veterans Home at King or
10 at the facilities operated by the department of veterans affairs under s. 45.385 at the
11 time of the decedent’s death.

12 **(14)** “Impairment” means a developmental disability, serious and persistent
13 mental illness, degenerative brain disorder, or other like incapacities.

14 **(15)** “Incapacity” means the inability of an individual effectively to receive and
15 evaluate information or to make or communicate a decision with respect to the
16 exercise of a right or power.

17 **(16)** “Individual found incompetent” means an individual who has been
18 adjudicated by a court as meeting the requirements of s. 54.10 (3).

19 **(17)** “Interested person” means any of the following:

20 (a) For purposes of a petition for guardianship, any of the following:

21 1. The proposed ward, if he or she has attained 14 years of age.

22 2. The spouse or adult child of the proposed ward, or the parent of a proposed
23 ward who is a minor.

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1 3. For a proposed ward who has no spouse, child, or parent, an heir, as defined
2 in s. 851.09, of the proposed ward that may be reasonably ascertained with due
3 diligence.

4 4. Any individual who is nominated as guardian, any individual who is
5 appointed to act as guardian or fiduciary for the proposed ward by a court of any
6 state, any trustee for a trust established by or for the proposed ward, any person
7 appointed as agent under a power of attorney for health care, as defined in s. 155.01
8 (4), or any person appointed as agent under a durable power of attorney under ch.
9 243.

10 5. If the proposed ward is a minor, the individual who has exercised principal
11 responsibility for the care and custody of the proposed ward during the period of 60
12 consecutive days immediately before the filing of the petition.

13 6. If the proposed ward is a minor and has no living parent, any individual
14 nominated to act as fiduciary for the minor in a will or other written instrument that
15 was executed by a parent of the minor.

16 7. If the proposed ward is receiving moneys paid, or if moneys are payable, by
17 the federal department of veterans affairs, a representative of the federal
18 department of veterans affairs, or, if the proposed ward is receiving moneys paid, or
19 if moneys are payable, by the state department of veterans affairs, a representative
20 of the state department of veterans affairs.

21 8. If the proposed ward is receiving long-term support services or similar public
22 benefits, the county department of human services or social services that is providing
23 the services or benefits.

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1 9. The corporation counsel of the county in which the petition is filed and, if the
2 petition is filed in a county other than the county of the proposed ward's residence,
3 the corporation counsel of the county of the proposed ward's residence.

4 10. Any other person required by the court.

5 (b) For purposes of proceedings subsequent to an order for guardianship, any
6 of the following:

7 1. The guardian.

8 2. The spouse or adult child of the ward or the parent of a minor ward.

9 3. The county of venue, through the county's corporation counsel, if the county
10 has an interest.

11 4. Any person appointed as agent under a durable power of attorney under ch.
12 243, unless the agency is revoked or terminated by a court.

13 5. Any other individual that the court may require, including any fiduciary that
14 the court may designate.

15 **(18)** "Least restrictive" means that which places the least possible restriction
16 on personal liberty and the exercise of rights and that promotes the greatest possible
17 integration of an individual into his or her community that is consistent with
18 meeting his or her essential requirements for health, safety, habilitation, treatment,
19 and recovery and protecting him or her from abuse, exploitation, and neglect.

20 **(19)** "Meet the essential requirements for physical health or safety" means
21 perform those actions necessary to provide the health care, food, shelter, clothes,
22 personal hygiene, and other care without which serious physical injury or illness will
23 likely occur.

24 **(21)** "Mortgage" means any agreement or arrangement in which property is
25 used as security.

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1 **(23)** “Personal representative” means any individual to whom letters to
2 administer a decedent’s estate have been granted by the court or by the probate
3 registrar under ch. 865, but does not include a special administrator.

4 **(24)** “Physician” has the meaning given in s. 448.01 (5).

5 **(25)** “Property” means any interest, legal or equitable, in real or personal
6 property, without distinction as to kind, including money, rights of a beneficiary
7 under a contractual arrangement, choses in action, and anything else that may be
8 the subject of ownership.

9 **(26)** “Proposed ward” means a minor, an individual alleged to be incompetent,
10 or an alleged spendthrift, for whom a petition for guardianship is filed.

11 **(27)** “Psychologist” has the means a licensed psychologist, as defined in s.
12 455.01 (4).

13 **(28)** “Psychotropic medication” means a prescription drug, as defined in s.
14 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging
15 behavior.

16 **(29)** “Sale” includes an option or agreement to transfer whether the
17 consideration is cash or credit. It includes exchange, partition, and settlement of title
18 disputes. The intent of this subsection is to extend and not to limit the meaning of
19 “sale.”

20 **(30)** “Serious and persistent mental illness” means a mental illness that is
21 severe in degree and persistent in duration, that causes a substantially diminished
22 level of functioning in the primary aspects of daily living and an inability to cope with
23 the ordinary demands of life, that may lead to an inability to maintain stable
24 adjustment and independent functioning without long-term treatment and support
25 and that may be of lifelong duration. “Serious and persistent mental illness” includes

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1 schizophrenia as well as a wide spectrum of psychotic and other severely disabling
2 psychiatric diagnostic categories, but does not include degenerative brain disorder
3 or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

4 **(32)** “Standby conservator” means an individual designated by the court under
5 s. 54.76 (2) whose appointment as conservator becomes effective immediately upon
6 the death, resignation, or court’s removal of the initially appointed conservator, or
7 if the initially appointed conservator is temporarily or permanently unable,
8 unavailable, or unwilling to fulfill his or her duties.

9 **(33)** “Standby guardian” means an individual designated by the court under
10 s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the
11 death, resignation, or court’s removed of the initially appointed guardian, or if the
12 initially appointed guardian is temporarily or permanently unable, unavailable, or
13 unwilling to fulfill his or her duties.

14 **(34)** “Successor conservator” means an individual appointed under s. 54.76 (9).

15 **(35)** “Successor guardian” means an individual appointed under s. 54.54.

16 **(36)** “Surviving spouse” means an individual who was married to the decedent
17 at the time of the decedent’s death. “Surviving spouse” does not include any of the
18 following:

19 (a) An individual who obtains or consents to a final decree or judgment of
20 divorce from the decedent or an annulment of their marriage, if the decree or
21 judgment is not recognized as valid in this state, unless the 2 subsequently
22 participated in a marriage ceremony purporting to marry each other or they
23 subsequently held themselves out as husband and wife.

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1 (b) An individual who, following an invalid decree or judgment of divorce or
2 annulment obtained by the decedent, participates in a marriage ceremony with a 3rd
3 individual.

4 (c) An individual who was party to a valid proceeding concluded by an order
5 purporting to terminate all property rights based on the marriage with the decedent.

6 **(38)** “Will” includes a codicil and any document incorporated by reference in a
7 testamentary document under s. 853.32 (1) or (2). “Will” does not include a copy,
8 unless the copy has been proven as a will under s. 856.17, but “will” does include a
9 properly executed duplicate original.

10 SUBCHAPTER II

11 APPOINTMENT OF GUARDIAN

12 **54.10 Appointment of guardian. (1)** A court may appoint a guardian of the
13 person or a guardian of the estate, or both, for a proposed ward if the court determines
14 that the individual is a minor.

15 **(2)** A court may appoint a guardian of the person or a guardian of the estate,
16 or both for a proposed ward if the court determines by clear and convincing evidence
17 that the individual is a spendthrift.

18 **(3) (a)** A court may appoint a guardian of the person or a guardian of the estate,
19 or both, for an individual based on a finding that the individual is incompetent only
20 if the court finds by clear and convincing evidence that all of the following are true:

21 1. The individual is aged at least 17 years and 9 months.

22 2. For purposes of appointment of a guardian of the person, because of an
23 impairment, the individual is unable effectively to receive and evaluate information
24 or to make or communicate decisions to such an extent that the individual is unable
25 to meet the essential requirements for his or her physical health and safety.

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1 3. For purposes of appointment of a guardian of the estate, because of an
2 impairment, the individual is unable effectively to receive and evaluate information
3 or to make or communicate decisions related to management of his or her property
4 or financial affairs, to the extent that any of the following applies:

5 a. The individual has property that will be dissipated in whole or in part.

6 b. The individual is unable to provide for his or her support.

7 c. The individual is unable to prevent financial exploitation.

8 4. The individual's need for assistance in decision making or communication
9 is unable to be met effectively and less restrictively through appropriate and
10 reasonably available training, education, support services, health care, assistive
11 devices, or other means that the individual will accept.

12 (b) Unless the proposed ward is unable to communicate decisions effectively in
13 any way, the determination under par. (a) may not be based on mere old age,
14 eccentricity, poor judgment, or physical disability.

15 (c) In appointing a guardian under this subsection, declaring incompetence to
16 exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate
17 for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2) (d), the court shall
18 consider all of the following:

19 1. The report of the guardian ad litem, as required in s. 54.40 (4).

20 2. The medical or psychological report provided under s. 54.36 (1) and any
21 additional medical, psychological, or other evaluation ordered by the court under s.
22 54.40 (4) (e) or offered by a party and received by the court.

23 3. Whether the proposed ward has engaged in any advance planning for
24 financial and health care decision making that would avoid guardianship, including

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1 by executing a durable power of attorney under ch. 243, a power of attorney for health
2 care, as defined in s. 155.01 (10), a trust, or a jointly held account.

3 4. Whether other reliable resources are available to provide for the individual's
4 personal needs or property management, and whether appointment of a guardian is
5 the least restrictive means to provide for the individual's need for a substitute
6 decision maker.

7 5. The preferences, desires, and values of the individual with regard to personal
8 needs or property management.

9 6. The nature and extent of the individual's care and treatment needs and
10 property and financial affairs.

11 7. Whether the individual's situation places him or her at risk of abuse,
12 exploitation, neglect, or violation of rights.

13 8. Whether the individual can adequately understand and appreciate the
14 nature and consequences of his or her impairment.

15 9. The individual's management of the activities of daily living.

16 10. The individual's understanding and appreciation of the nature and
17 consequences of any inability he or she may have with regard to personal needs or
18 property management.

19 11. The extent of the demands placed on the individual by his or her personal
20 needs and by the nature and extent of his or her property and financial affairs.

21 12. Any physical illness of the individual and the prognosis of the individual.

22 13. Any mental disability, alcoholism, or other drug dependence of the
23 individual and the prognosis of the mental disability, alcoholism, or other drug
24 dependence.

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1 14. Any medication with which the individual is being treated and the
2 medication's effect on the individual's behavior, cognition, and judgment.

3 15. Whether the effect on the individual's evaluative capacity is likely to be
4 temporary or long term, and whether the effect may be ameliorated by appropriate
5 treatment.

6 16. Other relevant evidence.

7 (d) Before appointing a guardian under this subsection, declaring
8 incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers
9 it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2) (d),
10 the court shall determine if additional medical, psychological, social, vocational, or
11 educational evaluation is necessary for the court to make an informed decision
12 respecting the individual's competency to exercise legal rights and may obtain
13 assistance in the manner provided in s. 55.06 (8) whether or not protective placement
14 is made.

15 (e) In appointing a guardian under this subsection, the court shall authorize
16 the guardian to exercise only those powers under ss. 54.18, 54.20, and 54.25 (2) (d)
17 that are necessary to provide for the individual's personal needs and property
18 management and to exercise the powers in a manner that is appropriate to the
19 individual and that constitutes the least restrictive form of intervention.

20 (4) If the court appoints both a guardian of the person and a guardian of the
21 estate for an individual, the court may appoint separate persons to be guardian of
22 the person and of the estate, or may appoint one person to act as both.

23 (5) The court may appoint coguardians of the person or coguardians of the
24 estate, subject to any conditions that the court imposes.

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1 4. The proposed guardian is listed under s. 146.40 (4g) (a) 2.

2 (b) If par. (a) 1., 2., 3., or 4. applies to the proposed guardian, he or she shall
3 include in the sworn and notarized statement a description of the circumstances
4 surrounding the applicable event under par. (a) 1., 2., 3., or 4.

5 **54.18 General duties and powers of guardian; limitations; immunity.**

6 **(1)** A ward retains all his or her rights that are not assigned to the guardian or
7 otherwise limited by statute. A guardian acting on behalf of a ward may exercise only
8 those powers that the guardian is authorized to exercise by statute or court order.
9 A guardian may be granted only those powers necessary to provide for the personal
10 needs or property management of the ward in a manner that is appropriate to the
11 ward and that constitutes the least restrictive form of intervention.

12 **(2)** A guardian shall do all of the following:

13 (a) Exercise the degree of care, diligence, and good faith when acting on behalf
14 of a ward that an ordinarily prudent person exercises in his or her own affairs.

15 (b) Advocate for the ward's best interests, including, if the ward is protectively
16 placed under ch. 55 and if applicable, advocating for the ward's applicable rights
17 under ss. 50.09 and 51.61.

18 (c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation
19 to the ward.

20 (d) Notify the court of any change of address of the guardian or ward.

21 **(3)** No guardian may do any of the following:

22 (b) Lend funds of the ward to another individual or to an entity, unless the court
23 first approves the terms, rate of interest, and any requirement for security.

24 **54.19 Duties of guardian of the estate.** Subject to s. 54.18 (1) and except
25 as specifically limited in the order of appointment, the guardian of the estate shall,

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1 following any applicable procedures of s. 54.22, do all of the following in order to
2 provide a ward with the greatest amount of independence and self-determination
3 with respect to property management in light of the ward's functional level,
4 understanding, and appreciation of his or her functional limitations and the ward's
5 personal wishes and preferences with regard to managing the activities of daily
6 living:

7 (2) Retain, expend, distribute, sell, or invest the ward's property, rents, income,
8 benefits, and proceeds and account for all of them, subject to ch. 786.

9 (3) Determine, if the ward has executed a will, the will's location, determine
10 the appropriate persons to be notified in the event of the ward's death, and, if the
11 death occurs, notify those persons.

12 (4) Use the ward's income and property to maintain and support the ward and
13 any dependents of the ward.

14 (5) Prepare and file an annual account as specified in s. 54.62.

15 (6) At the termination of the guardianship, deliver the ward's assets to the
16 persons entitled to them.

17 (8) File, with the register of deeds of any county in which the ward possesses
18 real property of which the guardian has actual knowledge, a sworn and notarized
19 statement that specifies the legal description of the property, the date that the ward
20 is determined to be an incompetent, and the name, address, and telephone number
21 of the ward's guardian and any surety on the guardian's bond.

22 (9) Perform any other duty required by the court order.

23 **54.20 Powers of guardian of the estate.** (1) (a) The ward's understanding
24 of the harm that he or she is likely to suffer as the result of his or her inability to
25 manage property and financial affairs.

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1 (b) The ward's personal preferences and desires with regard to managing his
2 or her activities of daily living.

3 (c) The least restrictive form of intervention for the ward.

4 **(2) POWERS REQUIRING COURT APPROVAL.** The guardian of the estate may do any
5 of the following with respect to the ward's income and assets only with the court's
6 prior written approval following any petition and upon any notice and hearing that
7 the court requires:

8 (a) Make gifts, under the terms, including the frequency, amount, and donees
9 specified by the court in approval of a petition under s. 54.21.

10 (c) Establish a trust as specified under 42 USC 1396p (d) (4) and transfer assets
11 into the trust.

12 (d) Purchase an annuity or insurance contract and exercise rights to elect
13 options or change beneficiaries under insurance and annuity policies and to
14 surrender the policies for their cash value.

15 (e) Ascertain, establish, and exercise any rights available to the ward under a
16 retirement plan or account.

17 (f) Exercise any elective rights that accrue to the ward as the result of the death
18 of the ward's spouse or parent.

19 (g) Release or disclaim, under s. 854.13, any interest of the ward that is received
20 by will, intestate succession, nontestamentary transfer at death, or other transfer.

21 (i) Provide support for an individual whom the ward is not legally obligated to
22 support.

23 (j) Convey or release a contingent or expectation interest in property, including
24 a marital property right and any right of survivorship that is incidental to a joint
25 tenancy or survivorship marital property.

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1 **(3) POWERS THAT DO NOT REQUIRE COURT APPROVAL.** The guardian of the estate
2 may do any of the following on behalf of the ward without first receiving the court's
3 approval:

4 (a) Provide support from the ward's income and assets for an individual whom
5 the ward is legally obligated to support.

6 (b) Enter into a contract, other than a contract under sub. (2) or that is
7 otherwise prohibited under this chapter.

8 (c) Exercise options of the ward to purchase securities or other property.

9 (d) Authorize access to or release of the ward's confidential financial records.

10 (e) Apply for public and private benefits.

11 (k) Take any other action, except an action specified under sub. (2), that is
12 reasonable or appropriate to the duties of the guardian of the estate.

13 **54.21 Petition to transfer ward's assets to another.** (1) In this section:

14 (a) "Disabled" has the meaning given in s. 49.468 (1) (a) 1.

15 (b) "Other individual" means any of the following:

16 1. The ward's spouse, if any.

17 2. The ward's close friend, if any, and if the close friend meets the requirements
18 of s. 50.94 (3) (e) 1. and 2.

19 3. The guardian ad litem of the ward's minor child, if any.

20 4. The ward's disabled child, if any.

21 5. Any of the ward's siblings who has an ownership interest in property that
22 is co-owned with the ward.

23 6. Any of the ward's children who provides care for the ward as specified in 42
24 USC 1396p (c) (2) (A) iv.

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1 (c) “Will, trust, or other instrument” includes a revocable or irrevocable trust,
2 a durable power of attorney, or a marital property agreement.

3 (2) A guardian or other individual who seeks an order authorizing and
4 directing the guardian of the estate to transfer any of a ward’s income or assets to
5 or for the benefit of any person shall submit to the court a petition that specifies all
6 of the following:

7 (a) Whether a proceeding by anyone seeking this authority with respect to the
8 ward’s income and assets was previously commenced and, if so, a description of the
9 nature of the proceeding and the disposition made of it.

10 (b) The amount and nature of the ward’s financial obligations, including
11 moneys currently and prospectively required to provide for the ward’s maintenance,
12 support, and well-being and to provide for others dependent upon the ward for
13 support, regardless of whether the ward is legally obligated to provide the support.
14 If the petitioner has access to a copy of a court order or written agreement that
15 specifies support obligations of the ward, the petitioner shall attach the copy to the
16 petition.

17 (c) The income and assets of the ward that is the subject of the petition, the
18 proposed disposition of the property, and the reasons for the disposition.

19 (d) The wishes, if ascertainable, of the ward.

20 (e) As specified in sub. (3), whether the ward has previously executed a will or
21 similar instrument.

22 (f) A description of any significant gifts or patterns of gifts that the ward has
23 made.

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1 (g) The current and likely future effect of the proposed transfer of assets on the
2 ward's eligibility for public benefits, including medical assistance or a benefit under
3 s. 46.27.

4 (h) Whether the guardian of the person and the guardian of the estate, if not
5 the petitioner, agree with or object to the transfer.

6 (i) The names, post-office addresses, and relationships to the ward of all of the
7 following:

8 1. Any presumptive adult heirs of the ward who can be ascertained with
9 reasonable diligence.

10 2. If the ward has previously executed a will, trust, or other instrument, the
11 named or described beneficiaries, if known, under the most recent will, trust, or other
12 instrument executed by the ward.

13 **(3)** (a) If a ward has previously executed a will, trust, or other instrument for
14 nontestamentary transfer and the petitioner is able, with reasonable diligence, to
15 obtain a copy, the petitioner shall provide the copy to the court, together with a
16 statement that specifies all of the following:

17 1. The manner in which the copy was secured.

18 2. The manner in which the terms of the will, trust, or other instrument for
19 nontestamentary transfer became known to the petitioner for nontestamentary
20 transfer.

21 3. The basis for the petitioner's belief that the copy is of the ward's most recently
22 executed will, trust, or other instrument.

23 (b) If the petitioner is unable to obtain a copy of the most recently executed will
24 or other dispositive estate planning document or is unable to determine if the ward
25 has previously executed a will or other dispositive estate planning document, the

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1 petitioner shall provide a statement to the court that specifies the efforts that were
2 made by the petitioner to obtain a copy or ascertain the information.

3 (c) If a copy of the most recently executed will or other dispositive estate
4 planning document is not otherwise available, the court may order the person who
5 has the original will or other dispositive estate planning document to provide a
6 photocopy to the court for in camera examination. The court may provide the
7 photocopy to the parties to the proceeding unless the court finds that doing so is
8 contrary to the ward's best interests.

9 (d) The petitioner and the court shall keep confidential the information in a will
10 or other dispositive estate planning document, or a copy of the will or other
11 dispositive estate planning document, under this subsection, and may not, unless
12 otherwise authorized, disclose that information.

13 **(4)** The petitioner shall serve notice upon all of the following, together with a
14 copy of the petition, stating that the petitioner will move the court, at a time and
15 place named in the notice, for the order described in the petition:

16 (a) If not the same as the petitioner, the guardian of the person and the
17 guardian of the estate.

18 (b) Unless the court dispenses with notice under this subsection, the persons
19 specified in sub. (2) (i), if known to the petitioner.

20 (c) The county corporation counsel, if the county has an interest in the matter.

21 **(5)** The court shall consider all of the following in reviewing the petition:

22 (a) The wishes of the ward, if known.

23 (b) Whether the duration of the ward's impairment is likely to be sufficiently
24 brief so as to justify dismissal of the proceedings in anticipation of the ward's
25 recovered ability to decide whether, and to whom, to transfer his or her assets.

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1 (c) Whether the proposed transfer will benefit the ward, the ward's income and
2 assets, or members of the ward's immediate family.

3 (d) Whether the donees or beneficiaries under the proposed disposition are
4 reasonably expected objects of the ward's generosity and whether the proposed
5 disposition is consistent with any ascertained wishes of the ward or known estate
6 plan or pattern of lifetime gifts that he or she has made.

7 (e) Whether the proposed disposition will produce tax savings that will
8 significantly benefit the ward, his or her dependents, or other persons for whom the
9 ward would be concerned.

10 (f) The factors specified in sub. (2) (a) to (i) and any statements or other evidence
11 under sub. (3).

12 (g) Any other factors that the court determines are relevant.

13 **(6)** The court may grant the petition under sub. (2) and enter an order
14 authorizing and directing the guardian of the estate to take action requested in the
15 petition, if the court finds and records all of the following:

16 (a) That the ward has incapacity to perform the act for which approval is sought
17 and the incapacity is not likely to change positively within a reasonable period of
18 time.

19 (b) That a competent individual in the position of the ward would likely perform
20 the act under the same circumstances.

21 (c) That, before the ward had incapacity to perform the act for which approval
22 is sought, he or she did not manifest intent that is inconsistent with the act.

23 **(7)** Nothing in this section requires a guardian to file a petition under this
24 section and a guardian is not liable or accountable to any person for having failed to
25 file a petition under this section.

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1 54.25 (1) DUTIES. A guardian of the person shall do all of the following:

2 (b) 1. Regular inspection, in person, of the ward's condition, surroundings, and
3 treatment.

4 2. Examination of the ward's patient health care records and treatment records
5 and authorization for redisclosure as appropriate.

6 3. Attendance and participation in staff meetings of any facility in which the
7 ward resides or is a patient, if the meeting includes a discussion of the ward's
8 treatment and care.

9 4. Inquiry into the risks and benefits of, and alternatives to, treatment for the
10 ward, particularly if drastic or restrictive treatment is proposed.

11 5. Specific consultation with providers of health care and social services in
12 making all necessary treatment decisions.

13 (2) POWERS. (a) *Rights and powers of a guardian of the person.* A guardian of
14 the person has only those rights and powers that the guardian is specifically
15 authorized to exercise by statute, rule, or court order. Any other right or power is
16 retained by the ward, unless the ward has been declared incompetent to exercise the
17 right under par. (c) or the power has been transferred to the guardian under par. (d).

18 (b) *Rights retained by individuals determined incompetent.* An individual
19 determined incompetent retains the power to exercise all of the following rights,
20 without consent of the guardian:

21 1. To have access to and communicate privately with the court and with
22 governmental representatives, including the right to have input into plans for
23 support services, the right to initiate grievances, including under state and federal
24 law regarding resident or patient rights, and the right to participate in
25 administrative hearings and court proceedings.

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1 2. To have access to, communicate privately with, and retain legal counsel, with
2 fees paid from the income and assets of the ward, subject to court approval.

3 3. To have access to and communicate privately with representatives of the
4 protection and advocacy agency under s. 51.62 and the board on aging and long-term
5 care.

6 4. To protest a residential placement made under s. 55.05 (5), and to be
7 discharged from a residential placement unless the individual is protectively placed
8 under s. 55.06 or the elements of s. 55.06 (11) are present.

9 5. To petition for court review of guardianship, protective services, protective
10 placement, or commitment orders.

11 6. To give or withhold a consent reserved to the individual under ch. 51.

12 7. To exercise any other rights specifically reserved to the individual by statute
13 or the constitutions of the state or the United States, including the rights to free
14 speech, freedom of association, and the free exercise of religious expression.

15 (c) *Declaration of incompetence to exercise certain rights.* 1. The court may, as
16 part of a proceeding under s. 54.44 in which an individual is found incompetent and
17 a guardian is appointed, declare that the individual has incapacity to exercise one
18 or more of the following rights:

19 a. The right to consent to marriage.

20 b. The right to execute a will.

21 c. The right to serve on a jury.

22 d. The right to apply for an operator's license, a license issued under ch. 29, or
23 a credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is
24 incapable of understanding the nature and risks of the licensed or credentialed
25 activity, to the extent that engaging in the activity would pose a substantial risk of

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1 physical harm to the individual or others. A failure to find that an individual is
2 incapable of applying for a license or credential is not a finding that the individual
3 qualifies for the license or credential under applicable laws and rules.

4 e. The right to consent to sterilization, if the court finds that the individual is
5 incapable of understanding the nature, risk, and benefits of sterilization, after the
6 nature, risk, and benefits have been presented in a form that the individual is most
7 likely to understand.

8 f. The right to consent to organ, tissue, or bone marrow donation.

9 2. Any finding under subd. 1. that an individual lacks evaluative capacity to
10 exercise a right must be based on clear and convincing evidence. In the absence of
11 such a finding, the right is retained by the individual.

12 3. If an individual is declared not competent to exercise a right under subd. 1.
13 or 4., a guardian may not exercise the right or provide consent for exercise of the right
14 on behalf of the individual. If the court finds with respect to a right listed under subd.
15 1. a., d., e., or f. that the individual is competent to exercise the right under some but
16 not all circumstances, the court may order that the individual retains the right to
17 exercise the right only with consent of the guardian of the person.

18 4. Regardless of whether a guardian is appointed, a court may declare that an
19 individual is not competent to exercise the right to register to vote or to vote in an
20 election if it finds by clear and convincing evidence that the individual is incapable
21 of understanding the objective of the elective process. If the petition for a declaration
22 of incompetence to vote is not part of a petition for guardianship, the same
23 procedures shall apply as would apply for a petition for guardianship.

24 The determination of the court shall be communicated in writing by the clerk
25 of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93

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1 with the responsibility for determining challenges to registration and voting that
2 may be directed against that elector. The determination may be reviewed as
3 provided in s. 54.64 (2) (a) and (c) and any subsequent determination of the court
4 shall be likewise communicated by the clerk of court.

5 (d) *Guardian authority to exercise certain powers.* 1. A court may authorize a
6 guardian of the person to exercise all or part of any of the powers specified in subd.
7 2. only if it finds, by clear and convincing evidence, that the individual lacks
8 evaluative capacity to exercise the power. The court shall authorize the guardian of
9 the person to exercise only those powers that are necessary to provide for the
10 individual's personal needs, safety, and rights and to exercise the powers in a manner
11 that is appropriate to the individual and that constitutes the least restrictive form
12 of intervention. The court may limit the authority of the guardian of the person with
13 respect to any power to allow the individual to retain power to make decisions about
14 which the individual is able effectively to receive and evaluate information and
15 communicate decisions. When a court appoints a guardian for a minor, the guardian
16 shall be granted care, custody, and control of the person of the minor.

17 2. All of the following are powers subject to subd. 1.:

18 a. Except as provided under subd. 2. b., c., and d., and except for consent to
19 psychiatric treatment and medication under ch. 51, and subject to any limitation
20 under s. 54.46 (3) (b), the power to give informed consent, if in the ward's best
21 interests, to voluntary or involuntary medical examination and treatment and to the
22 voluntary receipt by the ward of medication, including any appropriate psychotropic
23 medication that is in the ward's best interest, if the guardian has first made a
24 good-faith attempt to discuss with the ward the ward's voluntary receipt of the
25 psychotropic medication and the ward does not protest. For purposes of this subd.

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1 2. a., “protest” means make more than one discernible negative response, other than
2 mere silence, to the offer of, recommendation for, or other proffering of voluntary
3 receipt of psychotropic medication. “Protest” does not mean a discernible negative
4 response to a proposed method of administration of the psychotropic medication. A
5 guardian may consent to the involuntary administration of psychotropic medication
6 only under a court order under s. 55.14. In determining whether medication or
7 medical treatment, other than psychotropic medication, is in the ward’s best interest,
8 the guardian shall consider the invasiveness of the medication or treatment and the
9 likely benefits and side effects of the medication or treatment.

10 b. Unless it can be shown by clear and convincing evidence that the ward would
11 never have consented to research participation, the power to authorize the ward’s
12 participation in an accredited or certified research project if the research might help
13 the ward; or if the research might not help the ward but might help others, and the
14 research involves no more than minimal risk of harm to the ward.

15 c. The power to authorize the ward’s participation in research that might not
16 help the ward but might help others even if the research involves greater than
17 minimal risk of harm to the ward if the guardian can establish by clear and
18 convincing evidence that the ward would have elected to participate in such
19 research; and the proposed research was reviewed and approved by the research and
20 human rights committee of the institution conducting the research. The committee
21 shall have determined that the research complies with the principles of the
22 statement on the use of human subjects for research adopted by the American
23 Association on Mental Deficiency, and with the federal regulations for research
24 involving human subjects for federally supported projects.

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1 d. Unless it can be shown by clear and convincing evidence that the ward would
2 never have consented to any experimental treatment, the power to consent to
3 experimental treatment if the court finds that the ward's mental or physical status
4 presents a life-threatening condition; the proposed experimental treatment may be
5 a life saving remedy; all other reasonable traditional alternatives have been
6 exhausted; 2 examining physicians have recommended the treatment; and, in the
7 court's judgment, the proposed experimental treatment is in the ward's best
8 interests.

9 e. The power to give informed consent to receipt by the ward of social and
10 supported living services.

11 f. The power to give informed consent to release of medical, treatment, and
12 other confidential records and to redisclosure as appropriate.

13 g. The power to make decisions related to mobility and travel.

14 h. The power to admit the individual to residential facilities as provided under
15 s. 55.05 (5), make an emergency protective placement under s. 55.06 (11), or make
16 a temporary protective placement under s. 55.06 (12).

17 i. The power to choose providers of medical, social, and supported living
18 services.

19 j. The power to make decisions regarding educational and vocational placement
20 and support services or employment.

21 k. The power to make decisions regarding initiating a petition for the
22 termination of marriage.

23 L. The power to receive all notices on behalf of the ward.

24 m. The power to act in all proceedings as an advocate of the ward, except the
25 power to enter into a contract that binds the ward or the ward's property or to

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1 represent the ward in any legal proceedings pertaining to the property, unless the
2 guardian of the person is also the guardian of the estate.

3 n. The power to apply for protective placement under s. 55.06 or for
4 commitment under s. 51.20 or 51.45 (13) for the ward.

5 o. The power to have custody of the ward, if an adult, and the power to have
6 care, custody, and control of the ward, if a minor.

7 p. Any other power the court may specifically identify.

8 3. In exercising powers and duties delegated to the guardian of the person
9 under this paragraph, the guardian of the person shall, consistent with meeting the
10 individual's essential requirements for health and safety and protecting the
11 individual from abuse, exploitation, and neglect, do all of the following:

12 a. Place the least possible restriction on the individual's personal liberty and
13 exercise of constitutional and statutory rights, and promote the greatest possible
14 integration of the individual into his or her community.

15 b. Make diligent efforts to identify and honor the individual's preferences with
16 respect to choice of place of living, personal liberty and mobility, choice of associates,
17 communication with others, personal privacy, and choices related to sexual
18 expression and procreation. In making a decision to act contrary to the individual's
19 expressed wishes, the guardian shall take into account the individual's
20 understanding of the nature and consequences of the decision, the level of risk
21 involved, the value of the opportunity for the individual to develop decision-making
22 skills, and the need of the individual for wider experience.

23 c. Consider whether the ward's estate is sufficient to pay for the needed
24 services.

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SUBCHAPTER IV

PROCEDURES

54.30 Jurisdiction and venue.

(3) (b) 1. An interested person shall file a petition for change of venue in the county in which venue for the guardianship currently lies.

2. The person filing the petition under subd. 1. shall give notice to the corporation counsel of the county in which venue for the guardianship currently lies and to the register in probate and corporation counsel for the county to which change of venue is sought.

3. If no objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies may enter an order changing venue. If objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies shall set a date for a hearing within 7 days after the objection is made and shall give notice of the hearing to the corporation counsel of that county and to the corporation counsel and register in probate of the county to which change of venue is sought.

54.34 (1) (k) Whether the proposed ward is a recipient of a public benefit, including medical assistance or a benefit under s. 46.27.

(L) The agent under any current, valid power of attorney for health care or durable power of attorney that the proposed ward has executed.

(m) Whether the petitioner is requesting a full or limited guardianship and, if limited, the specific authority sought by the petitioner for the guardian or the specific rights of the individual that the petitioner seeks to have removed or transferred.

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1 (n) Whether the proposed ward, if married, has children who are not children
2 of the current marriage.

3 (p) Whether there is a petition for guardianship or conservatorship of the
4 proposed ward pending in another state or county.

5 **54.36 (2)** A petitioner or guardian ad litem may petition the court for an order
6 requiring the proposed ward to submit to an examination by a licensed physician or
7 psychologist pursuant to s. 804.10 (1).

8 **(3)** A physician or psychologist who examines a proposed ward under a court
9 order requiring the examination may, without the informed consent of the proposed
10 ward, obtain access to the patient health care records and treatment records of the
11 proposed ward.

12 **54.38 Notice. (1) FORM AND DELIVERY OF NOTICE.** A notice shall be in writing.
13 A copy of the petition, motion, or other required document shall be attached to the
14 notice. Unless otherwise provided, notice may be delivered in person, by certified
15 mail with return receipt requested, or by facsimile transmission. Notice is
16 considered to be given by proof of personal delivery or by proof that the notice was
17 mailed to the last-known address of the recipient or was sent by facsimile
18 transmission to the last-known facsimile transmission number of the recipient.

19 **(2) (b)** Personally or by mail at least 10 days before the time set for hearing,
20 to all of the following:

- 21 1. The proposed ward's counsel, if any.
- 22 2. The proposed ward's guardian ad litem.
- 23 3. Any presumptive adult heirs, as specified in s. 851.09, of the proposed ward.
- 24 4. Any other interested persons, unless specifically waived by the court.

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1 5. The agent under any durable power of attorney or power of attorney for
2 health care of the ward.

3 6. Any person who has legal or physical custody of the proposed ward.

4 7. Any public or private agency, charity, or foundation from which the proposed
5 ward is receiving aid or assistance.

6 8. The proposed guardian for the proposed ward.

7 9. Any other person that the court requires.

8 54.40 (4) (c) Interview the proposed guardian, the proposed standby guardian,
9 if any, and any other person seeking appointment as guardian and report to the court
10 concerning the fitness of each individual interviewed to serve as guardian and
11 concerning the report under s. 54.15 (8).

12 (d) 1. Review any power of attorney for health care under ch. 155, any durable
13 power of attorney under ch. 243 executed by the proposed ward, and any other
14 advance planning for financial and health care decision making in which the
15 proposed ward had engaged.

16 2. Interview any agent appointed by the proposed ward under any document
17 specified in subd. 1.

18 3. Report to the court concerning whether or not the proposed ward's advance
19 planning is adequate to preclude the need for guardianship.

20 (g) If the proposed ward or ward requests representation by counsel, inform the
21 court and the petitioner or the petitioner's counsel, if any.

22 (h) Attend all court proceedings related to the guardianship.

23 **54.42 Rights of proposed ward or ward. (1) RIGHT TO COUNSEL.** (a) 1. The
24 proposed ward or ward requests counsel.

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1 2. The guardian ad litem or another person states to the court that the proposed
2 ward or ward is opposed to the guardianship petition.

3 3. The court determines that the interests of justice require counsel for the
4 proposed ward or ward.

5 (b) Any attorney obtained under par. (a) or appointed under par. (c) shall be an
6 advocate for the expressed wishes of the proposed ward or ward.

7 **(2) RIGHT TO JURY TRIAL.** The proposed ward or ward has the right to a trial by
8 a jury if demanded by the proposed ward or ward, his or her attorney, or the guardian
9 ad litem, except that the right is waived unless demanded at least 48 hours before
10 the time set for the hearing. The number of jurors for such a trial is determined under
11 s. 756.06 (2) (b). The proposed ward or ward, his or her attorney, or the guardian ad
12 litem each has the right to present and cross-examine witnesses, including any
13 physician or licensed psychologist who reports to the court concerning the proposed
14 ward.

15 **(3) RIGHT TO INDEPENDENT EXAMINATION.**

16 **(5) RIGHT TO BE PRESENT AT HEARING.** The proposed ward or ward has the right
17 to be present at any hearing regarding the guardianship.

18 **(6) RIGHT TO HEARING IN ACCESSIBLE LOCATION.** The proposed ward or ward has
19 the right to have any hearing regarding the guardianship conducted in a location and
20 manner that is accessible to the proposed ward or ward.

21 **54.44 Hearing. (1) TIME OF HEARING; PROVISION OF REPORTS.** (a) *Time of hearing*
22 *for petition.* A petition for guardianship, other than a petition under par. (b) or s.
23 54.50 (1), shall be heard within 90 days after it is filed. The guardian ad litem and
24 attorney for the proposed ward shall be provided with a copy of the report of the

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1 examining physician or psychologist under s. 54.36 (1) at least 96 hours before the
2 time of the hearing.

3 (2) STANDARD OF PROOF. Any determination by the court as to whether the
4 proposed ward is incompetent or is a spendthrift shall be by clear and convincing
5 evidence.

6 (3) PRESENCE OF PROPOSED GUARDIAN. The proposed guardian and any proposed
7 standby guardian shall be physically present at the hearing unless the court excuses
8 the attendance of either or, for good cause shown, permits attendance by telephone.

9 (4) PRESENCE OF PROPOSED WARD. (a) *Adult proposed ward.* The petitioner shall
10 ensure that the proposed ward attends the hearing unless the attendance is waived
11 by the guardian ad litem. In determining whether to waive attendance by the
12 proposed ward, the guardian ad litem shall consider the ability of the proposed ward
13 to understand and meaningfully participate, the effect of the proposed ward's
14 attendance on his or her physical or psychological health in relation to the
15 importance of the proceeding, and the proposed ward's expressed desires. If the
16 proposed ward is unable to attend the hearing because of residency in a nursing
17 home or other facility, physical inaccessibility, or a lack of transportation and if the
18 proposed ward, guardian ad litem, advocate counsel, or other interested person so
19 requests, the court shall hold the hearing in a place where the proposed ward may
20 attend.

21 (b) *Minor proposed ward.* A minor is not required to attend the hearing.

22 (6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed
23 guardian is inappropriate, the court shall request that a petition proposing a suitable
24 guardian be filed, shall set a date for a hearing to be held within 30 days, and shall

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1 require the guardian ad litem to investigate the suitability of a new proposed
2 guardian.

3 **54.46 Disposition of petition.** After the hearing under s. 54.44, the court
4 shall dispose of the case in one of the following ways:

5 **(1) DISMISSAL OF THE PETITION.** (a) If the court finds any of the following, the
6 court shall dismiss the petition:

7 1. Contrary to the allegations of the petition, the proposed ward is not any of
8 the following:

9 a. Incompetent.

10 b. A spendthrift.

11 c. A minor.

12 2. Advance planning by the ward, as specified in s. 54.10 (3) (c) 3., renders
13 guardianship unnecessary.

14 3. The elements of the petition are unproven.

15 (b) The court may also consider an application by the proposed ward for the
16 appointment of a conservator under s. 54.76.

17 **(2) APPOINTMENT OF GUARDIAN; ORDER.** If the proposed ward is found to be
18 incompetent, a minor, or a spendthrift, the court may enter a determination and
19 order appointing a guardian that specifies any powers of the guardian that require
20 court approval, as provided in ss. 54.20 (2) and 54.25 (2), and may provide for any of
21 the following:

22 (a) *Coguardians.* If the court appoints coguardians of the person or
23 coguardians of the estate under s. 54.10 (5), and unless otherwise ordered by the
24 court, each decision made by a coguardian with respect to the ward must be
25 concurred in by any other coguardian, or the decision is void.

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1 (c) *Durable power of attorney.* If the ward has executed a durable power of
2 attorney before a finding of incompetency and appointment of a guardian is made for
3 the ward under this chapter, the durable power of attorney remains in effect, except
4 that the court may, only for good cause shown, revoke the durable power of attorney
5 or limit the authority of the agent under the terms of the durable power of attorney.
6 Unless the court makes this revocation or limitation, the ward's guardian may not
7 make decisions for the ward that may be made by the agent, unless the guardian is
8 the agent.

9 **(3) (c) Fees if guardian is not appointed.** If a guardian is not appointed under
10 sub. (2), the county in which the action is pending for the guardianship proceeding
11 is the county liable for any fees due the guardian ad litem. The proposed ward is
12 liable for any fees due his or her legal counsel, except as follows:

13 1. If counsel is appointed under s. 977.08, the proposed ward is liable only for
14 the fees applicable under ss. 977.07 and 977.075.

15 2. If the court finds the petition for guardianship frivolous under s. 814.025, the
16 court may assess fees to the petitioner.

17 3. If the proposed ward is indigent and counsel is not appointed under s. 977.08,
18 the county in which venue lies for the guardianship proceeding is liable.

19 **54.50 Temporary guardianships. (1) STANDARD.** If it is demonstrated to the
20 court that a proposed ward's particular situation, including the needs of the proposed
21 ward's dependents, requires the immediate appointment of a temporary guardian of
22 the person or estate, the court may appoint a temporary guardian under this section.

23 **(3) PROCEDURES FOR APPOINTMENT.** All of the following procedures apply to the
24 appointment of a temporary guardian:

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1 (a) Any person may petition for the appointment of a temporary guardian for
2 an individual. The petition shall contain the information required under s. 54.34 (1),
3 shall specify reasons for the appointment of a temporary guardian and the powers
4 requested for the temporary guardian, including the power specified in s. 51.30 (5)
5 (e), and shall include a petition for appointment of a guardian of the person or estate
6 or state why such a guardianship is not sought.

7 (b) The court shall appoint a guardian ad litem, who shall attempt to meet with
8 the proposed ward before the hearing or as soon as is practicable after the hearing,
9 but not later than 7 calendar days after the hearing. The guardian ad litem shall
10 report to the court on the advisability of the temporary guardianship at the hearing
11 or not later than 10 calendar days after the hearing.

12 (c) The court shall hold a hearing on the temporary guardianship. The hearing
13 may be held no earlier than 48 hours after the filing of the petition unless good cause
14 is shown. At the hearing, the petitioner shall provide a report or testimony from a
15 physician or psychologist that indicates that there is a reasonable likelihood that the
16 proposed ward is incompetent. The guardian ad litem shall attend the hearing in
17 person or by telephone or, instead, shall provide to the court a written report
18 concerning the proposed ward for review at the hearing.

19 (d) If the court appoints a temporary guardian and if the ward, his or her
20 counsel, the guardian ad litem, or an interested party requests, the court shall order
21 a rehearing on the issue of appointment of the temporary guardian within 10
22 calendar days after the request. If a rehearing is requested, the temporary guardian
23 may take no action to expend the ward's assets, pending a rehearing, without
24 approval by the court.

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SUBCHAPTER V

POST-APPOINTMENT MATTERS

1
2
3 **54.60 (2) CONTENTS OF INVENTORY.** The inventory shall provide all of the
4 following information with respect to each asset:

5 (a) How the asset is held or titled.

6 (b) The name and relationship to the ward of any co-owner.

7 (c) The marital property classification of the property and, for any property that
8 is marital property, the spouse who has management and control rights with respect
9 to the property.

10 **(3) TIME FOR FILING.** The guardian of the estate shall file the initial inventory
11 within 60 days after appointment, unless the court extends or reduces the time.

12 **(4) NOTICE OF INVENTORY.** The court shall specify the persons to whom the
13 guardian of the estate shall provide copies of the inventory.

14 **(5) FEE.** The guardian of the estate shall pay from the ward's income and assets
15 the fee specified in s. 814.66 (1) (b) 2. at the time the inventory or other documents
16 concerning the value of the income and assets are filed.

17 **(6) APPRAISAL.** The court may order that the guardian of the estate appraise
18 all or any part of the ward's assets.

19 **54.62 Accounts.**

20 **(3) SMALL ESTATES.** (a) If a ward's income and assets do not exceed the amount
21 specified in s. 867.03 (1g) (intro.), the guardian need not file an account under sub.
22 (1) unless otherwise ordered to do so by the court. For the purposes of this paragraph,
23 the value of the ward's income and assets does not include the ward's income, any
24 burial trust possessed by the ward, or any term or other life insurance policy that is
25 irrevocably assigned to pay for the disposition of the ward's remains at death.

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1 (b) If the ward's income and assets, as calculated under par. (a), increase above
2 the amount specified in s. 867.03 (1g) (intro.), the guardian shall so notify the court,
3 which shall determine if an annual account under sub. (1) or a final account under
4 s. 54.66 is required.

5 (4) ANNUAL ACCOUNTS OF MARRIED WARDS. (a) For a married ward, the court may
6 waive filing of an annual account under sub. (1) or permit the filing of a modified
7 annual account, which shall be signed by the ward's guardian and spouse and shall
8 consist of all of the following:

9 1. Total assets of the ward, as determined under ch. 766, on January 1 of the
10 year in question.

11 2. Income in the name of the ward, without regard to ch. 766, and the ward's
12 joint income.

13 3. Expenses incurred on behalf of the ward, including the ward's proportionate
14 share of household expenses if the ward and the ward's spouse reside in the same
15 household, without regard to ch. 766.

16 4. Total marital property of the ward, as determined under ch. 766, on
17 December 31 of the year in question.

18 (b) The court shall provide notice of the waiver under par. (a) to any adult child
19 of the ward.

20 (7) (a) The ward.

21 (b) Any guardian ad litem appointed by the court.

22 (c) Any personal representative or special administrator appointed by the
23 court.

24 **54.63 Expansion of order of guardianship; procedure.** (1) If the
25 guardian or another interested person submits to the court a written statement with

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1 relevant accompanying support requesting the removal of rights from the ward and
2 transfer to the guardian of powers in addition to those specified in the order of
3 appointment of the guardian, based on an expansion of the ward's incapacity, the
4 court shall do all of the following:

5 (a) Appoint a guardian ad litem for the ward.

6 (b) Order that notice, including notice concerning potential court action if
7 circumstances are extraordinary, be given to all of the following:

8 1. The county department of social services or human services if the ward is
9 protectively placed or receives long-term support services as a public benefit.

10 2. The ward.

11 3. The guardian.

12 4. The agent under the ward's power of attorney for health care under ch. 155,
13 if any, and the agent under the ward's durable power of attorney under ch. 243, if any.

14 5. Any other persons determined by the court.

15 **(2)** (a) If, after 10 days after notice is provided under sub. (1) (b), or earlier if
16 the court determines that the circumstances are extraordinary, no person submits
17 to the court an objection to the request under sub. (1), the court may amend the order
18 entered under s. 54.46 (2) and enter a determination and the amended order that
19 specifies any change in the powers of the guardian.

20 (b) If, within 10 days after notice is provided under sub. (1) (b), a person submits
21 to the court an objection to the request under sub. (1), the court shall hold a hearing,
22 unless the objector declines a hearing, under the procedure specified in s. 54.64 (2).

23 **54.64 (2) REVIEW AND MODIFICATION.**

24 (a) 1. Appoint a guardian ad litem.

25 2. Fix a time and place for hearing.

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1 3. Designate the persons who are entitled to notice of the hearing and designate
2 the manner in which the notice shall be given.

3 (b) The ward has the right to counsel for purposes of the hearing under par. (a).
4 Notwithstanding any finding of incompetence for the ward, the ward may retain and
5 contract for the payment of reasonable fees to an attorney, the selection of whom is
6 subject to court approval, in connection with proceedings involving review of the
7 terms and conditions of the guardianship, including the question of incompetence.
8 The court shall appoint counsel if the ward is unable to obtain counsel. If the ward
9 is indigent, the county of jurisdiction for the guardianship shall provide counsel at
10 the county's expense.

11 **(3)** (b) The ward changes residence from this state to another state and a
12 guardian is appointed in the new state of residence.

13 (e) The ward dies.

14 **(4)** (b) The ward changes residence from this state to another state and a
15 guardian is appointed in the new state of residence.

16 **(5)** (b) Continue the guardianship, but waive requirements for a bond for the
17 guardian and waive or require an accounting by the guardian.

18 **54.66 Final accounts.**

19 **(3) DISCHARGE.** After approving the final account and after the guardian has
20 filed proper receipts, the court shall discharge the guardian and release the
21 guardian's bond.

22 **54.68 Review of conduct of guardian. (1) CONTINUING JURISDICTION OF**
23 **COURT.** The court that appointed the guardian has continuing jurisdiction over the
24 guardian.

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1 **(2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN.** Any of the following, if
2 committed by a guardian with respect to a ward or the ward's income or assets,
3 constitutes cause for a remedy of the court under sub. (4):

4 (a) Failing to file timely an inventory or account, as required under this
5 chapter, that is accurate and complete.

6 (b) Committing fraud, waste, or mismanagement.

7 (c) Abusing or neglecting the ward or knowingly permitting others to do so.

8 (d) Engaging in self-dealing.

9 (e) Failing to provide adequately for the personal needs of the ward from the
10 ward's available assets and income, including any available public benefits.

11 (f) Failing to exercise due diligence and reasonable care in assuring that the
12 ward's personal needs are being met in the least restrictive environment consistent
13 with the ward's needs and incapacities.

14 (g) Failing to act in the best interests of the ward.

15 (h) Failing to disclose conviction for a crime that would have prevented
16 appointment of the person as guardian.

17 (i) Failing to disclose that the guardian is listed under s. 146.40 (4g) (a) 2.

18 (j) Other than as provided in pars. (a) to (i), failing to perform any duties of a
19 guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19,
20 54.20, 54.22, 54.25, and 54.62.

21 **(3) PROCEDURE.** Upon the filing of a petition for review of the conduct of a
22 guardian, the court shall hold a hearing in not less than 10, nor more than 60, days
23 and shall order that the petitioner provide notice of the hearing to the ward, the
24 guardian, and any other persons as determined by the court. The court may

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1 authorize use by the petitioner of any of the methods of discovery specified in ch. 804
2 in support of the petition to review conduct of the guardian.

3 (4) REMEDIES OF THE COURT. If petitioned by any party or on the court's own
4 motion and after finding cause as specified in sub. (2), a court may do any of the
5 following:

6 (a) Order the guardian to file an inventory or other report or account required
7 of the guardian.

8 (b) Require the guardian to reimburse the ward or, if deceased, the ward's
9 estate for losses incurred as the result of the guardian's breach of a duty to the ward.

10 (c) Impose a forfeiture of up to \$10,000 on the guardian, or deny compensation
11 for the guardian or both.

12 (d) Remove the guardian.

13 (e) Enter any other order that may be necessary or appropriate to compel the
14 guardian to act in the best interests of the ward or to otherwise carry out the
15 guardian's duties.

16 (5) REMOVAL OF PAID GUARDIAN. The court may remove a paid guardian if
17 changed circumstances indicate that a previously unavailable volunteer guardian is
18 available to serve and that the change would be in the best interests of the ward.

19 (6) FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. (2) or (5), all
20 of the following apply:

21 (a) The court may require the guardian to pay personally any costs of the
22 proceeding, including costs of service and attorney fees.

23 (b) Notwithstanding a finding of incompetence, a ward who is petitioning the
24 court under sub. (2) may retain legal counsel, the selection of whom is subject to court

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1 approval, and contract for the payment of fees, regardless of whether or not the
2 guardian consents or whether or not the court finds cause under sub. (2).

3 **54.72 Guardian compensation and reimbursement.** A guardian of the
4 person or a guardian of the estate is entitled to compensation and to reimbursement
5 for expenses as follows:

6 **(1) COMPENSATION.** (a) Subject to the court's approval, as determined under par.
7 (b), a guardian shall receive reasonable compensation for the guardian's services.

8 (b) The court shall use all of the following factors in deciding whether
9 compensation for a guardian is just and reasonable:

- 10 1. The reasonableness of the services rendered.
- 11 2. The fair market value of the services rendered.
- 12 3. Any conflict of interest of the guardian.
- 13 4. The availability of another to provide the services.
- 14 5. The value and nature of the ward's assets and income, including the sources
15 of the ward's income.
- 16 6. Whether the ward's basic needs are being met.
- 17 7. The hourly or other rate proposed by the guardian for the services.

18 (c) The amount of the compensation may be determined on an hourly basis, as
19 a monthly stipend, or on any other basis that the court determines is reasonable
20 under the circumstances. The court may establish the amount or basis for computing
21 the guardian's compensation at the time of the guardian's initial appointment.

22 **(2) REIMBURSEMENT OF EXPENSES.** The guardian shall be reimbursed for the
23 amount of the guardian's reasonable expenses incurred in the execution of the
24 guardian's duties, including necessary compensation paid to an attorney, an
25 accountant, a broker, and other agents or service providers.

SENATE BILL 391**SECTION 102**

1 **(3)** WHEN COURT APPROVAL REQUIRED. A court must approve compensation and
2 reimbursement of expenses before payment to the guardian is made, but court
3 approval need not be obtained before charges are incurred.

SUBCHAPTER VI**VOLUNTARY PROCEEDINGS;****CONSERVATORS****54.76 Conservator; appointment; duties and powers; termination.**

4 **(3g)** If the individual has executed a durable power of attorney before the
5 proceedings under this section, the durable power of attorney remains in effect,
6 except that the court may, only for good cause shown, revoke the durable power of
7 attorney or limit the authority of the agent under the terms of the durable power of
8 attorney. Unless the court makes this revocation or limitation, the individual's
9 conservator may not make decisions for the individual that may be made by the
10 agent, unless the conservator is the agent.

11 **(3m)** A person may at any time bring a petition for the appointment of a
12 standby conservator for an individual for whom a conservator has been appointed
13 under sub. (2).

14 **(3n)** At any hearing conducted under this section the court may designate one
15 or more standby conservators for an individual for whom a conservator has been
16 appointed under sub. (2) whose appointment shall become effective immediately
17 upon the death, unwillingness, unavailability, or inability to act, resignation, or
18 court's removal of the initially appointed conservator or during a period, as
19 determined by the initially appointed conservator or the court, when the initially
20 appointed conservator is temporarily unable to fulfill his or her duties, including
21 during an extended vacation or illness. The powers and duties of the standby
22
23
24
25

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1 conservator shall be the same as those of the initially appointed conservator. The
2 standby conservator shall receive a copy of the court order establishing or modifying
3 the initial conservatorship and the order designating the standby conservator. Upon
4 assuming office, the standby conservator shall so notify the court. Upon notification,
5 the court shall designate this conservator as permanent or shall specify the time
6 period for a limited standby conservatorship.

7 (6) The court that appointed the conservator shall have continuing jurisdiction
8 over the conservator. Any of the following, if committed by a conservator with respect
9 to a conservatee or the conservatee's income or assets, constitutes cause for removal
10 of the conservator under sub. (7) (a) 5:

11 (a) Failing to file timely an inventory or account, as required under this
12 chapter, that is accurate and complete.

13 (b) Committing fraud, waste, or mismanagement.

14 (c) Abusing or neglecting the conservatee or knowingly permitting others to do
15 so.

16 (d) Engaging in self-dealing.

17 (e) Failing to provide adequately for the personal needs of the conservatee from
18 the available income and assets and any available public benefits.

19 (f) Failing to act in the best interests of the conservatee.

20 (g) Failing to disclose conviction for a crime that would have prevented
21 appointment of the person as conservator.

22 (h) Failing to disclose that the conservator is listed under s. 146.40 (4g) (a) 2.

23 (7) (a) The powers of a conservator may not be terminated without a hearing
24 and may not be terminated unless any of the following occurs:

SENATE BILL 391**SECTION 102**

1 1. The court removes the conservator on the court's own motion or under sub.
2 (4).

3 2. The court appoints a guardian for the individual whose income and assets
4 are conserved.

5 3. The individual whose income and assets are conserved dies.

6 4. The conservator or individual whose income and assets are conserved
7 changes residence to another state.

8 5. The court finds cause, as specified in sub. (6), for removal of the conservator.

9 (b) If anyone objects to termination of the conservatorship and alleges that the
10 individual whose income and assets are conserved is appropriate for appointment of
11 a guardian, the court may stay the hearing under par. (a) for 14 days to permit any
12 interested person to file a petition for guardianship. If no petition is filed, the court
13 may terminate the conservatorship and may appoint a guardian ad litem for the
14 individual.

15 (8) If a court terminates a conservatorship or a conservator resigns, is removed,
16 or dies, the conservator or the conservator's personal representative or special
17 administrator shall promptly render a final account of the former conservatee's
18 income and assets to the court and to the former conservatee, any guardian of the
19 former conservatee, or any deceased conservatee's personal representative or special
20 administrator, as appropriate. If the conservator dies and the conservator and the
21 deceased conservatee's personal representative or special administrator are the
22 same person, the deceased conservatee's personal representative or special
23 administrator shall give notice of the termination and rendering of the final account
24 to all interested persons of the conservatee's estate.

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1 **(9)** (a) If a conservator resigns, is removed, or dies, the court, on its own motion
2 or upon petition of any interested person, may appoint a competent and suitable
3 person as successor conservator. The court may, upon request of any interested
4 person or on its own motion, direct that a petition for appointment of a successor
5 conservator be heard in the same manner and subject to the same requirements as
6 provided under this section for an original appointment of a conservator.

7 (b) If the appointment under par. (a) is made without hearing, the successor
8 conservator shall provide notice to the individual for whom a conservator has been
9 appointed and all interested persons of the appointment, the right to counsel, and
10 the right to petition for reconsideration of the successor conservator. The notice shall
11 be served personally or by mail not later than 10 days after the appointment.

SUBCHAPTER VII**UNIFORM GUARDIANSHIP ACTS**

12
13 **54.850 Definitions.** In this subchapter:

14 **(1)** “Administration” means any proceeding relating to a decedent’s estate
15 whether testate or intestate.
16

17 **(2)** “Beneficiary” means any person nominated in a will to receive an interest
18 in property other than in a fiduciary capacity.

19 **(3)** “Distributee” means any person to whom property of a decedent is
20 distributed other than in payment of a claim, or who is entitled to property of a
21 decedent under the decedent’s will or under the statutes of intestate succession.

22 **(4)** “Person interested” has the meaning given in s. 851.21.

23 **SECTION 103.** 55.01 (1v) of the statutes is created to read:

24 **55.01 (1v)** “Degenerative brain disorder” means the loss or dysfunction of brain
25 cells to the extent that the individual is substantially impaired in his or her ability

SENATE BILL 391**SECTION 103**

1 to provide adequately for his or her own care or custody or to manage adequately his
2 or her property or financial affairs.

3 **SECTION 104.** 55.01 (6t) of the statutes is created to read:

4 55.01 (6t) “Psychotropic medication” means a prescription drug, as defined in
5 s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging
6 behavior.

7 **SECTION 105.** 55.01 (6v) of the statutes is created to read:

8 55.01 (6v) “Serious and persistent mental illness” means a mental illness that
9 is severe in degree and persistent in duration, that causes a substantially diminished
10 level of functioning in the primary aspects of daily living and an inability to cope with
11 the ordinary demands of life, that may lead to an inability to maintain stable
12 adjustment and independent functioning without long-term treatment and support,
13 and that may be of lifelong duration. “Serious and persistent mental illness” includes
14 schizophrenia as well as a wide spectrum of psychotic and other severely disabling
15 psychiatric diagnostic categories, but does not include degenerative brain disorder
16 or a primary diagnosis of a developmental disability, as defined in s. 51.01 (5) (a), or
17 of alcohol or drug dependence.

18 **SECTION 106.** 55.02 of the statutes is amended to read:

19 **55.02 Protective service system; establishment.** The department shall
20 develop a statewide system of protective service for mentally retarded and other
21 developmentally disabled persons, for aged infirm persons, for chronically mentally
22 ill persons, and for persons with other like incapacities incurred at any age in
23 accordance with rules promulgated by the department. The protective service
24 system shall be designed to encourage independent living and to avoid protective
25 placement whenever possible. The system shall use the planning and advice of

SENATE BILL 391**SECTION 106**

1 agencies, including the county department under s. 46.215, 46.22, 46.23, 51.42, or
2 51.437. The chairperson of each county board of supervisors shall designate a county
3 department under s. 46.215, 46.22, 51.42, or 51.437 that is providing services in his
4 or her county or a joint mechanism of these county departments to have the
5 responsibility for local planning for the protective service system. The chairperson
6 of the Milwaukee County board of supervisors shall designate the county
7 department under s. 46.215 to serve as the county protective services agency for
8 purposes of s. 55.043. The department and these county departments shall cooperate
9 in developing a coordinated system of services. The department shall provide direct
10 services and enter into contracts with any responsible public or private agency for
11 provision of protective services. In each county, the county department designated
12 under this section shall determine the reporting requirements applicable to the
13 county under s. ~~880.38 (3)~~ 54.25 (1) (a).

14 **SECTION 107.** 55.03 of the statutes is amended to read:

15 **55.03 Status of guardian.** No agency acting as a guardian appointed under
16 ch. 54, or ch. 880 shall, 2003 stats., may be a provider of protective services or
17 placement for its ward under this chapter. Nothing in this chapter shall may be
18 construed to prohibit the transfer of guardianship and legal custody under s. 48.427
19 or 48.43.

20 **SECTION 108.** 55.05 (2) (d) of the statutes is amended to read:

21 55.05 (2) (d) The court may order protective services for an individual for whom
22 a determination of incompetency is made under s. ~~880.33~~ 54.10 (3) if the individual
23 entitled to the protective services will otherwise incur a substantial risk of physical
24 harm or deterioration or will present a substantial risk of physical harm to others.
25 The court may order the involuntary administration of psychotropic medication as

SENATE BILL 391**SECTION 108**

1 a protective service under this paragraph only if a determination of incompetency is
2 made for the individual under s. 880.33 (4m). The court may authorize a guardian
3 to consent to forcible administration of psychotropic medication for an individual
4 only if the court has made a finding under s. 880.33 (4r) (b) that the individual has
5 substantially failed to comply with the administration of psychotropic medication
6 under the individual's treatment plan only under the requirements of s. 55.14.

7 **SECTION 109.** 55.05 (5) (b) 1. of the statutes is amended to read:

8 55.05 (5) (b) 1. Guardians of persons who have been found adjudicated
9 incompetent under s. 880.33 in this state may consent to admission to a foster home,
10 group home or community-based residential facility, as defined under s. 50.01 (1g),
11 without a protective placement under s. 55.06 if the home or facility is licensed for
12 fewer than 16 beds. Prior to providing that consent, and annually thereafter, the
13 guardian shall review the ward's right to the least restrictive residential
14 environment and consent only to admission to a home or facility that implements
15 those rights.

16 **SECTION 110.** 55.05 (5) (b) 2. of the statutes is amended to read:

17 55.05 (5) (b) 2. Guardians of persons who have been found adjudicated
18 incompetent under s. 880.33 in this state may consent to admission to a nursing
19 home if the person is admitted directly from a hospital inpatient unit for recuperative
20 care for a period not to exceed 3 months, unless the hospital admission was for
21 psychiatric care. Prior to providing that consent, the guardian shall review the
22 ward's right to the least restrictive residential environment and consent only to
23 admission to a nursing home that implements those rights. Following the 3-month
24 period, a placement proceeding under s. 55.06 is required.

25 **SECTION 111.** 55.06 (1) (intro.) of the statutes is amended to read:

SENATE BILL 391**SECTION 111**

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

12 **SECTION 112.** 55.06 (1) (a) of the statutes is amended to read:

13 55.06 (1) (a) ~~The board designated under s. 55.02~~ department, the county
14 department or an agency designated by it with which the county department
15 contracts under s. 55.05 (2), a guardian, or an interested person may file a petition
16 for appointment of a guardian and for protective services or protective placement for
17 the individual. The department shall provide for a schedule of reimbursement for
18 the cost of ~~such~~ the proceedings based upon the ability to pay of the proposed ward
19 or ~~person~~ individual to be protected.

20 **SECTION 113.** 55.06 (2) (b) of the statutes is amended to read:

21 55.06 (2) (b) Except in the case of a minor who is alleged to be developmentally
22 disabled, has either been ~~determined to be~~ adjudicated incompetent by a circuit
23 court, or has had submitted on the minor's behalf a petition for a guardianship;

24 **SECTION 114.** 55.06 (3) (c) of the statutes is amended to read:

SENATE BILL 391**SECTION 114**

1 55.06 (3) (c) ~~The A~~ petition under sub. (1) shall be filed in the county of
2 residence of the ~~person~~ individual to be protected, as determined under s. 51.40 or
3 by the individual's guardian or where the individual is physically present due to
4 circumstances including those specified under s. 51.22 (4). If an individual has not
5 received services under ch. 46, 51, or 55 or if an individual has received services
6 under ch. 46, 51, or 55 that have been terminated and has established residence in
7 a county other than that in which the individual resided when the services were
8 received, the court may determine the individual's county of residence. The county
9 of residence under this paragraph is the county of responsibility.

10 **SECTION 115.** 55.06 (3) (d) of the statutes is created to read:

11 55.06 (3) (d) The court in which a petition is first filed under par. (c) shall
12 determine venue. The court shall direct that proper notice be given to any potentially
13 responsible or affected county. Proper notice is given to a potentially responsible or
14 affected county if written notice of the proceeding is sent by certified mail to the
15 county's clerk and corporation counsel. After all potentially responsible or affected
16 counties and parties have been given an opportunity to be heard, the court shall
17 determine that venue lies in the county in which the petition is filed under par. (c)
18 or in another county, as appropriate. If the court determines that venue lies in
19 another county, the court shall order the entire record certified to the proper court.
20 A court in which a subsequent petition is filed shall, upon being satisfied of an earlier
21 filing in another court, summarily dismiss the subsequent petition. If any
22 potentially responsible or affected county or party objects to the court's finding of
23 venue, the court may refer the issue to the department for a determination of the
24 county of residence under s. 51.40 (2) (g) and may suspend ruling on the motion for
25 change of venue until the determination under s. 51.40 (2) (g) is final.

SENATE BILL 391**SECTION 116**

1 **SECTION 116.** 55.06 (4) of the statutes is amended to read:

2 55.06 (4) A petition for guardianship if required under sub. (2) (b) must be
3 heard prior to placement under this section. If incompetency has been ~~determined~~
4 ~~under s. 880.33~~ adjudicated in this state more than one year preceding the filing of
5 an application for protective placement, the court shall review the finding of
6 incompetency.

7 **SECTION 117.** 55.06 (5) of the statutes is amended to read:

8 55.06 (5) Notice of a petition for placement shall be served upon the person
9 sought to be placed, by personal service, at least 10 days prior to the time set for a
10 hearing. Upon service of the notice, the person sought to be protected shall be
11 informed of the complete contents of the notice. The person serving the notice shall
12 return a certificate to the circuit judge verifying that the petition has been delivered
13 and notice given. The notice shall include the names of all petitioners. Notice shall
14 also be served personally or by mail upon the person's guardian ad litem, legal
15 counsel, guardian, if any, presumptive adult heirs, and upon other persons who have
16 physical custody of the person to be protected whose names and addresses are known
17 to the petitioner or can with reasonable diligence be ascertained, to any
18 governmental or private body or group from whom the person to be protected is
19 known to be receiving aid, and to such other persons or entities as the court may
20 require. Notice shall also be served personally or by mail upon the department at
21 least 10 days prior to the time set for hearing if the person sought to be protected may
22 be placed in a center for the developmentally disabled. Notice shall also be served
23 personally or by mail, at least 10 days before the time set for hearing, upon the county
24 department that is participating in the program under s. 46.278 of the county of
25 residence of the person sought to be protected, if the person has a developmental

SENATE BILL 391**SECTION 117**

1 disability and may be placed in an intermediate facility or a nursing facility, except
2 that, for a person sought to be protected to whom s. 46.279 (4m) applies, this notice
3 shall instead be served on the department. The individual adjudicated incompetent
4 or proposed incompetent for a determination of incompetency is presumed able to
5 attend the hearing unless, after a personal interview, the guardian ad litem certifies
6 to the court that the person is unable to attend.

7 **SECTION 118.** 55.06 (6) of the statutes is amended to read:

8 55.06 (6) ~~Section 880.33 (2) applies~~ Sections 54.42, 54.44, and 54.46 apply to
9 all hearings under this chapter except for transfers of placement under sub. (9) (b),
10 and (c) and (e). A person to be protected shall have a guardian ad litem who is an
11 attorney appointed in accordance with s. 757.48 (1) present at all hearings under this
12 chapter if the person does not have full legal counsel. The court may, however, excuse
13 a personal appearance by a guardian ad litem based on information contained in a
14 written report by the guardian ad litem to the court. If the person is an adult who
15 is indigent, the county of legal settlement shall be liable for guardian ad litem fees.
16 If the person is a child, the person's parents or the county of legal settlement shall
17 be liable for guardian ad litem fees as provided in s. 48.235 (8). The subject
18 individual, attorney or guardian ad litem shall have the right to present and
19 cross-examine witnesses, including any person making an evaluation or review
20 under sub. (8) (c).

21 **SECTION 119.** 55.06 (8) (c) of the statutes is amended to read:

22 55.06 (8) (c) A medical, psychological, social, vocational and educational
23 evaluation and review, where necessary, and any recommendations for or against
24 maintenance of partial legal rights as provided in s. ~~880.33~~ 54.25 (2). Such

SENATE BILL 391**SECTION 119**

1 evaluation and review shall include recommendations for placement consistent with
2 the least restrictive environment required.

3 **SECTION 120.** 55.06 (10) (c) of the statutes is amended to read:

4 55.06 (10) (c) Except in the case of a minor who is developmentally disabled and
5 who has a parent or person in the place of a parent, termination of guardianship
6 automatically revokes any protective placement made or protective services
7 provided under this chapter unless the placement or services are continued on a
8 voluntary basis. Notice to this effect shall be given to the ward by the provider of
9 services at the time of termination. If protective placement is made or protective
10 services are provided under this chapter to a minor who is developmentally disabled,
11 the attainment of the age of majority by such the individual automatically revokes
12 any such protective placement made or protective services provided unless the
13 placement or services are continued on a voluntary basis, or there is ~~a finding an~~ an
14 adjudication of incompetency and appointment of a guardian pursuant to ~~ch. 880 in~~ in
15 this state.

16 **SECTION 121.** 55.06 (14) of the statutes is amended to read:

17 55.06 (14) Prior to discharge of an individual from a protective placement, the
18 ~~appropriate board which county department that~~ is responsible for protective
19 placement shall review the need for ~~provision of~~ continuing protective services ~~or for,~~
20 continuation of full or limited guardianship, ~~or provision for such guardianship,~~ if
21 the individual has no guardian, guardianship. ~~Recommendation shall be made to the~~
22 ~~court if~~ If the county department's recommendation includes a course of action for
23 which court approval would be required, the county department shall make the
24 recommendation to the court. Prior to discharge of the individual from any state

SENATE BILL 391**SECTION 121**

1 mental health institute or center for the developmentally disabled, the department
2 shall make such the review under s. 51.35.

3 **SECTION 122.** 55.06 (17) (b) of the statutes is amended to read:

4 55.06 (17) (b) If the subject is an adult who has been ~~adjudged~~ adjudicated
5 incompetent ~~under ch. 880 in this state~~ or is a minor, consent for release of
6 information from and access to the court records may be given only as provided in
7 s. 51.30 (5).

8 **SECTION 123.** 55.14 of the statutes is created to read:

9 **55.14 Involuntary administration of psychotropic medication.** (1) In
10 this section:

11 (a) “Involuntary administration of psychotropic medication” means any of the
12 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (5) The guardian ad litem appointed under s. 55.06 (6) for an individual who
20 is the subject of a petition under this section shall report to the court whether the
21 allegations in the petition required under sub. (3) are true, and whether involuntary
22 administration of psychotropic medication is in the best interests of the individual.

23 (6) If requested by an individual who is the subject of a petition under this
24 section or anyone on his or her behalf, the individual has the right at his or her own
25 expense, or if indigent at the expense of the county in which the petition is filed, to

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1 secure an independent medical or psychological examination relevant to the issue of
2 whether the allegations in the petition required under sub. (3) are true and whether
3 involuntary administration of psychotropic medication is in the best interest of the
4 individual, and to present a report of this independent evaluation or the evaluator's
5 personal testimony as evidence at the hearing.

6 (7) Upon the filing of a petition under this section, the court shall appoint
7 counsel. A petition under this section shall be heard under s. 55.06 within 30 days
8 after it is filed.

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

19 (a) Direct the development of a treatment plan for the individual specifying the
20 protective services, including psychotropic medication as ordered by the treating
21 physician, that the individual should receive. If the individual resides in a nursing
22 home or hospital, the nursing home or hospital shall develop the treatment plan. If
23 the individual resides elsewhere, the county department or an agency with which it
24 contracts shall develop the treatment plan. The treatment plan shall include a plan
25 for the involuntary administration of psychotropic medication to the individual. The

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1 treatment plan is subject to the approval of the guardian and to review and approval
2 by the court. If the court approves the plan, the court shall order the county
3 department or an agency with which it contracts to ensure that protective services,
4 including psychotropic medication, are administered in accordance with the
5 treatment plan.

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

17 (9) If an individual who is subject to an order under this section is not in
18 compliance with the order because he or she refuses to take psychotropic medication
19 as ordered under the treatment plan, and it is necessary for the individual to be
20 transported to an appropriate facility for forcible restraint for administration of
21 psychotropic medication, the corporation counsel shall file with the court a
22 statement of the facts which constitute basis for the noncompliance of the individual.
23 The statement shall be sworn to be true and shall be based upon the information and
24 belief of the person filing the statement. The statement shall be signed by the
25 individual's guardian and by the director or designee of the county department or an

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1 agency with which it contracts to develop and administer the treatment plan. Upon
2 receipt of the statement of noncompliance, if the court finds by clear and convincing
3 evidence that the individual has substantially failed to comply with the
4 administration of psychotropic medication as ordered under the treatment plan, the
5 court may issue an order authorizing the sheriff or any other law enforcement agency
6 in the county in which the individual is found or in which it is believed that the
7 individual may be present to take the individual into custody and transport him or
8 her to an appropriate facility for administration of psychotropic medication using
9 forcible restraint, with consent of the guardian.

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

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

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

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

18 **SECTION 124.** 55.19 of the statutes is created to read:

19 **55.19 Annual review of order authorizing involuntary administration**
20 **of psychotropic medication.** In addition to or in conjunction with the annual
21 review required under s. 55.06 (10), all of the following shall be performed with
22 respect to any individual who is subject to an order under s. 55.14 or an order initially
23 issued under s. 880.33 (4r), 2003 stats., authorizing involuntary administration of
24 psychotropic medication:

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

15 1. File a report of the review with the court that issued the order.

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

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

20 (b) If, in an annual review of an individual's status under par. (a), the individual
21 or the individual's guardian or guardian ad litem requests termination of the order
22 and a full due process hearing is provided, or if a full due process hearing is provided
23 under a petition for modification or termination of the order, the county department
24 is not required to initiate a subsequent review under par. (a) until the first day of the

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1 11th month after the date that the court issues a final order after the full due process
2 hearing.

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

6 (c) The review under par. (a) may not be conducted by a person who is an
7 employee of a facility in which the individual resides or from which the individual
8 receives services. The report of the review shall include information on all of the
9 following:

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

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

14 3. Whether the individual continues to refuse to take psychotropic medication
15 voluntarily or attempting to administer psychotropic medication to the individual
16 voluntarily is not feasible or is not in the best interests of the individual, as specified
17 in s. 55.14 (3) (c).

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

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

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

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

7 **(1m)** COUNTY AGREEMENT. The county of residence of an individual who is
8 subject to an order under s. 55.14 and is protectively placed in a different county may
9 enter into an agreement with that county under which the county of the individual's
10 placement performs all or part of the duties of the county of residence under this
11 section.

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

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

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

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

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

23 3. That the court may under sub. (3) (b) 1. order performance of an evaluation.

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

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1 5. That a termination of the order for involuntary administration of
2 psychotropic medication may be ordered by the court.

3 6. The right to a full due process hearing under sub. (3) (d).

4 (c) Provide the information required under par. (b) to the individual in writing.

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

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

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

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

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

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

19 4. The individual or his or her guardian or guardian ad litem requests a full due
20 process hearing under this section for the individual.

21 (g) Certify to the court that he or she has complied with the requirements of
22 pars. (b), (c), and (d).

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

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

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

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

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

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

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

16 (c) The court shall order legal counsel for an individual and, if the individual
17 appears to be indigent, refer him or her to the authority for indigency determinations
18 under s. 977.07 (1) if any of the following apply:

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

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

22 (d) The court shall order either a summary hearing or a full due process
23 hearing. A summary hearing may be held in court or may be held by other means
24 including by telephone or video conference. The court shall hold a full due process
25 hearing if any of the following apply:

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- 1 1. The individual or the individual's guardian or guardian ad litem so requests.
- 2 2. The report under sub. (2) (f) indicates that the individual no longer meets the
- 3 standards for an order under s. 55.14 (8).
- 4 3. The report under sub. (2) (f) indicates that the individual objects to the order.
- 5 (e) Following the hearing under par. (d), the court shall do one of the following:
- 6 1. If the court finds that the individual continues to meet the standards for an
- 7 order under s. 55.14 (8), the court shall order the continuation of the order. The court
- 8 shall include in the decision the information relied upon as a basis for continuation
- 9 of the order and shall make findings based on the requirements for allegations of a
- 10 petition under s. 55.14 (3) in support of the need for continuation of the order.
- 11 2. If the court finds that the individual continues to meet the standards for an
- 12 order under s. 55.14 (8) but that modification of the order or the treatment plan would
- 13 be in the best interests of the individual, the court shall modify the order, order
- 14 modifications to the individual's treatment plan, or both. Any modifications to the
- 15 treatment plan are subject to the approval of the guardian. The court shall include
- 16 in the decision the information relied upon as a basis for continuation of the order
- 17 and shall make findings based on the requirements for allegations of a petition under
- 18 s. 55.14 (3) in support of the need for authorizing the guardian to consent to
- 19 involuntary administration of psychotropic medication.
- 20 3. If the court finds that the individual no longer meets the standards for an
- 21 order under s. 55.14 (8), the court shall terminate the order. If the order is
- 22 terminated, the court shall review the needs of the individual with respect to other
- 23 protective services. If the court determines that the individual meets the standards
- 24 for other protective services under this chapter that are not currently being provided
- 25 to the individual, the court may order those protective services for the individual.

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

3 1. The individual.

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

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

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

8 **SECTION 125.** 55.195 (7) of the statutes is created to read:

9 55.195 (7) Provide a summary written report to the court.

10 **SECTION 126.** 55.195 (9) of the statutes is created to read:

11 55.195 (9) Attend the hearing.

12 **SECTION 127.** 58.05 (2) of the statutes is amended to read:

13 58.05 (2) Any person who is mentally ill or ~~retarded~~ developmentally disabled
14 may, upon the written request of his or her guardian, be committed to any such
15 hospital or institution in the manner persons who are ~~adjudged mentally~~ adjudicated
16 incompetent are committed to the state hospitals; but the county in which ~~such~~ the
17 person resides shall be liable for his or her support, maintenance, and treatment only
18 when he or she has been committed upon the request of the county board, and ~~such~~
19 the hospital or institution ~~shall not be~~ is not required to keep, care for, or treat any
20 person who is mentally ill or ~~retarded~~ developmentally disabled longer than his or
21 her guardian ~~or~~, friends, or the county from which he or she shall have been
22 committed shall defray the expenses of his or her care and treatment. Any person
23 may voluntarily place himself or herself in such hospital, asylum, or institution for
24 care and treatment.

25 **SECTION 128.** 66.0915 (1) of the statutes is amended to read:

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1 66.0915 (1) PRIVATE VIADUCTS IN CITIES, VILLAGES AND TOWNS. The privilege of
2 erecting a viaduct above a public street, road, or alley, for the purpose of connecting
3 buildings on each side, may be granted by the city council, village board, or town
4 board upon the written petition of the owners of all the frontage of the lots and lands
5 abutting the portion sought to be connected, and the owners of more than one-half
6 of the frontage of the lots and lands abutting upon that portion of the remainder that
7 lies within 2,650 feet from the ends of the portion proposed to be connected. If a lot
8 or land is owned by the state, or by a county, city, village, or town, or by a minor or
9 individual adjudicated incompetent person, or the title to the lot or land is held in
10 trust, the petition may be signed by the governor, the chairperson of the county
11 board, the mayor of the city, the president of the board of trustees of the village, the
12 chairperson of the town board, the guardian of the minor or individual adjudicated
13 incompetent person, or the trustee, respectively, and the signature of a private
14 corporation may be made by its president, secretary, or other principal officer or
15 managing agent. Written notice stating when and where the petition will be acted
16 upon, and describing the location of the proposed viaduct, shall be given by the city
17 council, village board, or town board by publication of a class 3 notice, under ch. 985.

18 **SECTION 129.** 66.0915 (2) of the statutes is amended to read:

19 66.0915 (2) REMOVAL OF PRIVATE VIADUCTS. A viaduct in a city, village, or town
20 may be discontinued by the city council, village board, or town board, upon written
21 petition of the owners of more than one-half of the frontage of the lots and lands
22 abutting on the street or road approaching on each end of the viaduct, which lies
23 within 2,650 feet from the ends of the viaduct. If a lot or land is owned by the state,
24 or by a county, city, village, or town, or by a minor or individual adjudicated
25 incompetent person, or the title to the lot or land is held in trust, the petition may

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1 be signed by the governor, the chairperson of the county board, the mayor of the city,
2 the president of the board of trustees of the village, the chairperson of the town board,
3 the guardian of the minor or individual adjudicated incompetent person, or the
4 trustee, respectively, and the signature of a private corporation may be made by its
5 president, secretary, or other principal officer or managing agent. Written notice
6 stating when and where the petition will be acted upon, and stating what viaduct is
7 proposed to be discontinued, shall be given by the city council, village board, or town
8 board by publication of a class 1 notice, under ch. 985, not less than one year before
9 the day fixed for the hearing and a class 3 notice, under ch. 985, within the 30 days
10 before the date of the hearing.

11 **SECTION 130.** 71.07 (3m) (a) 1. e. of the statutes is amended to read:

12 71.07 **(3m)** (a) 1. e. For purposes of filing a claim under this subsection, when
13 a guardian has been appointed ~~under ch. 880~~ in this state for a ward who owns the
14 farmland, the claimant shall be the guardian on behalf of the ward.

15 **SECTION 131.** 71.28 (2m) (a) 1. e. of the statutes is amended to read:

16 71.28 **(2m)** (a) 1. e. For purposes of filing a claim under this subsection, when
17 a guardian has been appointed ~~under ch. 880~~ in this state for a ward who owns the
18 farmland, the claimant shall be the guardian on behalf of the ward.

19 **SECTION 132.** 71.47 (2m) (a) 1. e. of the statutes is amended to read:

20 71.47 **(2m)** (a) 1. e. For purposes of filing a claim under this subsection, when
21 a guardian has been appointed ~~under ch. 880~~ in this state for a ward who owns the
22 farmland, the claimant shall be the guardian on behalf of the ward.

23 **SECTION 133.** 71.58 (1) (f) of the statutes is amended to read:

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1 71.58 (1) (f) For purposes of filing a claim under this subchapter, when a
2 guardian has been appointed ~~under ch. 880 in this state~~ for a ward who owns the
3 farmland, the claimant shall be the guardian on behalf of the ward.

4 **SECTION 134.** 75.03 (title) of the statutes is amended to read:

5 **75.03 (title) Redeeming lands of minors, ~~incompetents~~ or individuals**
6 **adjudicated incompetent.**

7 **SECTION 135.** 75.521 (8) of the statutes is amended to read:

8 75.521 (8) DUTY OF THE COURT TO ENTER JUDGMENT IN DEFAULT CASES. In the event
9 of the failure to redeem or answer by any person having the right to redeem or answer
10 as hereinabove provided, such person and all persons claiming under and through
11 that person, from and after the date of the filing of the list of tax liens in the office
12 of the clerk of the circuit court of the county, shall be forever barred and foreclosed
13 of all right, title and interest and equity of redemption in and to the parcel described
14 in such list of the tax liens, and upon filing of an affidavit of such default or failure
15 of redemption by the county treasurer of such county, the court in which such list of
16 tax liens is filed, shall render final judgment ordering and adjudging that the county
17 is vested with an estate in fee simple absolute in such lands, subject, however, to all
18 unpaid taxes and charges which are subsequent to the latest dated valid tax lien
19 appearing on the list specified in sub. (3) (b) and to recorded restrictions as provided
20 by s. 75.14 (4) and all persons, both natural and artificial, including the state of
21 Wisconsin, infants, ~~incompetents~~ individuals adjudicated incompetent, absentees,
22 and nonresidents who may have had any right, title, interest, claim, lien or equity
23 of redemption in such lands, are forever barred and foreclosed of such right, title,
24 interest, claim, lien or equity of redemption. Such judgment shall be deemed to be
25 based on the latest dated valid tax lien appearing on the list of tax liens. No personal

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1 judgment shall be entered against any person having or claiming to have any right,
2 title or interest in or lien upon said lands. Such judgment shall have the effect of the
3 issuance of a tax deed or deeds and of judgment to bar former owners and quiet title
4 thereon.

5 **SECTION 136.** 75.521 (12) (b) of the statutes is amended to read:

6 75.521 (12) (b) This section shall apply to and be valid and effective with
7 respect to all defendants even though one or more be infants, ~~incompetents~~
8 individuals adjudicated incompetent, absentees or nonresidents of the state of
9 Wisconsin, provided that a guardian ad litem shall be appointed to serve for all
10 persons known or unknown who have or may have an interest in the lands described
11 in any list and who are or may be minors or ~~incompetents~~ individuals adjudicated
12 incompetent at the date of filing such list. Such guardian ad litem may be appointed
13 by the court without notice, and the fee for the services of the guardian ad litem as
14 fixed by the court shall be paid by the county.

15 **SECTION 137.** 75.521 (13) (b) of the statutes is amended to read:

16 75.521 (13) (b) In the event that the court shall determine that the issue raised
17 by the answer of the defendant is without merit, a final judgment to such effect shall
18 be entered ordering and adjudging that the county is vested with an estate in fee
19 simple absolute in such lands subject, however, to all unpaid taxes and charges which
20 are subsequent to the latest dated tax lien appearing on the list specified in sub. (3)
21 (b) and to recorded restrictions as provided by s. 75.14, and all persons, both natural
22 and artificial, including the state of Wisconsin, infants, ~~incompetents~~ individuals
23 adjudicated incompetent, absentees and nonresidents who may have had any right,
24 title, interest, claim, lien or equity of redemption in such lands, are forever barred
25 and foreclosed of such right, title, interest, claim, lien or equity of redemption. Such

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1 judgment shall be deemed to be based on the latest dated tax lien appearing on the
2 list of tax liens. Such judgment shall have the effect of the issuance of a tax deed or
3 deeds and of judgment to bar former owners and quiet title thereon.

4 **SECTION 138.** 88.04 (2) of the statutes is amended to read:

5 88.04 (2) If any minor or individual adjudicated incompetent ~~person~~ owns land
6 in a drainage district or proposed drainage district or proposed annex to a drainage
7 district, the ~~general~~ guardian or next of kin of such the minor or ~~incompetent~~
8 individual may sign petitions under this chapter for and on behalf of the minor or
9 incompetent.

10 **SECTION 139.** 88.10 of the statutes is amended to read:

11 **88.10 Guardian ad litem; failure to appoint.** Failure to appoint a guardian
12 ad litem in a proceeding under this chapter is not jurisdictional, but when the failure
13 is discovered a guardian ad litem shall be appointed and an order served upon the
14 guardian ad litem to show cause why the minor or ~~incompetent~~ individual
15 adjudicated incompetent should not be bound by all prior proceedings pertaining to
16 the drainage district. On such a hearing the court shall enter such order or judgment
17 as the facts warrant.

18 **SECTION 140.** 92.03 (4) (intro.) of the statutes is amended to read:

19 92.03 (4) (intro.) "Landowner" means any person over 18 years of age and any
20 partnership, limited liability company, firm, or corporation that holds title to land
21 lying within a county, whether or not this land is subject to easement, mortgage, lien,
22 lease, or restrictive covenant, except that this term does not include any person who
23 is under guardianship, a person who is adjudicated incompetent, or a person who is
24 mentally ill. A person, partnership, limited liability company, firm, or corporation

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1 is deemed to hold title to land if the person, partnership, limited liability company,
2 firm, or corporation has any of the following:

3 **SECTION 141.** 93.11 (6) (a) 1. of the statutes is amended to read:

4 93.11 (6) (a) 1. That the licensee is adjudicated incompetent.

5 **SECTION 142.** 114.135 (2) of the statutes is amended to read:

6 114.135 (2) NOTICE; CLAIM FOR DAMAGES. In case of any airport landing field or
7 landing and take-off strip owned by any city, village, town, or county or any union
8 of them, the commission or other body in charge of the operation and control of the
9 airport, landing field, or landing and take-off strip may prepare and record without
10 charge with the register of deeds plans and specifications showing the protection
11 privileges sought as described in sub. (1). The commission or other body in charge
12 shall send by registered mail with return receipt to each owner at his or her
13 last-known address a notice stating that the plans and specifications have been
14 recorded with the register of deeds' office, stating the county, time of recording, the
15 record number, and a brief description of the parcel of land or interest therein
16 affected. If the address of the owner cannot be ascertained or the registered letter
17 is returned unclaimed, notice shall be sent by registered mail to the person in
18 possession of the premises. If no person is in possession, then the notice shall be
19 posted in a conspicuous place on the land involved and published as a class 3 notice,
20 under ch. 985, in the area affected. The right of the owner to claim for damages for
21 the protection regulations imposed in the plans and specifications, or the removal of
22 obstructions shall be forever barred, unless the owner files a claim for damages with
23 the commission or other body in charge within 6 months from the receipt of the notice
24 from the commission, or other body in charge, or the posting and last publication.
25 The claim shall be verified and shall state the amount of damages claimed. The

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1 commission or other body in charge may pay the damages, if it has available funds,
2 and the payment shall operate as a conveyance. If no claims for payment are filed
3 or if payment is made, the commission or other body in charge shall file an affidavit
4 for each parcel involved setting forth the rights acquired which shall be recorded by
5 the register of deeds without charge and when so recorded has the same effect as any
6 recorded instrument. If any owner is a minor or is adjudicated incompetent, the
7 notice may be sent by registered mail to the owner's guardian, if he or she has one,
8 and if there is none the circuit court of the county in which the land, or a larger part,
9 is located shall upon application of the commission or other body in charge appoint
10 a guardian to receive the notice, and to protect the rights of the owner. Any funds
11 payable to the owner shall be cared for in the manner provided in ch. 880 54. If the
12 commission or other body in charge determines that the damages claimed are
13 excessive, it shall so report to the governing body that established the airport,
14 landing field or landing and take-off strip in question and with its consent may
15 acquire in the name of the governmental body the protection privilege desired in the
16 manner set forth in sub. (1) or it may deposit with the county clerk an award and
17 notify the owner of the land involved in the method specified in this subsection. The
18 landowner may accept the award without prejudice to his or her right to claim and
19 contest for a greater sum. The landowner may, within a period of 6 months after
20 notice of the award, proceed as provided in ch. 32 to have the damages appraised.

21 **SECTION 143.** 115.76 (12) (b) 2. of the statutes is amended to read:

22 115.76 (12) (b) 2. The state, a county, or a child welfare agency, if a child was
23 made a ward of the state, county, or child welfare agency under ch. 54 or ch. 880, 2003
24 stats., or if a child has been placed in the legal custody or guardianship of the state,
25 county, or child welfare agency under ch. 48 or ch. 767.

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1 **SECTION 144.** 115.797 (1) (c) of the statutes is amended to read:

2 115.797 (1) (c) “Party” means a competent adult pupil or the parent of a child
3 or ~~incompetent~~ adult pupil adjudicated incompetent who is the subject of a dispute,
4 and the local educational agency.

5 **SECTION 145.** 115.807 (intro.) of the statutes is amended to read:

6 **115.807 Transfer of parental rights at age of majority.** (intro.) When a
7 child with a disability, other than a child with a disability who has been ~~determined~~
8 ~~to be~~ adjudicated incompetent under ch. 880 in this state, reaches the age of 18, all
9 of the following apply:

10 **SECTION 146.** 146.34 (1) (d) of the statutes is amended to read:

11 146.34 (1) (d) “Guardian” means the person named by the court under ch. 48
12 or 54 or ch. 880, 2003 stats., having the duty and authority of guardianship.

13 **SECTION 147.** 146.81 (5) of the statutes is amended to read:

14 146.81 (5) “Person authorized by the patient” means the parent, guardian, or
15 legal custodian of a minor patient, as defined in s. 48.02 (8) and (11), the person
16 vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m), or
17 (4n), the guardian of a patient ~~adjudged~~ adjudicated incompetent, ~~as defined in s.~~
18 ~~880.01 (3) and (4) in this state~~, the personal representative or spouse of a deceased
19 patient, any person authorized in writing by the patient or a health care agent
20 designated by the patient as a principal under ch. 155 if the patient has been found
21 to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for
22 health care instrument. If no spouse survives a deceased patient, “person authorized
23 by the patient” also means an adult member of the deceased patient’s immediate
24 family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian
25 for a patient believed incompetent to consent to the release of records under this

SENATE BILL 391**SECTION 147**

1 section as the person authorized by the patient to decide upon the release of records,
2 if no guardian has been appointed for the patient.

3 **SECTION 148.** 146.82 (2) (a) 9. a. of the statutes is amended to read:

4 146.82 (2) (a) 9. a. In this subdivision, “abuse” has the meaning given in s. 51.62
5 (1) (ag); “neglect” has the meaning given in s. 51.62 (1) (br); and “parent” has the
6 meaning given in s. 48.02 (13), except that “parent” does not include the parent of a
7 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),
8 or for whom a guardian is appointed under s. 54.10 or s. 880.33, 2003 stats.

9 **SECTION 149.** 146.82 (2) (a) 9. c. of the statutes is amended to read:

10 146.82 (2) (a) 9. c. If the patient, regardless of age, has a guardian appointed
11 under s. 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with developmental
12 disability, as defined in s. 51.01 (5) (a), who has a parent or has a guardian appointed
13 under s. 48.831 and does not have a guardian appointed under s. 54.10 or s. 880.33,
14 2003 stats., information concerning the patient that is obtainable by staff members
15 of the agency or nonprofit corporation with which the agency has contracted is
16 limited, except as provided in subd. 9. e., to the nature of an alleged rights violation,
17 if any; the name, birth date and county of residence of the patient; information
18 regarding whether the patient was voluntarily admitted, involuntarily committed
19 or protectively placed and the date and place of admission, placement or
20 commitment; and the name, address and telephone number of the guardian of the
21 patient and the date and place of the guardian’s appointment or, if the patient is a
22 minor with developmental disability who has a parent or has a guardian appointed
23 under s. 48.831 and does not have a guardian appointed under s. 54.10 or s. 880.33,
24 2003 stats., the name, address and telephone number of the parent or guardian
25 appointed under s. 48.831 of the patient.

SENATE BILL 391**SECTION 150**

1 **SECTION 150.** 146.83 (4) (b) of the statutes is amended to read:

2 146.83 (4) (b) Conceal or withhold a patient health care record with intent to
3 prevent or obstruct an investigation or prosecution or with intent to prevent its
4 release to the patient, to his or her guardian ~~appointed under ch. 880~~, to his or her
5 health care provider with a statement of informed consent, or under the conditions
6 specified in s. 146.82 (2), or to a person with a statement of informed consent.

7 **SECTION 151.** 154.07 (2) of the statutes is amended to read:

8 154.07 (2) EFFECT OF DECLARATION. The desires of a qualified patient who is
9 competent supersede the effect of the declaration at all times. If a qualified patient
10 is adjudicated incompetent at the time of the decision to withhold or withdraw
11 life-sustaining procedures or feeding tubes, a declaration executed under this
12 subchapter is presumed to be valid. The declaration of a qualified patient who is
13 diagnosed as pregnant by the attending physician has no effect during the course of
14 the qualified patient's pregnancy. For the purposes of this subchapter, a physician
15 or inpatient health care facility may presume in the absence of actual notice to the
16 contrary that a person who executed a declaration was of sound mind at the time.

17 **SECTION 152.** 154.13 (2) (c) of the statutes is amended to read:

18 154.13 (2) (c) The court and all parties involved in proceedings in this state for
19 ~~guardianship of~~ adjudication of incompetency and appointment of a guardian for the
20 declarant ~~under ch. 880~~, for emergency detention under s. 51.15, for involuntary
21 commitment under s. 51.20, or for protective placement or protective services under
22 ch. 55.

23 **SECTION 153.** 155.05 (1) of the statutes is amended to read:

24 155.05 (1) An individual who is of sound mind and has attained age 18 may
25 voluntarily execute a power of attorney for health care. An individual for whom an

SENATE BILL 391**SECTION 153**

1 adjudication of incompetence and appointment of a guardian of the person is in effect
2 ~~under ch. 880 in this state~~ is presumed not to be of sound mind for purposes of this
3 subsection executing a power of attorney for health care.

4 **SECTION 154.** 155.40 (2m) of the statutes is created to read:

5 155.40 (2m) If a principal, after executing a power of attorney for health care,
6 is adjudicated incompetent in this state, the power of attorney for health care
7 remains in effect, except that a court may under s. 54.46 (2) (b), for good cause shown,
8 revoke the power of attorney for health care and invalidate the power of attorney for
9 health care instrument, or limit the authority of the agent under the terms of the
10 power of attorney for health care instrument.

11 **SECTION 155.** 155.60 (1) of the statutes is amended to read:

12 155.60 (1) Nothing in this chapter prohibits an individual from petitioning a
13 court ~~under ch. 880 in this state~~ for a determination of incompetency and for
14 appointment of a guardian for an individual who is a principal under this chapter.

15 **SECTION 156.** 155.60 (2) of the statutes is amended to read:

16 155.60 (2) ~~If a court under s. 880.33 determines that an individual who is a~~
17 ~~principal is adjudicated incompetent or makes a finding of limited incompetency~~
18 ~~under s. 880.33 (3) and appoints a guardian for the individual in this state and a~~
19 ~~guardian is appointed for him or her,~~ the power of attorney for health care executed
20 under this chapter by the principal is ~~revoked and the power of attorney for health~~
21 ~~care instrument is invalid, unless remains in effect, except that~~ the court finds that
22 may under s. 54.46 (2) (b), for good cause shown, revoke the power of attorney for
23 health care and invalidate the power of attorney for health care instrument should
24 remain in effect. If, or limit the authority of the agent under the terms of the power
25 of the power of attorney for health care instrument. Unless the court makes this

SENATE BILL 391**SECTION 156**

1 ~~finding revocation or limitation~~, the guardian for the individual may not make health
2 care decisions for the ward that may be made by the health care agent, unless the
3 guardian is the health care agent.

4 **SECTION 157.** 155.65 (2) (c) of the statutes is amended to read:

5 155.65 (2) (c) The court and all parties involved in proceedings in this state for
6 guardianship of adjudication of incompetency and appointment of a guardian for the
7 principal ~~under ch. 880~~, for emergency detention under s. 51.15, for involuntary
8 commitment under s. 51.20, or for protective placement or protective services under
9 ch. 55.

10 **SECTION 158.** 179.65 of the statutes is amended to read:

11 **179.65 Power of estate of deceased or incompetent partner**
12 **adjudicated incompetent.** If a partner who is an individual dies or is adjudged
13 adjudicated incompetent to manage his or her person or property, the partner's
14 personal representative, guardian, conservator, or other legal representative may
15 exercise all of the partner's rights for the purpose of settling his or her estate or
16 administering his or her property, including any power the partner had to give an
17 assignee the right to become a limited partner. If a partner is a corporation, limited
18 liability company, trust, or other entity and is dissolved or terminated, the powers
19 of that partner may be exercised by its legal representative or successor.

20 **SECTION 159.** 180.0103 (11) of the statutes is amended to read:

21 180.0103 (11) "Individual" includes the estate of an individual adjudicated
22 incompetent or a deceased natural person.

23 **SECTION 160.** 181.0103 (14) of the statutes is amended to read:

SENATE BILL 391**SECTION 160**

1 181.0103 (14) "Individual" means a natural person. Except in ss. 181.0802 and
2 181.0840, "individual" includes the estate of an individual adjudicated incompetent
3 or a deceased natural person.

4 **SECTION 161.** 186.10 (2) of the statutes is amended to read:

5 186.10 (2) SHARES IN TRUST. Shares may be issued in trust, subject to any
6 conditions prescribed in the bylaws. Share accounts and deposit accounts may be
7 held by a member in trust for a beneficiary, held by a nonmember in trust for a
8 beneficiary who is a member or held by a nonmember custodian for a member
9 pursuant to ~~ss. 880.61 to 880.72~~ under ss. 54.854 to 54.898.

10 **SECTION 162.** 214.37 (4) (k) 1. of the statutes is amended to read:

11 214.37 (4) (k) 1. An affidavit stating that the person has standing under s.
12 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or assignment
13 of a decedent's estate or that the person is an heir of the decedent, or was guardian,
14 as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the decedent at the time of
15 the decedent's death, and may obtain transfer of property of a decedent under s.
16 867.03.

17 **SECTION 163.** 215.14 (9) (title) of the statutes is amended to read:

18 215.14 (9) (title) SAVINGS ACCOUNTS OF DECEASED ~~OR INCOMPETENT~~ PERSONS.

19 **SECTION 164.** 215.26 (8) (e) 1. of the statutes is amended to read:

20 215.26 (8) (e) 1. Submits an affidavit stating that the person has standing
21 under s. 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or
22 assignment of a decedent's estate or that the person is an heir of the decedent, or was
23 guardian, as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the decedent at
24 the time of the decedent's death, and may obtain transfer of property of a decedent
25 under s. 867.03; and

SENATE BILL 391**SECTION 165**

1 **SECTION 165.** 223.03 (6) (intro.) of the statutes is amended to read:

2 223.03 **(6)** (intro.) To act as trustee, personal representative, registrar of stocks
3 and bonds, custodian, agent, guardian of estates, ~~guardian of any person~~ the estate
4 or guardian of the person of any individual subject to guardianship, assignee,
5 receiver, and in any other fiduciary capacity authorized by the division, subject to all
6 of the following conditions:

7 **SECTION 166.** 223.10 of the statutes is amended to read:

8 **223.10 Organizations as fiduciaries.** Except as provided in s. ~~880.35~~ 54.15
9 (7), no court or probate registrar in this state may appoint or issue letters to any
10 corporation, limited liability company, association, partnership or business trust as
11 trustee, personal representative, guardian, conservator, assignee, receiver, or in any
12 other fiduciary capacity unless such corporation, limited liability company,
13 association, partnership or business trust is subject to regulation and examination
14 under s. 223.105, or is a national bank, state or federal savings and loan association,
15 state or federal savings bank or federal credit union with authority to exercise such
16 powers, or is a foreign corporation operating under s. 223.12.

17 **SECTION 167.** 243.07 (3) (a) of the statutes is amended to read:

18 243.07 **(3)** (a) If, following execution of a durable power of attorney, ~~a court of~~
19 ~~the principal's domicile appoints a conservator, guardian of the estate, or other~~ the
20 individual who is the principal is adjudicated incompetent and a guardian is
21 appointed for him or her, a conservator is appointed for him or her under s. 54.76, or
22 another fiduciary is charged by a court with the management of all or some of the
23 principal's property or all of his or her property except specified exclusions, the agent
24 is accountable to the fiduciary as well as to the principal. Unless the court finds that
25 the durable power of attorney should remain in effect, the fiduciary has the same

SENATE BILL 391**SECTION 167**

1 ~~power to revoke or amend the power of attorney that the principal would have had~~
2 ~~if the principal were not disabled or incapacitated, the durable power of attorney~~
3 ~~executed under this chapter by the principal remains in effect, except that the court~~
4 ~~may under s. 54.46 (2) (c) or s. 54.76 (3g) or, for a fiduciary, after a hearing upon a~~
5 ~~petition, as applicable, for good cause shown, revoke the durable power of attorney~~
6 ~~and invalidate the basic power of attorney for finances and property or limit the~~
7 ~~authority of the agent under the terms of the basic power of attorney for finances and~~
8 ~~property. Unless the court makes this revocation or limitation, the guardian,~~
9 ~~conservator, or other fiduciary, as applicable, may not make decisions for the~~
10 ~~principal that may be made by the agent, unless the guardian, conservator, or~~
11 ~~fiduciary is the agent.~~

12 **SECTION 168.** 243.07 (3) (b) of the statutes is amended to read:

13 243.07 (3) (b) A principal may nominate, by a durable power of attorney, the
14 conservator, guardian of his or her estate, or guardian of his or her person for
15 consideration by the court if ~~protective~~ guardianship or conservatorship proceedings
16 for the principal's person or estate are ~~thereafter~~ after execution of the
17 durable power of attorney. The court shall make its appointment in accordance with
18 the principal's most recent nomination in a durable power of attorney except for good
19 cause or disqualification.

20 **SECTION 169.** 243.10 (7) (c) of the statutes is created to read:

21 243.10 (7) (c) If a principal, after executing a durable power of attorney, is
22 adjudicated incompetent in this state, has a conservator appointed for him or her, or
23 a court charges another fiduciary with the management of all or some of his or her
24 property, a court may under s. 54.46 (2) (c) or 54.76 (3g) or, for a fiduciary, after a
25 hearing upon a petition, as applicable, for good cause shown, revoke the durable

SENATE BILL 391**SECTION 169**

1 power of attorney or limit the authority of the agent under the terms of the durable
2 power of attorney.

3 **SECTION 170.** 252.15 (2) (a) 4. a. of the statutes is amended to read:

4 252.15 (2) (a) 4. a. The individual has been adjudicated incompetent ~~under ch.~~
5 880 in this state, is under 14 years of age or is unable to give consent because he or
6 she is unable to communicate due to a medical condition.

7 **SECTION 171.** 252.15 (2) (a) 4. b. of the statutes is amended to read:

8 252.15 (2) (a) 4. b. The health care provider obtains consent for the testing from
9 the individual's guardian, if the individual is adjudicated incompetent ~~under ch. 880~~
10 in this state; from the individual's parent or guardian, if the individual is under 14
11 years of age; or from the individual's closest living relative or another with whom the
12 individual has a meaningful social and emotional relationship if the individual is not
13 a minor nor adjudicated incompetent.

14 **SECTION 172.** 252.15 (2) (bm) (intro.) of the statutes is amended to read:

15 252.15 (2) (bm) (intro.) The health care provider that subjects a person to a test
16 for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to
17 HIV under par. (a) 3. shall provide the test subject and the test subject's guardian,
18 if the test subject is an individual found incompetent under ch. 880 in this state, with
19 all of the following information:

20 **SECTION 173.** 252.15 (5) (a) 15. of the statutes is amended to read:

21 252.15 (5) (a) 15. To anyone who provides consent for the testing under sub. (2)
22 (a) 4. b., except that disclosure may be made under this subdivision only during a
23 period in which the test subject is adjudicated incompetent ~~under ch. 880 in this~~
24 state, is under 14 years of age, or is unable to communicate due to a medical
25 condition.

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1 **SECTION 174.** 253.10 (3) (c) 7. of the statutes is amended to read:

2 253.10 **(3)** (c) 7. If the woman considering an abortion is a minor, unless s.
3 48.375 (4) (a) 2. applies, the requirements to provide information to the woman under
4 subds. 1. to 6. apply ~~to~~ also to require provision of the information to the individual
5 whose consent is also required under s. 48.375 (4) (a) 1. If the woman considering
6 an abortion ~~has been adjudicated~~ is an individual adjudicated incompetent under ~~ch.~~
7 ~~880~~ in this state, the requirements to provide information to the woman under subds.
8 1. to 6. apply to also require provision of the information to the person appointed as
9 the woman's guardian.

10 **SECTION 175.** 343.06 (1) (L) of the statutes is created to read:

11 343.06 **(1)** (L) To any person who has been declared incompetent under s. 54.25
12 (2) (c) 1. d. to apply for an operator's license.

13 **SECTION 176.** 343.31 (title) of the statutes is amended to read:

14 **343.31** (title) **Revocation or suspension of licenses after certain**
15 **convictions or declarations.**

16 **SECTION 177.** 343.31 (2x) of the statutes is created to read:

17 343.31 **(2x)** The department shall suspend a person's operating privilege upon
18 receiving a record of a declaration under s. 54.25 (2) (c) 1. d. that the person is
19 incompetent to apply for an operator's license. The department may reinstate the
20 person's operator's license upon receiving a record of a declaration that the person
21 is no longer incompetent to apply for an operator's license under s. 54.25 (2) (c) 1. d.,
22 if the person is otherwise qualified under this chapter to obtain an operator's license.

23 **SECTION 178.** 343.31 (3) (a) of the statutes is amended to read:

SENATE BILL 391**SECTION 178**

1 343.31 (3) (a) Except as otherwise provided in this subsection or sub. (2m) or,
2 (2s), or (2x), all revocations or suspensions under this section shall be for a period of
3 one year.

4 **SECTION 179.** 403.308 (1) of the statutes is amended to read:

5 403.308 (1) In an action with respect to an instrument, the authenticity of, and
6 authority to make, each signature on the instrument is admitted unless specifically
7 denied in the pleadings. If the validity of a signature is denied in the pleadings, the
8 burden of establishing validity is on the person claiming validity, but the signature
9 is presumed to be authentic and authorized unless the action is to enforce the liability
10 of the purported signer and the signer is dead or adjudicated incompetent at the time
11 of trial of the issue of validity of the signature. If an action to enforce the instrument
12 is brought against a person as the undisclosed principal of a person who signed the
13 instrument as a party to the instrument, the plaintiff has the burden of establishing
14 that the defendant is liable on the instrument as a represented person under s.
15 403.402 (1).

16 **SECTION 180.** 440.121 of the statutes is created to read:

17 **440.121 Credential denial, nonrenewal, and revocation based on**
18 **incompetency.** Notwithstanding any other provision of chs. 440 to 480 relating to
19 issuance or renewal of a credential, the department shall deny an application for an
20 initial credential or credential renewal or revoke a credential issued to an individual
21 for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1.
22 d. stating that the individual is incompetent to apply for a credential under chs. 440
23 to 480.

24 **SECTION 181.** 565.30 (2) of the statutes is amended to read:

SENATE BILL 391**SECTION 181**

1 565.30 (2) PAYMENT OF PRIZES TO MINORS. If the prize for a winning lottery ticket
2 or lottery share given to a minor is less than \$1,000, the administrator may make
3 payment of the prize by delivering to an adult member of the minor's family, or to the
4 minor's guardian, a check or draft payable to the minor. If the prize is \$1,000 or more,
5 the administrator shall make payment to the minor by paying or delivering the
6 money to a broker or financial institution under s. ~~880.65~~ 54.870 (1) (b).

7 **SECTION 182.** 609.65 (1) (intro.) of the statutes is amended to read:

8 609.65 (1) (intro.) If an enrollee of a limited service health organization,
9 preferred provider plan, or defined network plan is examined, evaluated, or treated
10 for a nervous or mental disorder pursuant to a court order under s. 880.33 (4m) or
11 (4r), 2003, stats., an emergency detention under s. 51.15, a commitment or a court
12 order under s. 51.20 or 880.33 (4m) or (4r), an order for protective placement or
13 protective services under ch. 55, an order under s. 55.14 or 55.19 (3) (e), or an order
14 under ch. 980, then, notwithstanding the limitations regarding participating
15 providers, primary providers, and referrals under ss. 609.01 (2) to (4) and 609.05 (3),
16 the limited service health organization, preferred provider plan, or defined network
17 plan shall do all of the following:

18 **SECTION 183.** 628.10 (1) of the statutes is amended to read:

19 628.10 (1) GENERAL. An intermediary's license issued under s. 628.04 remains
20 in force until it is revoked or limited under sub. (2), until it is suspended under sub.
21 (2) or s. 227.51 (3), until it is surrendered or until the licensee dies or is in this state
22 adjudicated incompetent as defined in s. 880.01 (4).

23 **SECTION 184.** 705.04 (2) of the statutes is amended to read:

24 705.04 (2) If the account is a P.O.D. account, on the death of the original payee
25 or the survivor of 2 or more original payees, any sums remaining on deposit belong

SENATE BILL 391**SECTION 184**

1 to the P.O.D. beneficiaries if surviving, or to the survivor of them if one or more die
2 before the original payee. Payment may be made to a minor P.O.D. beneficiary,
3 however, only in accordance with a procedure approved in ch. 880 54. If 2 or more
4 P.O.D. beneficiaries survive, they shall be entitled to payment of the sums on deposit
5 in accordance with such written instructions as may have been filed with the
6 financial institution, and if none, to payment in equal shares. There is no right of
7 survivorship in the event of the death of one of 2 or more P.O.D. beneficiaries after
8 their entitlement to payment has matured unless the terms of the account expressly
9 provide for survivorship or for the account's continuance as a joint account.

10 **SECTION 185.** 706.03 (4) of the statutes is amended to read:

11 706.03 (4) A conveyance by a minor or an individual adjudicated incompetent
12 in this state is effective only if executed by an authorized guardian on behalf of ~~such~~
13 ~~the~~ minor or individual adjudicated incompetent. ~~In the case of a limited~~
14 ~~incompetency, such~~ This restriction does not apply if ~~an individual has been~~
15 ~~determined competent to make contracts under s. 880.33 (3)~~ the individual's
16 adjudication of incompetency permits him or her to contract.

17 **SECTION 186.** 706.09 (1) (f) of the statutes is amended to read:

18 706.09 (1) (f) *Lack of authority of officers, agents or fiduciaries.* Any defect or
19 insufficiency in authorization of any purported officer, partner, manager, agent, or
20 fiduciary to act in the name or on behalf of any corporation, partnership, limited
21 liability company, principal, trust, estate, minor, individual adjudicated
22 incompetent, or other holder of an interest in real estate purported to be conveyed
23 in a representative capacity, after the conveyance has appeared of record for 5 years.

24 **SECTION 187.** 753.30 (1) of the statutes is amended to read:

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1 753.30 (1) The clerk of circuit court shall keep the books and records under s.
2 59.40 (2) (a) to (i) and ch. 799 and perform the duties under s. 59.40 (2) (j) to (q) for
3 all matters in the circuit court except those under chs. 48, 54, and 851 to ~~880~~ 879.
4 In counties having only one circuit judge, the circuit judge, with the approval of the
5 chief judge of the judicial administrative district, may appoint the clerk of court
6 register in probate. The appointments are revocable at the pleasure of the circuit
7 judge. Appointments and revocations shall be in writing and shall be filed in the
8 office of the register in probate. If appointed for this purpose, the clerk has the
9 powers and duties of registers in probate. In prosecutions of ordinance violations in
10 the circuit court in counties having a population of 500,000 or more, an assistant
11 chief deputy clerk appointed under sub. (3) (a), or one of his or her deputies, shall
12 enter upon the records of the court a statement of the offense charged, which shall
13 stand as the complaint, unless the court directs formal complaint be made. The
14 defendant's plea shall be guilty or not guilty, and shall be entered as not guilty on
15 failure to plead, which plea of not guilty shall put all matters in such case at issue,
16 any other provisions of law notwithstanding.

17 **SECTION 188.** 757.48 (1) (a) of the statutes is amended to read:

18 757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a
19 guardian ad litem is appointed by the court, the guardian ad litem shall be an
20 attorney admitted to practice in this state. In order to be appointed as a guardian
21 ad litem under s. 767.045, an attorney shall have completed 3 hours of approved
22 continuing legal education that relates to the functions and duties of a guardian ad
23 litem under ch. 767 and that includes training on the dynamics of domestic violence
24 and the effects of domestic violence on victims of domestic violence and on children.

SENATE BILL 391**SECTION 188**

1 In order to be appointed as a guardian ad litem under s. 54.40 (1), an attorney shall
2 have complied with SRC chapter 36.

3 **SECTION 189.** 757.48 (3) of the statutes is amended to read:

4 757.48 (3) No guardian ad litem may be permitted to receive any ~~money or~~
5 ~~property~~ assets or income of his or her ward, nor may any bond be required of a
6 guardian ad litem, but all ~~money or property of his or her~~ assets or income of the ward
7 may be paid or delivered to ~~a general guardian of his or her property~~ the ward's
8 guardian of the estate, subject to the exceptions of s. 880.04 54.12.

9 **SECTION 190.** 757.69 (1) (h) of the statutes is amended to read:

10 757.69 (1) (h) Hear petitions for commitment and conduct probable cause
11 hearings under ss. 51.20, 51.45 and 55.06 (11), conduct reviews of guardianships
12 under ch. 54 and reviews of protective placements and protective services under ~~chs.~~
13 ~~ch. 55 and 880~~, advise a person alleged to be mentally ill of his or her rights under
14 the United States and Wisconsin constitutions, and, if the person claims or appears
15 to be unable to afford counsel, refer the person to the authority for indigency
16 determinations specified under s. 977.07 (1) or, if the person is a child, refer that child
17 to the state public defender, who shall appoint counsel for the child without a
18 determination of indigency, as provided in s. 48.23 (4).

19 **SECTION 191.** 758.19 (6) (a) of the statutes is amended to read:

20 758.19 (6) (a) In this subsection, "guardian ad litem costs" means the costs of
21 guardian ad litem compensation that a county incurs under ch. 48, 54, 55, 767, 880
22 or 938 or ch. 880, 2003 stats., that the county has final legal responsibility to pay, or
23 that the county is unable to recover from another person and that does not exceed
24 the per hour rate established for time spent in court by private attorneys under s.
25 977.08 (4m) (b).

SENATE BILL 391**SECTION 192**

1 **SECTION 192.** 758.19 (6) (d) 1. of the statutes is amended to read:

2 758.19 **(6)** (d) 1. The total cost of guardian ad litem compensation that the
3 county incurred under chs. 48, 54, 55, 767, ~~880~~ and 938 and ch. 880, 2003 stats., in
4 the previous calendar year.

5 **SECTION 193.** 758.19 (6) (d) 2. of the statutes is amended to read:

6 758.19 **(6)** (d) 2. The total guardian ad litem compensation that the county
7 initially paid under chs. 48, 54, 55, 767, ~~880~~ and 938 and ch. 880, 2003 stats., and that
8 was recovered in the previous calendar year by the county from another responsible
9 person.

10 **SECTION 194.** 765.11 (1) of the statutes is amended to read:

11 765.11 **(1)** If any parent, grandparent, child, or natural guardian of a minor
12 applicant for a marriage license, any brother, sister, or guardian of either of the
13 applicants for a marriage license, either of the applicants, the district attorney, or a
14 circuit court commissioner believes that the statements of the application are false
15 or insufficient, or that ~~the applicants or either of them are~~ an applicant is adjudicated
16 incompetent without the right to marry, that person may file with the court having
17 probate jurisdiction in the county in which the marriage license is applied for, a
18 petition under oath, setting forth the grounds of objection to the marriage, and
19 asking for an order requiring the parties making ~~such~~ the application to show cause
20 why the marriage license should not be refused. Whereupon, the court, if satisfied
21 that the grounds of objection are prima facie valid, shall issue an order to show cause
22 as aforesaid, returnable as the court directs, but not more than 14 days after the date
23 of the order, which shall be served forthwith upon the applicants for the marriage
24 license residing in the state, and upon the clerk before whom the application has been
25 made, and shall operate as a stay upon the issuance of the marriage license until

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1 further ordered; if either or both of the applicants are nonresidents of the state the
2 order shall be served forthwith immediately upon the nonresident by publication of
3 a class 1 notice, under ch. 985, in the county ~~wherein~~ in which the application is
4 pending, and by mailing a copy thereof to the nonresident at the address contained
5 in the application.

6 **SECTION 195.** 766.51 (7) of the statutes is amended to read:

7 766.51 (7) A court may appoint a conservator or guardian under ch. 880 54 to
8 exercise a disabled spouse's right to manage and control marital property.

9 **SECTION 196.** 767.29 (3) (a) of the statutes is amended to read:

10 767.29 (3) (a) If maintenance payments or support money, or both, is ordered
11 to be paid for the benefit of any ~~person~~, individual who is committed by court order
12 to an institution or is in confinement, or whose legal custody is vested by court order
13 under ch. 48 or 938 in an agency, department ~~or~~, relative, or other entity, the court
14 or a circuit court commissioner may order ~~such~~ the maintenance payments or
15 support money to be paid to the relative ~~or~~, agency, institution, welfare department,
16 or other entity having the legal or actual custody of ~~said person~~ the individual, and
17 to be used for the latter's care and maintenance, without the appointment of a
18 guardian ~~under ch. 880~~ in this state.

19 **SECTION 197.** 786.01 of the statutes is amended to read:

20 **786.01 Conveyance of lands held in trust by persons under disability.**

21 Whenever any minor or ~~person~~ individual adjudicated incompetent ~~to manage his or~~
22 ~~her affairs~~ is seized or possessed of any lands or interest in any lands by way of
23 mortgage or in trust only for others, the circuit court of the proper county may, upon
24 the petition of the guardian of the minor or individual adjudicated incompetent
25 ~~person~~ or of any person in any way interested in the real estate, make an order

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1 authorizing or compelling the minor or individual adjudicated incompetent person
2 to convey and assure the lands or interest in the lands to any person entitled thereto,
3 in such manner as the court directs.

4 **SECTION 198.** 786.02 of the statutes is amended to read:

5 **786.02 Specific performance of incompetent's contract of individual**
6 **adjudicated incompetent.** A circuit court may authorize or compel the specific
7 performance of any contract made by any person who becomes individual who is
8 adjudicated incompetent before the performance thereof of the contract, on the
9 complaint or petition of the guardian of the individual adjudicated incompetent
10 person or of any other person interested in the contract.

11 **SECTION 199.** 786.03 of the statutes is amended to read:

12 **786.03 Specific performance; order; appeal.** No order authorizing or
13 directing any such conveyance or the performance of any such contract shall be made
14 until after hearing the parties and being satisfied that such conveyance ought to be
15 made or such contract ought to be performed. The court may, by such order, direct
16 the guardian of such individual adjudicated incompetent person, or a special
17 guardian appointed in such proceeding, to do any act which is necessary to carry such
18 order into effect. The court may further direct that the reasonable expenses of the
19 proceedings be paid out of the proceeds of the sale. No appeal shall lie from such
20 order unless notice of intention to appeal shall be filed with the court within 10 days
21 after date of the order. The court may enforce such order by any proper proceedings.

22 **SECTION 200.** 786.04 of the statutes is amended to read:

23 **786.04 Specific performance; conveyance; warranties.** The court may
24 require the guardian to convey the real estate which such individual adjudicated
25 incompetent person might or ought to have conveyed if still competent. Where such

SENATE BILL 391**SECTION 200**

1 ~~incompetent person~~ individual contracted before incompetency to convey real estate
2 by warranty deed, the guardian shall convey by warranty deed subject to any
3 exceptions set forth in the ~~incompetent's~~ individual's contract to convey. The
4 guardian shall not be personally liable because of any breach of such warranty, but
5 such warranty deed shall have the same effect for all purposes as if the individual
6 adjudicated incompetent had executed it at such time while competent. This section
7 is applicable where an individual adjudicated incompetent before incompetency
8 made an assignment of a contract to convey real estate but did not deed to the
9 assignee the title to the premises covered by the contract.

10 **SECTION 201.** 786.05 of the statutes is amended to read:

11 **786.05 Specific performance; recording order; effect.** A certified copy of
12 such judgment directing such conveyance, which is recorded in the office of the
13 register of deeds in the county where the lands lie, shall be prima facie evidence of
14 the correctness of the proceedings and of the authority of the guardian to convey.
15 Every such conveyance shall be as effectual in passing the estate as if the individual
16 adjudicated incompetent were then competent and executed the conveyance.

17 **SECTION 202.** 786.06 (intro.) of the statutes is amended to read:

18 **786.06 Realty of wards; grounds for mortgage, sale, lease.** (intro.) Any
19 real estate, or interest therein belonging to a minor or to ~~a person~~ an individual
20 adjudicated incompetent ~~to manage personal affairs~~ may be sold, mortgaged or
21 leased:

22 **SECTION 203.** 786.06 (1) of the statutes is amended to read:

23 **786.06 (1)** When the personal property and the income of the real estate of such
24 minor or individual adjudicated incompetent ~~person~~ are together insufficient for the

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1 payment of his or her debts or for the maintenance and education of himself or herself
2 and family;

3 **SECTION 204.** 786.06 (2) of the statutes is amended to read:

4 786.06 (2) When the interests of such minor or individual adjudicated
5 incompetent ~~person~~ require or will be substantially promoted by such disposition on
6 account of such real estate or interest therein being exposed to waste or dilapidation,
7 or being unproductive, or for other peculiar reasons or circumstances.

8 **SECTION 205.** 786.07 of the statutes is amended to read:

9 **786.07 Realty of wards or incompetents individuals adjudicated**
10 **incompetent; application for sale or encumbrance.** The application for the
11 disposition must be made to the circuit court of the county in which the real estate
12 or some part thereof is situated or to the circuit court of the county in which the
13 ~~general~~ guardian for the minor or individual adjudicated incompetent ~~person~~ has
14 been appointed, by petition of the ~~general~~ guardian of the minor or of the incompetent
15 ~~person~~ individual or by any relative or other person in behalf of either. The petition
16 must be verified and must set forth the facts which would authorize the selling,
17 mortgaging or leasing of the real estate or some part of the real estate for one or more
18 of the reasons set forth in s. 786.06. If the real estate sold or some part of the real
19 estate is situated in a county other than that in which the proceeding is taken, a
20 certified copy of the order confirming the sale containing the name of the purchaser,
21 the selling price and a description of the property sold shall be recorded in the office
22 of the register of deeds of the county in which the real estate or any part of the real
23 estate is situated. When the minor or individual adjudicated incompetent ~~person~~ has
24 a ~~general~~ guardian and the application is to any court other than the court in which
25 the ~~general~~ guardian was appointed, notice of hearing of the application shall be

SENATE BILL 391**SECTION 205**

1 given by mailing a copy of the notice to the judge of the court that appointed the
2 ~~general~~ guardian, and also to the ~~general~~ guardian, unless he or she is the petitioner,
3 at least 10 days before the date of the hearing.

4 **SECTION 206.** 786.08 (1) (a) of the statutes is amended to read:

5 786.08 (1) (a) When the application is made on behalf of a minor or individual
6 adjudicated incompetent, who has no ~~general~~ guardian, the court shall appoint some
7 suitable person special guardian of the minor or ~~incompetent~~ individual in the
8 proceeding; the special guardian shall give a bond to the judge of the court, to be filed
9 with the clerk of the circuit court, in such sum, with such sureties, and in such form
10 as the circuit court or judge directs, conditioned for the faithful performance of the
11 trust reposed, for paying over, investing or accounting for all moneys that shall be
12 received by the guardian, according to law and for observance of the directions of the
13 court in relation to the trust.

14 **SECTION 207.** 786.08 (1) (b) of the statutes is amended to read:

15 786.08 (1) (b) When the minor shall have a ~~general~~ guardian, ~~such general the~~
16 guardian may be appointed special guardian in said matter; or, ~~such general the~~
17 guardian, as such, may be authorized and empowered to act in and conduct such
18 proceedings in the same manner, and with the same provisions as to an additional
19 ~~general~~ guardian's bond, as is provided in said proceedings for the conduct thereof
20 by the ~~general~~ guardian of individuals adjudicated incompetent persons.

21 **SECTION 208.** 786.08 (2) of the statutes is amended to read:

22 786.08 (2) When the application is made on behalf of an individual adjudicated
23 incompetent person, the guardian of the ~~incompetent person~~ individual shall, in the
24 discretion of the court, give a bond to the judge of the court to be filed with the clerk
25 of the circuit court, in such sum, additional to the guardian's original bond, as the

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1 court deems necessary, with such sureties and such conditions for the faithful
2 performance of trust reposed as prescribed by this section.

3 **SECTION 209.** 786.10 of the statutes is amended to read:

4 **786.10 Order for lease, mortgage, sale.** If, after an examination of the
5 matter by the court or judge to which application is made, without a reference, or on
6 the coming in of the report of the referee, and on examination of the matter, it shall
7 satisfactorily appear that a disposition of any part of the real estate of such minor
8 or individual adjudicated incompetent person or any interest therein is necessary
9 and proper, for any of the causes mentioned in s. 786.06 such court or judge shall
10 make an order directing and authorizing the guardian to contract for the leasing,
11 mortgaging, or sale of such real estate or interest therein or of such part thereof as
12 the court or judge shall deem proper in such manner and with such restrictions as
13 shall be deemed expedient.

14 **SECTION 210.** 786.13 of the statutes is amended to read:

15 **786.13 Platting realty of wards before sale.** Whenever an order shall have
16 been made for the sale of any such real estate and it shall be made to appear to the
17 court or judge that the interest of the minor or other ward would be promoted by
18 platting such real estate the court or judge may, by order, authorize the guardian
19 either alone or together with the cotenants, if any, or other owners, to make and
20 acknowledge a plat of such real estate in the manner prescribed in ch. 236. A plat
21 made pursuant to such order, certified and acknowledged in manner and form
22 prescribed in ch. 236 and approved by the court or presiding judge, shall be as valid
23 and effectual as if made by such the minor when of full age or by such ~~incompetent~~
24 ~~person when of sound memory and understanding~~ the individual adjudicated
25 incompetent before the adjudication. After such plat shall have been duly made and

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1 recorded such guardians may make separate sales of any lot or lots, according to such
2 plat, or of such ward's interest therein in the manner above prescribed.

3 **SECTION 211.** 786.14 of the statutes is amended to read:

4 **786.14 Realty of wards; will or conveyance not disregarded.** No real
5 estate or interest therein shall be sold, mortgaged or leased under the provisions of
6 this chapter contrary to the provisions of any will by which the same was devised or
7 of any conveyance by which the same was transferred to ~~such~~ the minor or individual
8 adjudicated incompetent person.

9 **SECTION 212.** 786.15 of the statutes is amended to read:

10 **786.15 Realty of wards, validity of the conveyance.** Every deed,
11 mortgage, lease or other conveyance made in good faith by the guardian of a minor
12 or individual adjudicated incompetent person, pursuant to any order or judgment of
13 a circuit court, made under the provisions of this chapter, shall be as valid and
14 effectual as if made by the minor when of full age or by the ~~incompetent person when~~
15 ~~of sound memory and understanding~~ individual adjudicated incompetent before the
16 adjudication.

17 **SECTION 213.** 786.16 of the statutes is amended to read:

18 **786.16 Realty of wards; effect of sale; proceeds realty.** No sale of the real
19 estate of any minor or individual adjudicated incompetent person shall give to ~~such~~
20 the minor or incompetent person individual any other or greater interest or estate
21 in the proceeds of such sale than the minor or ~~incompetent person~~ individual had in
22 the estate so sold; but the said proceeds shall be deemed real estate of the same
23 nature as the property sold.

24 **SECTION 214.** 786.17 (1) of the statutes is amended to read:

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1 786.17 (1) The court shall make an order for the application and disposition of
2 the proceeds of any such sale or mortgage, and of the income derived from the
3 investment thereof and of the rent accruing upon any such lease, and direct the
4 investment of any portion thereof belonging to the minor or individual adjudicated
5 incompetent ~~person which that~~ is not needed for the payment of debts or the
6 immediate support of the ~~person~~ individual and the ~~person's~~ individual's family, so
7 as to secure the same for the benefit of the minor or ~~incompetent person~~ individual,
8 and shall direct a return of the investment to be made on oath as soon as possible,
9 and shall require accounts to be rendered periodically by any guardian or other
10 person who may be entrusted with the disposition of the proceeds or the income
11 thereof.

12 **SECTION 215.** 786.18 (1) of the statutes is amended to read:

13 786.18 (1) If the real estate or interest therein of any minor or any individual
14 adjudicated incompetent ~~person which that~~ is directed to be sold is subject to an
15 estate for life or for years in the whole or any part thereof the order for the sale may,
16 in the discretion of the court or presiding judge, direct that such estate shall be sold,
17 with the reversionary estate or interest of the minor or ~~incompetent person~~
18 individual.

19 **SECTION 216.** 786.19 of the statutes is amended to read:

20 **786.19 Ward's particular estate, disposition.** Where the interest of the
21 minor or individual adjudicated incompetent ~~person~~ in real estate consists of an
22 estate for life or for years the court or presiding judge may, by order, authorize the
23 guardian to join with the ~~person~~ individual holding the reversionary estate in a
24 conveyance of the property to which such interest attaches, so as to fully convey the
25 particular estate, on receiving from the proceeds of the sale a gross sum in

SENATE BILL 391**SECTION 216**

1 satisfaction of such estate or such proceeds or the proper portion thereof to be
2 invested, and the interest thereon paid to the ~~person~~ individual having such ~~the~~
3 estate until the termination thereof; in either case the amount to be ascertained as
4 prescribed in s. 786.18. When the proceeds or a proportionate part of such proceeds
5 is received by the guardian for investment, the order of the court or presiding judge
6 must provide for the investment thereof until termination of the particular estate,
7 and then for the payment thereof to the ~~person~~ individual entitled thereto.

8 **SECTION 217.** 786.20 of the statutes is amended to read:

9 **786.20 Minor, ~~or incompetent~~, ward of the court.** From the time of
10 application on behalf of a minor ~~or of an incompetent person~~ having no guardian for
11 the disposition of property, the minor ~~or incompetent person~~ shall be considered the
12 ward of the court in which the application is made, so far as it relates to property, its
13 proceeds and income.

14 **SECTION 218.** 786.21 of the statutes is amended to read:

15 **786.21 Estate of individual adjudicated incompetent, management.**
16 The real estate of an individual adjudicated incompetent ~~person shall~~ may not be
17 leased for more than 5 years, or mortgaged or disposed of otherwise than is
18 authorized and directed by this chapter.

19 **SECTION 219.** 786.25 (1) of the statutes is amended to read:

20 **786.25 (1)** If a minor or individual adjudicated incompetent ~~person~~ residing
21 outside this state owns any right, title, or interest in or to any real estate in this state
22 and has a guardian or conservator who has been appointed in the state, territory ~~or~~,
23 district, or country where he or she resides and no guardian appointed in this state,
24 the foreign guardian or conservator may file a copy of the appointment,
25 authenticated so as to make the same receivable in evidence, in the circuit court for

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1 the county in which the real estate of the minor or individual adjudicated
2 incompetent person is situated.

3 **SECTION 220.** 786.25 (2) of the statutes is amended to read:

4 786.25 (2) Upon filing of the appointment under sub. (1) and proper
5 application, the foreign guardian or conservator may be licensed by the court or
6 presiding judge to lease, mortgage, or sell the real estate of his or her ward in the
7 county under sub. (1), or any portion thereof, or interest therein, in the same manner
8 and upon the same terms and conditions and for the same purposes as prescribed in
9 this chapter in the case of a guardian appointed in this state. The court, or the
10 presiding judge thereof, may, upon the petition of such foreign guardian or
11 conservator, appoint some suitable person residing in this state, special guardian of
12 the minor or individual adjudicated incompetent person to make the lease, mortgage,
13 or sale in the manner provided by this chapter.

14 **SECTION 221.** 786.25 (3) of the statutes is amended to read:

15 786.25 (3) In case a special guardian shall be appointed the moneys arising
16 from such lease, mortgage or sale shall be paid out and disposed of or invested as may
17 be directed by the court or judge appointing such special guardian. The duly
18 authenticated copy of the appointment of any guardian or conservator appointed in
19 any other state, district, territory, or country together with a duly authenticated copy
20 of the appointment of the special guardian of such minor or individual adjudicated
21 incompetent person, shall also be properly recorded and tract indexed at the ward's
22 expense in the office of the register of deeds of the county in which such real estate
23 is situated.

24 **SECTION 222.** 801.11 (2) (intro.) of the statutes is amended to read:

SENATE BILL 391**SECTION 222**

1 801.11 (2) NATURAL PERSON UNDER DISABILITY. (intro.) Upon a natural person
2 under disability by serving the summons in any manner prescribed in sub. (1) upon
3 such the person under disability and, in addition, where required by par. (a) or (b),
4 upon a person therein designated. A minor 14 years of age or older who is not
5 mentally adjudicated incompetent and not otherwise under guardianship is not a
6 person under disability for purposes of this subsection.

7 **SECTION 223.** 801.11 (2) (b) of the statutes is amended to read:

8 801.11 (2) (b) Where the person under disability is known by the plaintiff to be
9 under guardianship of any kind, a summons shall be served separately upon the
10 guardian in any manner prescribed in sub. (1), (5) or (6). If no guardian has been
11 appointed when service is made upon a person ~~known to~~ alleged by the plaintiff to
12 be incompetent to have charge of the person's affairs, then service of the summons
13 shall be made upon the guardian ad litem after appointment under s. 803.01.

14 **SECTION 224.** 802.10 (1) of the statutes is amended to read:

15 802.10 (1) APPLICATION. This section applies to all actions and special
16 proceedings except appeals taken to circuit court,; actions seeking the remedy
17 available by certiorari, habeas corpus, mandamus, prohibition, and quo warranto,;
18 actions in which all defendants are in default,; provisional remedies,; and actions
19 under ss. 49.90 and s. 66.0114 and chs. 48, 54, 102, 108, 227, 348, 767, 778, 799 and
20 812, and proceedings under chs. 851 to 882.

21 **SECTION 225.** 803.01 (3) (title) of the statutes is amended to read:

22 803.01 (3) (title) ~~INFANTS~~ MINORS OR INDIVIDUALS ALLEGED OR ADJUDICATED
23 INCOMPETENT PERSONS.

24 **SECTION 226.** 803.01 (3) (a) of the statutes is amended to read:

SENATE BILL 391**SECTION 226**

1 803.01 (3) (a) *Appearance by guardian or guardian ad litem.* If a party to an
2 action or proceeding is a minor, or if ~~the court has reason to believe that a party is~~
3 ~~mentally adjudicated incompetent or alleged to be incompetent to have charge of the~~
4 ~~party's affairs,~~ the party shall appear by an attorney, by the ~~general~~ guardian of the
5 ~~party's property estate of the party~~ who may appear by attorney, or by a guardian ad
6 litem who may appear by an attorney. A guardian ad litem shall be appointed in all
7 cases ~~where in which~~ the minor or ~~individual alleged to be incompetent~~ has no
8 ~~general guardian of property the estate,~~ or ~~where in which~~ the ~~general~~ guardian fails
9 to appear and act on behalf of the ward or ~~individual adjudicated~~ incompetent, or
10 ~~where in which~~ the interest of the minor or ~~individual adjudicated~~ incompetent is
11 adverse to that of the ~~general~~ guardian. Except as provided in s. 807.10, if the ~~general~~
12 guardian does appear and act and the interests of the ~~general~~ guardian are not
13 adverse to the minor or ~~individual adjudicated~~ incompetent, a guardian ad litem
14 shall ~~may~~ not be appointed. Except as provided in s. 879.23 (4), ~~where if~~ the interests
15 of the minor or ~~mentally individual alleged to be or adjudicated~~ incompetent person
16 are represented by an attorney of record, the court shall, except upon good cause
17 stated in the record, appoint that attorney as the guardian ad litem.

18 **SECTION 227.** 803.01 (3) (b) 2. of the statutes is amended to read:

19 803.01 (3) (b) 2. When the plaintiff is a minor 14 years of age or over, upon the
20 plaintiff's application or upon the state's application under s. 767.045 (1) (c); or if the
21 plaintiff is under that age or is ~~mentally~~ adjudicated incompetent or alleged to be
22 incompetent, upon application of the plaintiff's guardian or of a relative or friend or
23 upon application of the state under s. 767.045 (1) (c). If the application is made by
24 a relative, a friend, or the state, notice thereof must first be given to the guardian if
25 the plaintiff has one in this state; if the plaintiff has none, then to the person with

SENATE BILL 391**SECTION 227**

1 whom the minor or ~~mentally~~ individual adjudicated incompetent resides or who has
2 the minor or ~~mentally~~ individual adjudicated incompetent in custody.

3 **SECTION 228.** 803.01 (3) (b) 3. of the statutes is amended to read:

4 803.01 (3) (b) 3. When the defendant is a minor 14 years of age or over, upon
5 the defendant's application made within 20 days after the service of the summons or
6 other original process; if the defendant is under that age or neglects to so apply or
7 is ~~mentally~~ adjudicated incompetent or alleged to be incompetent, then upon the
8 court's own motion or upon the application of any other party or any relative or friend
9 or the defendant's guardian upon such notice of the application as the court directs
10 or approves.

11 **SECTION 229.** 803.01 (3) (b) 4. of the statutes is amended to read:

12 803.01 (3) (b) 4. If the appointment, for a plaintiff or a defendant, is after the
13 commencement of the action, it shall be upon motion entitled in the action. If the
14 appointment is for a plaintiff and is made before the action is begun, the petition for
15 appointment shall be entitled in the name of the action proposed to be brought by the
16 minor or individual adjudicated incompetent or alleged to be incompetent, and the
17 appointment may be made before the summons is served. Upon the filing of a
18 petition for appointment before summons, the clerk may impose the fee required for
19 the commencement of an action, but in that event no additional commencement fee
20 may be imposed when the summons is filed.

21 **SECTION 230.** 803.01 (3) (b) 5. of the statutes is amended to read:

22 803.01 (3) (b) 5. The motion or petition under subd. 4. shall state facts showing
23 the need and authority for the appointment. The hearing on the motion or petition
24 under subd. 4., if made by a minor or ~~mentally~~ an individual adjudicated incompetent
25 or alleged to be incompetent person for such ~~person's~~ the minor's or individual's

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1 guardian ad litem, may be held without notice and the appointment made by order.
2 If the motion or petition is made for a minor or ~~mentally~~ an individual adjudicated
3 incompetent or alleged to be incompetent who is an adverse party, the hearing shall
4 be on notice.

5 **SECTION 231.** 803.01 (3) (b) 6. of the statutes is amended to read:

6 803.01 (3) (b) 6. If a compromise or a settlement of an action or proceeding to
7 which an unrepresented minor or ~~mentally~~ individual adjudicated incompetent or
8 alleged to be incompetent ~~person~~ is a party is proposed, a guardian ad litem shall be
9 appointed, upon petition in a special proceeding, to protect the interest of the minor
10 or ~~incompetent~~ individual even though commencement of an action is not proposed.
11 Any compromise or settlement shall be subject to s. 807.10.

12 **SECTION 232.** 803.01 (3) (c) (title) of the statutes is amended to read:

13 803.01 (3) (c) (title) *Procedure where minor or incompetent not represented for*
14 *unrepresented person.*

15 **SECTION 233.** 803.01 (3) (c) 2. (intro.) of the statutes is amended to read:

16 803.01 (3) (c) 2. (intro.) If the court finds after the entry of judgment or final
17 order that a person, who at the time of entry of judgment or final order was a minor
18 or ~~mentally~~ an individual adjudicated or alleged to be incompetent, was not
19 represented in the action or proceeding by an attorney of record or otherwise
20 represented as provided in par. (a) the judgment or order shall be vacated on motion
21 of:

22 **SECTION 234.** 803.01 (3) (c) 2. a. of the statutes is amended to read:

23 803.01 (3) (c) 2. a. The minor or ~~mentally~~ individual adjudicated or alleged to
24 be incompetent, for whom no appointment was made, at any time prior to the
25 expiration of one year after the disability is removed; or

SENATE BILL 391**SECTION 235**

1 **SECTION 235.** 803.01 (3) (c) 2. b. of the statutes is amended to read:

2 803.01 (3) (c) 2. b. The personal representative of such the minor or mentally
3 individual adjudicated or alleged to be incompetent at any time prior to the
4 expiration of one year after the death of the minor or ~~mentally incompetent~~
5 individual.

6 **SECTION 236.** 803.10 (2) of the statutes is amended to read:

7 803.10 (2) INCOMPETENCY. If a party ~~becomes~~ is adjudicated incompetent, the
8 court upon motion served as provided in sub. (1) may allow the action to be continued
9 by or against the ~~incompetent~~ party's representative.

10 **SECTION 237.** 804.02 (1) (b) of the statutes is amended to read:

11 804.02 (1) (b) *Notice and service.* The petitioner shall thereafter serve a notice
12 upon each person named in the petition as an expected adverse party, together with
13 a copy of the petition, stating that the petitioner will move the court, at a time and
14 place named therein, for the order described in the petition. At least 20 days before
15 the date of hearing the notice shall be served either within or without the state in the
16 manner provided in s. 801.11 for service of summons; but if such service cannot with
17 due diligence be made upon any expected adverse party named in the petition, the
18 court may make such order as is just for service by publication or otherwise, and shall
19 appoint, for persons not served in the manner provided in s. 801.11, an attorney who
20 shall represent them, and, in case they are not otherwise represented, shall
21 cross-examine the deponent. If any expected adverse party is a minor or is an
22 individual adjudicated or alleged to be incompetent, s. 803.01 (3) applies.

23 **SECTION 238.** 806.04 (4) (intro.) of the statutes is amended to read:

24 806.04 (4) REPRESENTATIVES, ETC. (intro.) Any person interested as or through
25 a personal representative, trustee, guardian, or other fiduciary, creditor, devisee,

SENATE BILL 391**SECTION 238**

1 legatee, heir, next of kin, or cestui que trust in the administration of a trust, or of the
2 estate of a decedent, infant, ~~mental~~ individual adjudicated incompetent, or
3 insolvent, may have a declaration of rights or legal relations in respect to the
4 administration of the trust or estate for any of the following purposes:

5 **SECTION 239.** 807.10 (title) of the statutes is amended to read:

6 **807.10 (title) Settlements in behalf of minors or individuals**
7 **adjudicated incompetent; judgments.**

8 **SECTION 240.** 807.10 (1) of the statutes is amended to read:

9 807.10 (1) A compromise or settlement of an action or proceeding to which a
10 minor or ~~mentally~~ individual adjudicated incompetent ~~person~~ is a party may be made
11 by the ~~general~~ guardian, if the guardian is represented by an attorney, or the
12 guardian ad litem with the approval of the court in which such action or proceeding
13 is pending.

14 **SECTION 241.** 807.10 (2) of the statutes is amended to read:

15 807.10 (2) A cause of action in favor of or against a minor or ~~mentally~~ individual
16 adjudicated incompetent ~~person~~ may, without the commencement of an action
17 thereon, be settled by the ~~general~~ guardian, if the guardian is represented by an
18 attorney, with the approval of the court appointing the ~~general~~ guardian, or by the
19 guardian ad litem with the approval of any court of record. An order approving a
20 settlement or compromise under this subsection and directing the consummation
21 thereof shall have the same force and effect as a judgment of the court.

22 **SECTION 242.** 807.10 (3) of the statutes is amended to read:

23 807.10 (3) If the amount awarded to a minor or individual adjudicated
24 incompetent by judgment or by an order of the court approving a compromise
25 settlement of a claim or cause of action of the minor or individual does not exceed

SENATE BILL 391**SECTION 242**

1 \$10,000 the amount specified under s. 867.03 (1g) (intro.), exclusive of interest and
2 costs and disbursements, and if there is no general guardian of the ward, the court
3 may upon application by the guardian ad litem after judgment, or in the order
4 approving settlement, fix and allow the expenses of the action, including attorney
5 fees and fees of guardian ad litem, authorize the payment of the total recovery to the
6 clerk of the court, authorize and direct the guardian ad litem upon the payment to
7 satisfy and discharge the judgment, or to execute releases to the parties entitled
8 thereto, and enter into a stipulation dismissing the action upon its merits. The order
9 shall also direct the clerk upon the payment to pay the costs and, disbursements, and
10 expenses of the action and to dispose of the balance in ~~one of the manners~~ a manner
11 provided in s. 880.04 ~~(2)~~ 54.12 (1), as selected by the court. The fee for the clerk's
12 services for handling, depositing, and disbursing funds under this subsection is
13 prescribed in s. 814.61 (12) (a).

14 **SECTION 243.** 807.13 (2) (intro.) of the statutes is amended to read:

15 807.13 (2) EVIDENTIARY HEARINGS. (intro.) In civil actions and proceedings,
16 including those under chs. 48, 51, 54, and 55 and ~~880~~, the court may admit oral
17 testimony communicated to the court on the record by telephone or live audiovisual
18 means, subject to cross-examination, when:

19 **SECTION 244.** 808.075 (4) (f) (intro.) of the statutes is amended to read:

20 808.075 (4) (f) (intro.) In a case under ch. 880 54:

21 **SECTION 245.** 808.075 (4) (f) 1. of the statutes is amended to read:

22 808.075 (4) (f) 1. Review a bond under s. ~~880.125, 880.13 or 880.60 (9)~~ 54.46 (4)
23 or 54.852 (9).

24 **SECTION 246.** 808.075 (4) (f) 2. of the statutes is amended to read:

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1 808.075 (4) (f) 2. Release of deposited funds under s. ~~880.13 (2) (b)~~ 54.46 (4) (b)

2 3.

3 **SECTION 247.** 808.075 (4) (f) 3. of the statutes is amended to read:

4 808.075 (4) (f) 3. Order for visitation under s. ~~880.155~~ 54.56.

5 **SECTION 248.** 808.075 (4) (f) 4. of the statutes is amended to read:

6 808.075 (4) (f) 4. Appointment of successor guardian under s. ~~880.17~~ 54.54 (1).

7 **SECTION 249.** 808.075 (4) (f) 5. of the statutes is amended to read:

8 808.075 (4) (f) 5. Approval of guardian's exercise of marital property rights
9 under s. ~~880.173~~ 54.20 (2) (h).

10 **SECTION 250.** 808.075 (4) (f) 6. of the statutes is amended to read:

11 808.075 (4) (f) 6. Approval of management of property under s. ~~880.19~~ 54.19
12 (1) or 54.20.

13 **SECTION 251.** 808.075 (4) (f) 7. of the statutes is amended to read:

14 808.075 (4) (f) 7. Direction for use of estate for benefit of wards under s. ~~880.21~~
15 54.19 (4).

16 **SECTION 252.** 808.075 (4) (f) 8. of the statutes is amended to read:

17 808.075 (4) (f) 8. Examination of annual accounts and assets under s. ~~880.25~~
18 ss. 54.62 and 54.66.

19 **SECTION 253.** 808.075 (4) (f) 9. of the statutes is amended to read:

20 808.075 (4) (f) 9. Removal of guardian under s. ~~880.251~~ 54.68 (4) (d).

21 **SECTION 254.** 808.075 (4) (f) 11. of the statutes is amended to read:

22 808.075 (4) (f) 11. Termination of guardianship under s. ~~880.26~~ 54.64.

23 **SECTION 255.** 808.075 (4) (f) 12. of the statutes is amended to read:

24 808.075 (4) (f) 12. Restoration of specific legal rights under s. ~~880.33 (3)~~ 54.64
25 (2) (c).

SENATE BILL 391**SECTION 256**

1 **SECTION 256.** 808.075 (4) (f) 13. of the statutes is amended to read:

2 808.075 (4) (f) 13. Authorization of purchase of a home for a ward under s.
3 ~~880.60~~ 54.852 (15) (a).

4 **SECTION 257.** 813.12 (5) (d) of the statutes is amended to read:

5 813.12 (5) (d) A petition may be prepared and filed by the person who alleges
6 that he or she has been the subject of domestic abuse or by the guardian, ~~as defined~~
7 ~~in s. 880.01 (3), of an incompetent individual, as defined in s. 880.01 (4), adjudicated~~
8 incompetent in this state who has been the subject of domestic abuse.

9 **SECTION 258.** 813.123 (3) (b) 1. of the statutes is amended to read:

10 813.123 (3) (b) 1. That a guardian ad litem be appointed ~~under s. 880.331 (1)~~
11 for the vulnerable adult.

12 **SECTION 259.** 814.61 (12) (a) 1. of the statutes is amended to read:

13 814.61 (12) (a) 1. For receiving a trust fund, or handling or depositing money
14 under s. 757.25, or 807.10 (3) ~~or 880.04 (2) (a)~~, at the time the money is deposited with
15 the clerk, a fee of \$10 or ~~0.5%~~ 0.5 percent of the amount deposited, whichever is
16 greater. In addition, a fee of \$10 shall be charged upon each withdrawal of any or
17 all of the money deposited with the clerk.

18 **SECTION 260.** 814.66 (1) (b) 2. of the statutes is amended to read:

19 814.66 (1) (b) 2. For filing a petition for guardianship of the estate under ch.
20 ~~880 54~~ or an application for conservatorship under ~~ch. 880 s. 54.76~~, if the value of the
21 property, less encumbrances, liens or charges, is \$10,000 the amount specified under
22 s. 867.03 (1g) (intro.) or less, a fee of \$20 and, if more than \$10,000 the amount
23 specified under s. 867.03 (1g) (intro.), a fee of ~~0.2%~~ 0.2 percent of the value of the
24 property, less encumbrances, liens or charges.

25 **SECTION 261.** 814.66 (1) (m) of the statutes is amended to read:

SENATE BILL 391**SECTION 261**

1 814.66 (1) (m) For filing a petition under s. ~~880.155~~ 54.56, whether in a
2 guardianship or temporary guardianship proceeding or to commence an
3 independent action, \$60.

4 **SECTION 262.** 814.66 (1) (n) of the statutes is created to read:

5 814.66 (1) (n) For depositing or disbursing money under s. 54.12 (1) (a), a fee
6 of \$10 or 0.5 percent of the amount deposited, whichever is greater at the time the
7 money is deposited with the register in probate, and a fee of \$10 whenever any
8 withdrawal is made of the money deposited with the register in probate.

9 **SECTION 263.** 842.25 of the statutes is amended to read:

10 **842.25 ~~Incompetent's share~~ Share of individual adjudicated**
11 **incompetent.** The share of any ward shall be paid to the ~~general~~ guardian of the
12 ward's estate of the ward, except under s. 54.12 (1) or s. 880.04 (2), 2003 stats.

13 **SECTION 264.** 851.72 (2) of the statutes is amended to read:

14 851.72 (2) Keep a court record of every proceeding in the court under chs. 54
15 and 851 to 880 879 under its proper title, a brief statement of the nature of the
16 proceeding and of all papers filed therein, with the date of filing and a reference to
17 where minute records can be found or to the microfilm or optical disk or electronic
18 file where papers have been stored so that the court record is a complete index or brief
19 history of each proceeding from beginning to final disposition.

20 **SECTION 265.** 851.72 (3) of the statutes is amended to read:

21 851.72 (3) Keep a minute record and enter therein a brief statement of all
22 proceedings of the court under chs. 54 and 851 to 880 879 during its sessions, all
23 motions made and by whom, all orders granted in open court or otherwise, and the
24 names of all witnesses sworn or examined. If this information is all included in the
25 court record, the judge may direct that the minute record be no longer kept.

SENATE BILL 391**SECTION 266**

1 **SECTION 266.** 851.73 (1) (a) of the statutes is amended to read:

2 851.73 (1) (a) May make orders for hearings when the judge is away from the
3 county seat or unable to discharge duties or when given authority in writing by the
4 judge and an application is made to the court in a proceeding under chs. 54 and 851
5 to ~~880~~ 879 requiring notice of hearing. The order and notice when signed “by the
6 court,, register in probate” has the same effect as if signed by the judge.

7 **SECTION 267.** 854.08 (5) (title) of the statutes is amended to read:

8 854.08 (5) (title) SALE OR LOSS OF PROPERTY OF AN INDIVIDUAL ADJUDICATED
9 INCOMPETENT.

10 **SECTION 268.** 854.13 (2) (f) of the statutes is amended to read:

11 854.13 (2) (f) *Disclaimer by guardian or conservator.* A guardian of the estate
12 or a conservator appointed under ch. 54 or ch. 880, 2003 stats., may disclaim on
13 behalf of his or her ward, with court approval, if the ward is entitled to disclaim under
14 this section.

15 **SECTION 269.** 854.17 of the statutes is amended to read:

16 **854.17 Classification; how determined.** In chs. 54 and 851 to 882,
17 classification of the property of a decedent spouse and surviving spouse is
18 determined under ch. 766.

19 **SECTION 270.** 857.15 of the statutes is amended to read:

20 **857.15 When personal representative removed, resigns.** The judge may
21 accept the written resignation of any personal representative. When a personal
22 representative ~~becomes~~ is adjudicated incompetent, disqualified, unsuitable,
23 incapable of discharging the personal representative’s duties, or is a nonresident of
24 this state who has not appointed a resident agent to accept service of process in all
25 actions or proceedings with respect to the estate and caused such appointment to be

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1 filed with the court, the court shall remove the personal representative. When any
2 personal representative has failed to perform any duty imposed by law or by any
3 lawful order of the court or has ceased to be a resident of the state, the court may
4 remove the personal representative. When grounds for removal appear to exist, the
5 court on its own motion or on the petition of any person interested shall order the
6 personal representative to appear and show cause why the personal representative
7 should not be removed.

8 **SECTION 271.** 860.13 of the statutes is amended to read:

9 **860.13 Who not to be purchaser, mortgagee or lessee without court**
10 **approval.** The personal representative may not be interested as a purchaser,
11 mortgagee, or lessee of any property in the estate unless the purchase, mortgage, or
12 lease is made with the written consent of the persons interested and of the guardian
13 ad litem for minors and ~~incompetents~~ individuals adjudicated incompetent or with
14 the approval of the court after petition and hearing on notice given under s. 879.03
15 to all persons interested, or unless the will of the decedent specifically authorizes the
16 personal representative to be interested as a purchaser, mortgagee, or lessee.

17 **SECTION 272.** 862.03 (title) of the statutes is amended to read:

18 **862.03 (title) Account of incompetent, deceased or removed personal**
19 **representative adjudicated incompetent, deceased, or removed.**

20 **SECTION 273.** 862.03 (1) of the statutes is amended to read:

21 862.03 (1) ~~INCOMPETENT PERSONAL~~ PERSONAL REPRESENTATIVE ADJUDICATED
22 INCOMPETENT. If a personal representative is ~~adjudged~~ adjudicated incompetent, the
23 account under s. 862.01 shall be filed by the personal representative's guardian, or,
24 if the personal representative's guardian fails to file, then by the personal
25 representative's bondsman. If neither the guardian nor the bondsman files an

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1 account, the court shall appoint a special administrator to file the account of the
2 incompetent personal representative who is adjudicated incompetent.

3 **SECTION 274.** 862.03 (4) of the statutes is amended to read:

4 862.03 (4) PAYMENT FOR PREPARATION. The person who prepares and files an
5 account in accordance with this section shall be allowed the reasonable value of the
6 person's services to be paid out of the estate, and the fees of the ~~incompetent,~~
7 ~~deceased or removed~~ personal representative who is adjudicated incompetent,
8 deceased, or removed shall be reduced accordingly.

9 **SECTION 275.** 863.43 of the statutes is amended to read:

10 **863.43 Distribution to ward; notice.** At least 10 days prior to distribution
11 of a share or legacy for the benefit of a minor or individual adjudicated incompetent
12 for whom a guardian of the ~~minor's or incompetent's~~ estate has been appointed, the
13 personal representative shall notify the court appointing the guardian of the estate,
14 in writing, the total property to be distributed to the guardian of the estate for the
15 benefit of the guardian's ward. An affidavit of mailing the notice shall be filed before
16 making the distribution.

17 **SECTION 276.** 863.45 of the statutes is amended to read:

18 **863.45 Receipts from guardians.** If a distributee of an estate is a minor or
19 an individual adjudicated incompetent and has within this state a guardian of his
20 or her estate, the personal representative shall deliver the money or other property
21 to the guardian of the estate, take a receipt from the guardian of the estate, and file
22 the receipt with the court. The court shall transmit a certified copy of the receipt to
23 the court which appointed the guardian of the estate.

24 **SECTION 277.** 865.02 (1) (b) 1. of the statutes is amended to read:

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1 865.02 (1) (b) 1. All interested persons request or consent in writing to informal
2 administration and to the appointment of the same person as personal
3 representative. A guardian or guardian ad litem may consent on behalf of an
4 interested person who is a minor or is an individual adjudicated incompetent. The
5 probate registrar may appoint a guardian ad litem, and shall have the authority, for
6 such purpose, granted to the court by, and shall proceed pursuant to s. 879.23.

7 **SECTION 278.** 865.03 (1) of the statutes is amended to read:

8 865.03 (1) A formal proceeding in this chapter is a judicial proceeding before
9 the court involving the administration of the estate of a decedent, including a court
10 proceeding concerning the use or availability of this chapter. It is distinguished from
11 an administrative proceeding before the probate registrar. Formal proceedings,
12 either as to a particular issue or as to the entire subsequent administration of the
13 estate, may be initiated by the personal representative or by any interested person
14 at any time by a written demand therefor. Formal proceedings may be demanded by
15 a guardian or guardian ad litem on behalf of an interested person who is a minor or
16 ~~otherwise~~ is an individual adjudicated incompetent.

17 **SECTION 279.** 867.03 (1c) of the statutes is amended to read:

18 867.03 (1c) DEFINITION. In this section, “guardian” has the meaning given in
19 s. 54.01 (10) or s. 880.01 (3), 2003 stats.

20 **SECTION 280.** 878.07 (4) of the statutes is amended to read:

21 878.07 (4) SEPARATE AND JOINT ACTIONS; ACTION BY WARD; ACCOUNTING, WHEN
22 UNNECESSARY. An action upon a bond by or in behalf of one person interested does not
23 bar or in any way affect the right of any other person interested to maintain an action
24 thereon, but separate actions or a joint action may be maintained thereon by or in
25 behalf of any or all persons interested, but the action does not impair any other

SENATE BILL 391**SECTION 280**

1 remedy of the ward. An accounting is not necessary before bringing an action against
2 sureties when if the personal representative, special administrator, guardian, or
3 trustee dies ~~or~~, moves out of the state, or ~~becomes~~ is adjudicated incompetent.

4 **SECTION 281.** 879.09 of the statutes is amended to read:

5 **879.09 Notice requirement satisfied by waiver of notice.** Persons who
6 are not minors or individuals adjudicated incompetent, on behalf of themselves, and
7 appointed guardians ad litem and guardians of the estate on behalf of themselves
8 and those whom they represent, may in writing waive the service of notice upon them
9 and consent to the hearing of any matter without notice, except that guardians ad
10 litem cannot waive the notice of a hearing to prove a will or for administration on
11 behalf of those whom they represent. An attorney, or attorney-in-fact, for a person
12 in the military service may waive notice on behalf of himself or herself but cannot
13 waive notice on behalf of the person in the military service. Waiver of notice by any
14 person is equivalent to timely service of notice.

15 **SECTION 282.** 879.11 of the statutes is amended to read:

16 **879.11 Notice requirement satisfied by appearance.** An appearance by
17 a person who is not a minor or an individual adjudicated incompetent is equivalent
18 to timely service of notice upon the person. An appearance by a guardian of the estate
19 is equivalent to timely service of notice upon the guardian and upon the guardian's
20 ward. An appearance by a guardian ad litem is equivalent to timely service of notice
21 upon the guardian ad litem and except at a hearing to prove a will or for
22 administration is equivalent to timely service of notice upon those whom the
23 guardian ad litem represents. An appearance by an attorney, or an attorney-in-fact,
24 for a person in the military service is equivalent to timely service of notice upon the

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1 attorney or attorney-in-fact but does not satisfy a requirement for notice to the
2 person in the military service.

3 **SECTION 283.** 879.13 of the statutes is amended to read:

4 **879.13 Delayed service of notice.** If for any reason notice to any person,
5 including a minor or an individual adjudicated incompetent, is insufficient, the court
6 may at any time order service of notice together with documents required under ss.
7 858.03 and 862.09 and, where required, appoint a guardian ad litem under s. 879.23
8 and require the person or the person's guardian ad litem to show cause why the
9 person should not be bound by the action already taken in the proceedings as though
10 the person had been timely served with notice. Such person may consent in writing
11 to be bound.

12 **SECTION 284.** 879.15 (1) of the statutes is amended to read:

13 879.15 (1) A minor or individual adjudicated incompetent ~~person~~ shall appear
14 by a guardian ad litem or by the guardian of his or her estate, who may appear by
15 attorney, or by another person under the doctrine of virtual representation as
16 provided in s. 879.23 (5);

17 **SECTION 285.** 879.19 of the statutes is amended to read:

18 **879.19 Attorney, notice to.** Except for a person in the military service, as
19 provided in s. 879.09, if a person interested who is not a minor or an individual
20 adjudicated incompetent has retained an attorney to represent him or her and the
21 attorney has mailed a notice of retainer and request for service to the attorney for
22 the personal representative and filed a copy with the court, any notice ~~which~~ that
23 would be given to the person interested shall instead be given to the attorney, and
24 the attorney may waive notice for the person interested under s. 879.09.

25 **SECTION 286.** 879.23 (1) of the statutes is amended to read:

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1 879.23 (1) VIRTUAL REPRESENTATION. A guardian ad litem shall be appointed for
2 any person interested who is a minor or an individual adjudicated incompetent and
3 has no guardian of his or her estate, or where the guardian of the minor's or
4 ~~incompetent's~~ individual's estate fails to appear on the minor's or ~~incompetent's~~
5 individual's behalf or where the interest of the minor or ~~incompetent~~ individual is
6 adverse to that of the guardian of the minor's or ~~incompetent's~~ individual's estate.
7 A guardian ad litem may be appointed for persons not in being or presently
8 unascertainable. A guardian ad litem shall not be appointed or appear in the same
9 matter for different persons whose interests are conflicting.

10 **SECTION 287.** 879.23 (4) (a) of the statutes is amended to read:

11 879.23 (4) (a) Except as provided in par. (b) or (c), the guardian ad litem
12 appointed under this section shall be either an attorney admitted to practice in this
13 state or a parent or child of the minor or individual adjudicated incompetent to be
14 represented by the guardian ad litem. A parent or child of the person to be
15 represented may be appointed the guardian ad litem under this section only if the
16 court finds either that the prospective guardian ad litem is an attorney admitted to
17 practice in this state or is otherwise suitably qualified to perform the functions of the
18 guardian ad litem.

19 **SECTION 288.** 879.23 (4) (c) of the statutes is amended to read:

20 879.23 (4) (c) In matters relating to the probate of an estate in which an
21 individual adjudicated incompetent has an interest that is unlikely to exceed \$1,000
22 in value, the guardian ad litem shall be a surviving parent, unless the court finds that
23 no surviving parent is qualified and willing to serve as the guardian ad litem. If the
24 court finds that no surviving parent is qualified and willing to serve, the guardian
25 ad litem shall be an adult child of the ~~incompetent~~ individual, unless the court finds

SENATE BILL 391**SECTION 288**

1 that no adult child of the ~~incompetent~~ individual is qualified and willing to serve as
2 the guardian ad litem. If the court finds that neither a parent nor an adult child of
3 the individual adjudicated incompetent is qualified and willing to serve as the
4 guardian ad litem, the court shall appoint an attorney as provided in par. (a).

5 **SECTION 289.** 879.23 (5) of the statutes is amended to read:

6 879.23 (5) VIRTUAL REPRESENTATION. The court may dispense with or terminate
7 the appointment of a guardian ad litem for an interested person who is a minor, an
8 individual adjudicated incompetent, not in being, or presently unascertainable, if
9 there is a living person, of full legal rights and capacity, who is a party to the
10 proceeding and has a substantially identical interest in it.

11 **SECTION 290.** 879.26 of the statutes is amended to read:

12 **879.26 Waiver of right to certain documents.** Any person who is not a
13 minor or an individual adjudicated incompetent may in writing waive the person's
14 right to be given a statement that the inventory has been filed under s. 858.03 and
15 a copy of accounts under s. 862.11.

16 **SECTION 291.** 879.27 (4) of the statutes is amended to read:

17 879.27 (4) WHO MAY APPEAL ON BEHALF OF MINOR OR INDIVIDUAL ADJUDICATED
18 INCOMPETENT. In all cases the appeal on behalf of any minor or individual adjudicated
19 incompetent ~~person~~ may be taken and prosecuted by the guardian of the minor's or
20 ~~incompetent's~~ individual's estate or by a guardian ad litem.

21 **SECTION 292.** 879.27 (5) of the statutes is amended to read:

22 879.27 (5) LIMITATION ON BOND AND COSTS. On appeals from courts assigned to
23 exercise probate jurisdiction to the court of appeals no bond may be required of, or
24 costs awarded against, any alleged incompetent individual or person acting in behalf
25 of an alleged incompetent individual on an appeal from an adjudication of

SENATE BILL 391**SECTION 292**

1 incompetency, and no bond may be required of any personal representative,
2 guardian, or trustee of a testamentary trust.

3 **SECTION 293.** 879.57 of the statutes is amended to read:

4 **879.57 Special administrator; personal representative, guardian.** If it
5 is found by the court to be necessary to appoint a personal representative or guardian
6 and there appears to be no person in the state to petition for the appointment or there
7 appears to be no suitable person to be so appointed, the court shall, upon its own
8 motion or upon the petition of any interested party, grant administration of an estate
9 of a decedent or guardianship of the estate of a minor or ~~incompetent person~~
10 individual who is adjudicated incompetent to the interested party or a special
11 administrator, and he or she shall thereupon take possession of the estate and
12 protect and preserve it, and proceed with the administration and with the care and
13 management of the estate. The authority of a special administrator in the
14 administration or guardianship may be revoked at any time upon the appointment
15 and qualification of a personal representative or guardian, or when for any other
16 cause the court deems it just or expedient. Revocation of authority does not
17 invalidate the special administrator's acts performed prior to revocation and does
18 not impair the special administrator's rights to receive from the estate his or her
19 legal charges and disbursements, to be determined by the court.

20 **SECTION 294.** Chapter 880 (title) of the statutes is repealed.

21 **SECTION 295.** Subchapter I (title) of chapter 880 [precedes 880.01] of the
22 statutes is repealed.

23 **SECTION 296.** 880.01 (intro.) of the statutes is repealed.

24 **SECTION 297.** 880.01 (1) of the statutes is renumbered 54.01 (2) and amended
25 to read:

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1 54.01 (2) “Agency” means any public or private board, corporation, or
2 association ~~which, including a county department under s. 51.42 or 51.437, that is~~
3 concerned with the specific needs and problems of ~~mentally retarded,~~
4 ~~developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons,~~
5 ~~including a county department under s. 51.42 or 51.437~~ individuals with
6 developmental disability, mental illness, alcoholism, or drug dependency and of
7 aging individuals.

8 **SECTION 298.** 880.01 (2) of the statutes is renumbered 54.01 (8) and amended
9 to read:

10 54.01 (8) “~~Developmentally disabled person~~ Developmental disability” means
11 ~~any individual having~~ a disability attributable to mental retardation, cerebral palsy,
12 epilepsy, autism, or another neurological condition closely related to mental
13 retardation or requiring treatment similar to that required for ~~mentally retarded~~
14 individuals with mental retardation, which has continued or can be expected to
15 continue indefinitely, substantially impairs the an individual from adequately
16 providing for his or her own care or custody, and constitutes a substantial handicap
17 to the afflicted individual. The term does not include ~~a person affected by senility~~
18 ~~which dementia that~~ is primarily caused by the process of aging or ~~the infirmities of~~
19 aging degenerative brain disorder.

20 **SECTION 299.** 880.01 (3) of the statutes is renumbered 54.01 (10) and amended
21 to read:

22 54.01 (10) “Guardian” means ~~one~~ a person appointed by a court under s. 54.10
23 ~~to have care, custody and control of the person of a minor or an incompetent or the~~
24 ~~management of the estate~~ manage the income and assets and provide for the

SENATE BILL 391**SECTION 299**

1 essential requirements for health and safety and the personal needs of a minor, an
2 individual found incompetent, or a spendthrift.

3 **SECTION 300.** 880.01 (4) of the statutes is repealed.

4 **SECTION 301.** 880.01 (5) of the statutes is repealed.

5 **SECTION 302.** 880.01 (6) of the statutes is repealed.

6 **SECTION 303.** 880.01 (7) of the statutes is renumbered 54.01 (20) and amended
7 to read:

8 54.01 (20) “Minor” means ~~a person~~ an individual who has not attained the age
9 of 18 years.

10 **SECTION 304.** 880.01 (7m) of the statutes is renumbered 55.14 (1) (b) and
11 amended to read:

12 55.14 (1) (b) “Not competent to refuse psychotropic medication” means that,
13 ~~because of chronic mental illness, as defined in s. 51.01 (3g)~~ for an individual with
14 developmental disability or as a result of degenerative brain disorder, serious and
15 persistent mental illness, or other like incapacities, and after the advantages and
16 disadvantages of and alternatives to accepting the particular psychotropic
17 medication have been explained to an individual, one of the following is true:

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

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

SENATE BILL 391**SECTION 305**

1 **SECTION 305.** 880.01 (8) of the statutes is renumbered 54.01 (22) and amended
2 to read:

3 54.01 (22) “Other like incapacities” means those conditions incurred at any age
4 ~~which~~ that are the result of accident, organic brain damage, mental or physical
5 disability, or continued consumption or absorption of substances, ~~producing and that~~
6 produce a condition ~~which~~ that substantially impairs an individual from providing
7 for the individual’s his or her own care or custody.

8 **SECTION 306.** 880.01 (9) of the statutes is renumbered 54.01 (31) and amended
9 to read:

10 54.01 (31) “Spendthrift” means a person who, because of the use of ~~intoxicants~~
11 alcohol or other drugs or because of gambling, ~~idleness or debauchery~~ or other
12 wasteful course of conduct, is unable to ~~attend to business or thereby~~ manage
13 effectively his or her financial affairs or is likely to affect the health, life, or property
14 of the person himself, herself, or others so as to endanger ~~the~~ his or her support of
15 the person and the person’s support of his or her dependents, if any, or expose the
16 public to ~~such~~ responsibility for his or her support.

17 **SECTION 307.** 880.01 (10) of the statutes is renumbered 54.01 (37) and amended
18 to read:

19 54.01 (37) “Ward” means ~~a subject~~ an individual for whom a guardian has been
20 appointed.

21 **SECTION 308.** 880.02 of the statutes is renumbered 54.30 (1) and amended to
22 read:

23 54.30 (1) ~~JURISDICTION IN CIRCUIT COURT.~~ The circuit court ~~shall have~~ has subject
24 matter jurisdiction over all petitions for guardianship. A guardianship of the estate
25 of any person individual, once granted, shall extend to all of ~~his or her estate~~ the

SENATE BILL 391**SECTION 308**

1 ward's income and assets in this state and shall exclude the jurisdiction of every
2 other circuit court, except as provided in ch. 786.

3 **SECTION 309.** 880.03 of the statutes is repealed.

4 **SECTION 310.** 880.04 (title) of the statutes is renumbered 54.12 (title) and
5 amended to read:

6 **54.12 (title) Exceptions to appointment of guardian.**

7 **SECTION 311.** 880.04 (1) of the statutes is renumbered 54.46 (6) and amended
8 to read:

9 54.46 (6) EMANCIPATION OF MARRIED MINORS. Except for ~~minors~~ a minor found
10 to be incompetent, upon marriage, a minor ~~shall is~~ no longer be a proper subject for
11 guardianship of the person and a guardianship of the person is revoked by the
12 marriage of a minor ward. Upon application, the court may release in whole or in
13 part the estate income and assets of a minor ward to the ward upon the ward's
14 marriage. Upon marriage, ~~the guardianship of an incompetent is subject to review~~
15 ~~under s. 880.34.~~

16 **SECTION 312.** 880.04 (2) of the statutes is renumbered 54.12 (1) and amended
17 to read:

18 54.12 (1) SMALL ESTATES. If a minor or an individual found incompetent, except
19 for his or her incapacity, is entitled to ~~possession of personal property of a value of~~
20 ~~\$10,000~~ possess assets valued at the amount specified in s 867.03 (1g) (intro.) or less,
21 any court ~~wherein~~ in which an action or proceeding involving said property the assets
22 is pending may, ~~in its discretion,~~ without requiring the appointment of a guardian,
23 order that the register i probate do one of the following:

24 (a) Deposit the property in ~~a savings~~ an interest-bearing account in a bank,
25 ~~the payment of whose accounts in cash immediately upon default of the bank are or~~

SENATE BILL 391

1 ~~other financial institution insured by an agency of the federal deposit insurance~~
2 ~~corporation; deposit in a savings account in a savings bank or a savings and loan~~
3 ~~association that has its deposits insured by the federal deposit insurance~~
4 ~~corporation; deposit in a savings account in a credit union having its deposits~~
5 ~~guaranteed by the Wisconsin credit union savings insurance corporation or by the~~
6 ~~national board, as defined in s. 186.01 (3m); government or invest the property in~~
7 ~~interest-bearing obligations of the United States. The fee for the clerk's services of~~
8 ~~the register in probate in depositing and disbursing the funds under this paragraph~~
9 is prescribed in s. ~~814.61 (12) (a)~~ 814.66 (1) (n).

10 (b) ~~Payment~~ Make payment to the ~~natural guardian parent~~ of the minor or to
11 the person having actual custody of the minor.

12 (c) ~~Payment~~ Make payment to the minor.

13 (d) ~~Payment~~ Make payment to the person having actual or legal custody of the
14 incompetent or to the person providing for the ~~incompetent's~~ care and maintenance
15 of the individual found incompetent for the benefit of the individual found
16 incompetent.

17 **SECTION 313.** 880.04 (2m) of the statutes is renumbered 54.12 (2) and amended
18 to read:

19 54.12 (2) INFORMAL ADMINISTRATION. If a minor or an individual found
20 incompetent, except for his or her incapacity, is entitled to possession of personal
21 property assets of a value of \$5,000 the amount specified in s. 867.03 (1g) (intro.) or
22 less from an estate administered through informal administration under ch. 865, the
23 personal representative may, without the appointment of a guardian, do any of the
24 following:

SENATE BILL 391**SECTION 313**

1 (a) With the approval of the register in probate, take one of the actions ~~under~~
2 specified in sub. (2) (1) (a) to (f).

3 (b) With the approval of the guardian ad litem of the minor or individual found
4 incompetent, take one of the actions ~~under~~ specified in sub. (2) (1) (a) to (f) and file
5 proof of the action taken and of the approval of the guardian ad litem with the probate
6 registrar instead of filing a receipt under s. 865.21.

7 **SECTION 314.** 880.04 (3) of the statutes is renumbered 54.12 (3) and amended
8 to read:

9 54.12 (3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or
10 her incapacity, is entitled to possession of personal property of any value, any court
11 ~~wherein~~ in which an action or proceeding involving the property is pending may,
12 without requiring the appointment of a guardian, order payment, subject to any
13 limitations the court may impose, to a custodian for the minor designated by the
14 court under ss. 880.61 to 880.72 54.854 to 54.898 or under the uniform gifts to minors
15 act or uniform transfers to minors act of any other state.

16 **SECTION 315.** 880.05 of the statutes is renumbered 54.30 (2) and amended to
17 read:

18 54.30 (2) VENUE. All petitions for guardianship of residents of the state shall
19 be directed to the circuit court of the county of residence of the ~~person subject to~~
20 guardianship proposed ward or of the county in which the ~~person proposed ward~~ is
21 physically present. A petition for guardianship of the person or estate of a
22 nonresident may be directed to the circuit court of any county ~~where~~ in which the
23 ~~person nonresident~~ or any ~~property assets~~ of the nonresident may be found or of the
24 county in which the petitioner proposes that the proposed ward resides.

25 **SECTION 316.** 880.06 (title) of the statutes is renumbered 54.30 (3) (title).

SENATE BILL 391**SECTION 317**

1 **SECTION 317.** 880.06 (1) of the statutes is renumbered 54.30 (3) (a) and
2 amended to read:

3 54.30 (3) (a) *Original proceeding.* The court ~~wherein~~ in which a petition is first
4 filed shall determine venue. The court shall direct that proper notice be given to any
5 potentially responsible or affected county. Proper notice is given to a potentially
6 responsible or affected county if written notice of the proceeding is sent by certified
7 mail to the county's clerk and corporation counsel. After all potentially responsible
8 or affected counties and parties have been given an opportunity to be heard, the court
9 shall determine that venue lies in the county in which the petition is filed under sub.
10 (2) or in another county, as appropriate. If it is determined the court determines that
11 venue lies in another county, the court shall order the entire record certified to the
12 proper court. A court wherein in which a subsequent petition is filed shall, upon
13 being if it is satisfied of that an earlier filing took place in another court, summarily
14 dismiss such the petition. If any potentially responsible or affected county or party
15 objects to the court's finding of venue, the court may refer the issue to the department
16 for a determination of the county of residence under s. 51.40 (2) (g) and may suspend
17 ruling on the motion for change of venue until the determination under s. 51.40 (2)
18 (g) is final.

19 **SECTION 318.** 880.06 (2) of the statutes is renumbered 54.30 (3) (b) (intro.) and
20 amended to read:

21 54.30 (3) (b) (intro.) *Change of residence of ward or guardian.* If a guardian
22 ~~removes from the county where appointed to another county within the state or a~~
23 ~~ward removes from the county in which he or she has resided~~ changes residence from
24 one county to another county within the state, the circuit court for the county in
25 ~~which the ward resides may appoint a new guardian as provided by law for the~~

SENATE BILL 391**SECTION 318**

1 appointment of a guardian. Upon verified petition of the new guardian, accompanied
2 by a certified copy of appointment and bond if the appointment is in another county,
3 and upon the notice prescribed by s. 879.05 to the originally appointed guardian,
4 unless he or she is the same person, and to any other persons that the court shall
5 order, the court of original appointment may order the guardianship accounts settled
6 and the property delivered to the new guardian. venue may be transferred to the
7 ward's new county of residence under the following procedure:

8 **SECTION 319.** 880.07 (title) of the statutes is renumbered 54.34 (title) and
9 amended to read:

10 **54.34 (title) Petition; fees for guardianship.**

11 **SECTION 320.** 880.07 (1) (intro.) of the statutes is renumbered 54.34 (1) (intro.)
12 and amended to read:

13 54.34 (1) (intro.) Any relative, public official or other person, may petition for
14 the appointment of a guardian of a person subject to guardianship. Such for an
15 individual. The petition shall state, so far as may be all of the following, if known
16 to the petitioner:

17 **SECTION 321.** 880.07 (1) (a) of the statutes is renumbered 54.34 (1) (a).

18 **SECTION 322.** 880.07 (1) (b) of the statutes is renumbered 54.34 (1) (b) and
19 amended to read:

20 54.34 (1) (b) The specific nature of the proposed ward's alleged incapacity with
21 specification of the incompetency or spendthrift habits.

22 **SECTION 323.** 880.07 (1) (c) of the statutes is renumbered 54.34 (1) (c).

23 **SECTION 324.** 880.07 (1) (d) of the statutes is renumbered 54.34 (1) (d) and
24 amended to read:

SENATE BILL 391**SECTION 324**

1 54.34 (1) (d) Any assets of the proposed ward previously derived from or
2 benefits of the proposed ward now due and payable from the U.S. department of
3 veterans affairs.

4 **SECTION 325.** 880.07 (1) (e) of the statutes is renumbered 54.34 (1) (e).

5 **SECTION 326.** 880.07 (1) (f) of the statutes is renumbered 54.34 (1) (f).

6 **SECTION 327.** 880.07 (1) (g) of the statutes is renumbered 54.34 (1) (g).

7 **SECTION 328.** 880.07 (1) (h) of the statutes is renumbered 54.34 (1) (h) and
8 amended to read:

9 54.34 (1) (h) The names and post-office addresses of ~~the spouse and~~
10 ~~presumptive or apparent adult heirs of the proposed ward, and all other persons~~
11 ~~believed by the petitioner to be interested parties.~~

12 **SECTION 329.** 880.07 (1) (i) of the statutes is renumbered 54.34 (1) (i) and
13 amended to read:

14 54.34 (1) (i) The name and post-office address of the person or institution
15 ~~having the, if any, that has~~ care and custody of the proposed ward or the facility, if
16 any, that is providing care to the proposed ward.

17 **SECTION 330.** 880.07 (1) (j) of the statutes is renumbered 54.34 (1) (j) and
18 amended to read:

19 54.34 (1) (j) The interest of the petitioner, and, if a public official ~~or creditor~~ is
20 the petitioner, ~~then the fact of indebtedness or continuing liability for maintenance~~
21 ~~or continuing breach of the public peace as well as the authority of the petitioner to~~
22 act.

23 **SECTION 331.** 880.07 (1m) of the statutes is repealed.

24 **SECTION 332.** 880.07 (2) of the statutes is renumbered 54.34 (2) and amended
25 to read:

SENATE BILL 391**SECTION 332**

1 54.34 (2) A petition for guardianship may also include an application for
2 protective placement or protective services or both under ch. 55.

3 **SECTION 333.** 880.07 (3) of the statutes is repealed.

4 **SECTION 334.** 880.07 (4) of the statutes is repealed.

5 **SECTION 335.** 880.075 (title) of the statutes is repealed.

6 **SECTION 336.** 880.075 of the statutes is renumbered 54.44 (1) (b) and amended
7 to read:

8 54.44 (1) (b) *Time of hearing for certain appointments.* A petition for
9 guardianship of ~~a person~~ an individual who has been admitted to a nursing home
10 or a community-based residential facility under s. 50.06 shall be heard within 60
11 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is
12 making a health care decision under s. 50.06 (5) (a) that is not in the best interests
13 of the incapacitated individual or if the incapacitated individual verbally objects to
14 or otherwise actively protests the admission, the petition shall be heard as soon as
15 possible within the 60-day period.

16 **SECTION 337.** 880.08 (intro.) of the statutes is renumbered 54.38 (2) (intro.) and
17 amended to read:

18 54.38 (2) ~~NOTICE OF HEARING FOR APPOINTMENTS AND REHEARINGS, SERVICE, AND~~
19 ~~DELIVERY.~~ (intro.) Upon the filing of a petition for guardianship, ~~and the court being~~
20 ~~of the person or of the estate, including appointment or change of a guardian, if the~~
21 ~~court is satisfied as to compliance with s. 880.07 54.34, the court shall, except as~~
22 ~~provided in sub. (3), order the petitioner to serve notice on the proposed ward and~~
23 ~~guardian, if any, and to deliver notice to interested persons of the time and place of~~
24 ~~the hearing, as follows:~~

25 **SECTION 338.** 880.08 (1) (title) of the statutes is repealed.

SENATE BILL 391**SECTION 339**

1 **SECTION 339.** 880.08 (1) of the statutes is renumbered 54.38 (2) (a) and
2 amended to read:

3 54.38 (2) (a) ~~A petitioner shall have notice served of a petition for appointment~~
4 ~~or change of a guardian upon~~ On the proposed incompetent and existing guardian,
5 if any, ward by personal service and an existing guardian, if any, by personal service
6 or by registered or certified mail at least 10 days before the time set for hearing. If
7 ~~such proposed incompetent~~ the proposed ward is in custody or confinement, ~~a~~ the
8 petitioner shall have notice served by registered or certified mail on the proposed
9 incompetent's ward's custodian, who shall immediately serve it on the proposed
10 incompetent ward. The process server or custodian shall inform the proposed
11 incompetent ward of the complete contents of the notice and certify thereon petition,
12 motion, or other required document; certify on the notice that the process server or
13 custodian served and informed the proposed incompetent and returned ward; and
14 return the certificate and notice to the circuit judge. ~~The notice shall include the~~
15 ~~names of all persons who are petitioning for guardianship. A copy of the petition~~
16 ~~shall be attached to the notice. The court shall cause the proposed incompetent, if~~
17 ~~able to attend, to be produced at the hearing. The proposed incompetent is presumed~~
18 ~~able to attend unless, after a personal interview, the guardian ad litem certifies in~~
19 ~~writing to the court the specific reasons why the person is unable to attend. If the~~
20 ~~person is unable to attend a hearing because of physical inaccessibility or lack of~~
21 ~~transportation, the court shall hold the hearing in a place where the person may~~
22 ~~attend if requested by the proposed ward, guardian ad litem, adversary counsel or~~
23 ~~other interested person. Such notice shall also be given personally or by mail at least~~
24 ~~10 days before the hearing to the proposed incompetent's counsel, if any, guardian~~
25 ~~ad litem, presumptive adult heirs or other persons who have legal or physical custody~~

SENATE BILL 391**SECTION 339**

1 of the proposed incompetent whose names and addresses are known to the petitioner
2 or can with reasonable diligence be ascertained, to any governmental or private
3 agency, charity or foundation from which the proposed incompetent is receiving aid
4 and to such other persons or entities as the court may require. The court shall then
5 proceed under s. 880.33 court.

6 **SECTION 340.** 880.08 (2) of the statutes is repealed.

7 **SECTION 341.** 880.08 (3) (title) of the statutes is repealed.

8 **SECTION 342.** 880.08 (3) (am) (intro.) of the statutes is renumbered 54.38 (3)
9 (intro.) and amended to read:

10 54.38 (3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR. (intro.)
11 When If the proposed ward is a minor, notice shall be given as provided in s. 879.05
12 the court shall order delivery of notice by the petitioner of the time and place of the
13 hearing to all of the following persons, if applicable:

14 **SECTION 343.** 880.08 (3) (am) 1. of the statutes is renumbered 54.38 (3) (a) and
15 amended to read:

16 54.38 (3) (a) The proposed ward's spouse, if any.

17 **SECTION 344.** 880.08 (3) (am) 2. of the statutes is renumbered 54.38 (3) (b) and
18 amended to read:

19 54.38 (3) (b) The proposed ward's parents parent, unless the parent's parental
20 rights have been judicially terminated.

21 **SECTION 345.** 880.08 (3) (am) 3. of the statutes is renumbered 54.38 (3) (c) and
22 amended to read:

23 54.38 (3) (c) ~~A minor~~ The proposed ward, if the proposed ward is over 14 years
24 of age unless the minor appears at the hearing.

SENATE BILL 391**SECTION 346**

1 **SECTION 346.** 880.08 (3) (am) 4. of the statutes is renumbered 54.38 (3) (d) and
2 amended to read:

3 54.38 (3) (d) Any other person, ~~agency, institution, welfare department or other~~
4 ~~entity having~~ that has the legal or actual physical custody of the minor.

5 **SECTION 347.** 880.08 (3) (e) of the statutes is repealed.

6 **SECTION 348.** 880.08 (4) of the statutes is renumbered 54.38 (4) and amended
7 to read:

8 54.38 (4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper
9 subject to continue under guardianship shall be given as required ~~for the~~
10 ~~appointment of a guardian~~ under subs. (1), (2), and (3).

11 **SECTION 349.** 880.09 (intro.) of the statutes is renumbered 54.15 (intro.) and
12 amended to read:

13 **54.15 ~~Nomination; selection of guardians~~ Selection of guardian;**
14 **nominations; preferences; other criteria.** (intro.) The court shall do one of the
15 following and shall consider all of the following nominations made by any interested
16 ~~person and, in its discretion, shall appoint a proper guardian, having due regard for~~
17 ~~the following, applicable preferences, and criteria in determining who is appointed~~
18 as guardian:

19 **SECTION 350.** 880.09 (1) (title) of the statutes is repealed.

20 **SECTION 351.** 880.09 (1) of the statutes is renumbered 54.15 (4) (b) and
21 amended to read:

22 54.15 (4) (b) A minor ~~over~~ who is 14 years or older may in writing in circuit court
23 nominate his or her own guardian, but if the minor is in the armed service, is ~~without~~
24 outside of the state, or if other good reason exists, the court may dispense with the
25 minor's right of nomination.

SENATE BILL 391**SECTION 352**

1 **SECTION 352.** 880.09 (2) of the statutes is renumbered 54.15 (5) and amended
2 to read:

3 54.15 (5) ~~PREFERENCE PARENT OF A PROPOSED WARD.~~ If one or both of the parents
4 of a minor, ~~a developmentally disabled person or a person with other like incapacity~~
5 ~~or an individual with developmental disability or with serious and persistent mental~~
6 ~~illness~~ are suitable and willing, the court shall appoint one or both of them as
7 guardian unless the ~~proposed ward objects~~ court finds that the appointment is not
8 in the proposed ward,s best interest. The court shall ~~appoint a corporate guardian~~
9 ~~under s. 880.35 only if no suitable individual guardian is available~~ consider a
10 proposed ward's objection to the appointment of his or her parent.

11 **SECTION 353.** 880.09 (3) (title) of the statutes is repealed.

12 **SECTION 354.** 880.09 (3) of the statutes is renumbered 54.15 (4) (c) and
13 amended to read:

14 54.15 (4) (c) If neither parent of a minor who is 14 years or older is suitable and
15 willing to be appointed guardian, the court may appoint the nominee of ~~a~~ the minor.

16 **SECTION 355.** 880.09 (4) of the statutes is repealed.

17 **SECTION 356.** 880.09 (5) of the statutes is repealed.

18 **SECTION 357.** 880.09 (6) of the statutes is renumbered 54.15 (6) and amended
19 to read:

20 54.15 (6) ~~TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS~~ NOMINATION BY
21 PROPOSED WARD'S PARENTS. Subject to the rights of a surviving parent, a parent may
22 by will nominate a guardian and successor guardian of the person or estate ~~of~~ for any
23 of his or her minor children who ~~are~~ is in need of guardianship, unless the court finds
24 that appointment of the guardian or successor guardian is not i the minor's best
25 interests. For ~~a person over the age of~~ an individual who is aged 18 or older and is

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1 found to be in need of guardianship under s. 880.33 by reason of a developmental
2 disability or ~~other like incapacity~~ serious and persistent mental illness, a parent may
3 by will nominate a testamentary guardian. The parent may waive the requirement
4 of a bond for such an estate that is derived through a will.

5 **SECTION 358.** 880.09 (7) (title) of the statutes is repealed.

6 **SECTION 359.** 880.09 (7) of the statutes is renumbered 54.15 (4) (a) and
7 amended to read:

8 54.15 (4) (a) Any ~~person~~ individual other than a minor aged 14 years or younger
9 may, at such time as if the person has sufficient capacity individual does not have
10 incapacity to such an extent that he or she is unable to form an intelligent a
11 reasonable and informed preference, execute a written instrument, in the same
12 manner as the execution of a will under s. 853.03, nominating ~~a person~~ another to
13 be appointed as guardian of his or her person or ~~property~~ estate or both in the event
14 that if a guardian is in the future appointed. ~~Such nominee shall be appointed as~~
15 ~~guardian by the~~ for the individual. The court shall appoint this nominee as guardian
16 unless the court finds that the appointment of ~~such nominee~~ is not in the best
17 interests of the ~~person for whom, or for whose property, the guardian is to be~~
18 ~~appointed~~ proposed ward.

19 **SECTION 360.** 880.10 of the statutes is renumbered 54.38 (5) and amended to
20 read:

21 54.38 (5) NOTICE OF APPOINTMENT OF GUARDIAN OF A MINOR WARD. If for any reason
22 the court fails to appoint as guardian the nominee of the minor, the guardian who
23 qualifies shall give notice of the guardian's appointment to the minor by certified
24 mail addressed to the minor's last-known post-office address and shall file an

SENATE BILL 391**SECTION 360**

1 affidavit of such ~~the~~ mailing shall be filed with the court within 10 days after the
2 issuance of letters notice is given.

3 **SECTION 361.** 880.12 of the statutes is repealed.

4 **SECTION 362.** 880.125 of the statutes is repealed.

5 **SECTION 363.** 880.13 (title) of the statutes is renumbered 54.46 (5) (title).

6 **SECTION 364.** 880.13 (1) of the statutes is renumbered 54.46 (4) (a) and
7 amended to read:

8 54.46 (4) (a) *Form Amount and sufficiency of bond.* Upon the appointment of
9 a guardian of the estate of a ward, ~~except as provided under s. 880.60 (9), the court~~
10 ~~may require a bond given in accordance with ch. 878 and s. 895.345~~ The order under
11 sub. (2) shall specify the amount of any bond required to be given by the guardian
12 of the estate, conditioned upon the faithful performance of the duties of the guardian
13 of the estate. No bond may be required for the guardian of the person.

14 **SECTION 365.** 880.13 (2) (title) of the statutes is renumbered 54.46 (4) (b) (title).

15 **SECTION 366.** 880.13 (2) (a) of the statutes is renumbered 54.46 (4) (b) (intro.)
16 and amended to read:

17 54.46 (4) (b) (intro.) Unless required under s. 880.60 54.852 (9), the court may
18 waive the requirement of a bond at under any of the following circumstances:

19 1. At any time in its discretion or if,

20 2. If so requested in a will wherein in which a nomination appears.

21 **SECTION 367.** 880.13 (2) (b) of the statutes is renumbered 54.46 (4) (b) 3. and
22 amended to read:

23 54.46 (4) (b) 3. ~~Whenever~~ If a guardian has or will have possession of funds of
24 the ward with a total value of \$40,000 \$100,000 or less, and the court may ~~direct~~
25 directs deposit of the funds in an insured account of a bank, credit union, savings

SENATE BILL 391**SECTION 367**

1 bank, or savings and loan association in the name of the guardian and the ward and
2 payable only upon further order of the court. In such event the court may waive the
3 requirement of a bond.

4 **SECTION 368.** 880.13 (3) of the statutes is repealed.

5 **SECTION 369.** 880.14 of the statutes is renumbered 54.46 (5) and amended to
6 read:

7 54.46 (5) ~~WHEN LETTERS TO BE ISSUED~~ LETTERS OF GUARDIANSHIP. ~~When~~ If a
8 guardian of the estate has given bond as, if required, and the bond has been approved
9 by the judge court, letters under the seal of the court shall be issued to the guardian
10 of the estate. If a court determination and order appointing a guardian of the person
11 is entered, letters under the seal of the court shall be issued to the guardian of the
12 person.

13 **SECTION 370.** 880.15 (title) of the statutes is repealed.

14 **SECTION 371.** 880.15 (1) of the statutes is renumbered 54.50 (2) and amended
15 to read:

16 54.50 (2) ~~APPOINTMENT~~ DURATION AND EXTENT OF AUTHORITY. ~~If, after~~
17 ~~consideration of a petition for temporary guardianship, the court finds that the~~
18 ~~welfare of a minor, spendthrift or an alleged incompetent requires the immediate~~
19 ~~appointment of a guardian of the person or of the estate, or of both, it~~ The court may
20 appoint a temporary guardian for a ward for a period not to exceed 60 days unless
21 further extended for 60 days by order of the court. The court may extend the period
22 only once, except that the court may extend this period for good cause shown for one
23 additional 60-day period. The court may impose no further temporary guardianship
24 on the ward for at least 90 days after the expiration of the temporary guardianship
25 and any extension. The court's determination and order appointing the temporary

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1 guardian shall specify the authority of the temporary guardian and shall be limited
2 to those acts that are reasonably related to the reasons for appointment that are
3 specified in the petition for temporary guardianship. The authority of the temporary
4 guardian shall be is limited to the performance of duties respecting specific property,
5 ~~or to the performance of particular those acts,~~ as stated in the order of appointment.
6 All provisions of the statutes concerning the powers and duties of guardians shall
7 apply to temporary guardians except as limited by the order of appointment. The
8 temporary guardian shall make the reports the court directs and shall account to the
9 court upon termination of authority. The court assigned to exercise jurisdiction
10 under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary
11 guardian of a minor for medical purposes but shall proceed in accordance with this
12 section Unless the court first specifically approves and orders bond, the temporary
13 guardian may not sell real estate or expend an amount in excess of \$2,000.

14 **SECTION 372.** 880.15 (1m) of the statutes is repealed.

15 **SECTION 373.** 880.15 (1s) of the statutes is renumbered 54.38 (6) and amended
16 to read:

17 54.38 (6) NOTICE OF PETITION AND HEARING FOR TEMPORARY GUARDIANSHIP. The
18 person petitioning petitioner for appointment of a temporary guardian shall cause
19 give notice to be given under s. 880.08 of that the petition to the minor, ~~spendthrift~~
20 ~~or alleged incompetent and, if the appointment is made, shall give notice of the~~
21 ~~appointment to the ward. The time limits of s. 880.08 do not apply to notice given~~
22 ~~under this subsection~~ proposed ward. The notice shall be served before or at the time
23 the petition is filed or as soon thereafter as possible and shall include notice of the
24 right to counsel and of the right to petition for reconsideration or modification of the
25 temporary guardianship at any time under s. 880.34 ~~within 30 days of receipt of the~~

SENATE BILL 391**SECTION 373**

1 notice 54.50 (3) (d) The petitioner shall serve notice of the order for hearing on the
2 proposed ward before the hearing or not later than 3 calendar days after the hearing.
3 If the petitioner serves notice after the hearing is conducted and the court has
4 entered an order, the petitioner shall include the court's order with the notice of the
5 order for hearing.

6 **SECTION 374.** 880.15 (2) of the statutes is repealed.

7 **SECTION 375.** 880.15 (3) of the statutes is renumbered 54.50 (4) and amended
8 to read:

9 54.50 (4) (d) CESSATION OF POWERS. ~~If the temporary guardianship is not sooner~~
10 ~~terminated the~~ The duties and powers of the temporary guardian shall cease upon
11 the issuing of letters of permanent guardianship to the guardian of the ward, or, if
12 the ward is a minor, upon his becoming of age, or when it shall be judicially
13 ~~determined, the expiration of the time period specified in sub. (2), or if the court~~
14 sooner determines that any other disability of the temporary ward which situation
15 of the ward that was the cause of the temporary guardianship has terminated. Upon
16 ~~the~~ termination of the temporary guardian's duties and powers, a temporary
17 guardian of the person shall file with the court any report that the court requires.
18 A temporary guardian of the estate shall, upon the termination of duties and powers,
19 account to the court and deliver to the person ~~or persons~~ entitled to ~~them~~ all the
20 estate of the ward in his or her hands the ward's estate over which the temporary
21 guardian of the estate has had control. Any action ~~which~~ that has been commenced
22 by the temporary guardian may be prosecuted to final judgment by the successor or
23 successors in interest, if any.

24 **SECTION 376.** 880.155 of the statutes is renumbered 54.56 and amended to
25 read:

SENATE BILL 391**SECTION 376**

1 **54.56 Visitation by a minor's grandparents and stepparents.** (1) In this
2 section, "stepparent" means the surviving spouse of a deceased parent of a minor
3 child, whether or not the surviving spouse has remarried.

4 (2) If one or both parents of a minor child are deceased and the child minor is
5 in the custody of the surviving parent or any other person, a grandparent or
6 stepparent of the child minor may petition for visitation privileges with respect to the
7 child minor, whether or not the person with custody is married. The grandparent or
8 stepparent may file the petition in a guardianship or temporary guardianship
9 proceeding under this chapter that affects the minor child or may file the petition to
10 commence an independent action under this chapter. Except as provided in sub.
11 (3m), the court may grant reasonable visitation privileges to the grandparent or
12 stepparent if the surviving parent or other person who has custody of the child minor
13 has notice of the hearing and if the court determines that visitation is in the best
14 interest of the child minor.

15 (3) Whenever possible, in making a determination under sub. (2), the court
16 shall consider the wishes of the child minor.

17 (3m) (a) Except as provided in par. (b), the court may not grant visitation
18 privileges to a grandparent or stepparent under this section if the grandparent or
19 stepparent has been convicted under s. 940.01 of the first-degree intentional
20 homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of
21 the child minor, and the conviction has not been reversed, set aside or vacated.

22 (b) Paragraph (a) does not apply if the court determines by clear and convincing
23 evidence that the visitation would be in the best interests of the child minor. The
24 court shall consider the wishes of the child minor in making the determination.

SENATE BILL 391**SECTION 376**

1 (4) The court may issue any necessary order to enforce a visitation order that
2 is granted under this section, and may from time to time modify such the visitation
3 privileges or enforcement order ~~upon a showing of~~ for good cause shown.

4 (4m) (a) If a grandparent or stepparent granted visitation privileges with
5 respect to a ~~child~~ minor under this section is convicted under s. 940.01 of the
6 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional
7 homicide, of a parent of the ~~child~~ minor, and the conviction has not been reversed,
8 set aside or vacated, the court shall modify the visitation order by denying visitation
9 with the ~~child~~ minor upon petition, motion or order to show cause by a person having
10 custody of the ~~child~~ minor, or upon the court's own motion, and upon notice to the
11 grandparent or stepparent granted visitation privileges.

12 (b) Paragraph (a) does not apply if the court determines by clear and convincing
13 evidence that the visitation would be in the best interests of the ~~child~~ minor. The
14 court shall consider the wishes of the ~~child~~ minor in making the determination.

15 (5) This section applies to every minor ~~child~~ in this state whose parent or
16 parents are deceased, regardless of the date of death of the parent or parents.

17 **SECTION 377.** 880.157 (title) of the statutes is renumbered 54.57 (title).

18 **SECTION 378.** 880.157 (1) of the statutes is renumbered 54.57 (1) and amended
19 to read:

20 54.57 (1) Except as provided in sub. (2), in an action under this chapter that
21 affects a minor ~~child~~, a court may not grant to a parent of the ~~child~~ minor visitation
22 or physical placement rights with the ~~child~~ minor if the parent has been convicted
23 under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the
24 2nd-degree intentional homicide, of the ~~child's~~ minor's other parent, and the
25 conviction has not been reversed, set aside or vacated.

SENATE BILL 391**SECTION 379**

1 **SECTION 379.** 880.157 (2) of the statutes is renumbered 54.57 (2) and amended
2 to read:

3 **54.57 (2)** Subsection (1) does not apply if the court determines by clear and
4 convincing evidence that visitation or periods of physical placement would be in the
5 best interests of the ~~child~~ minor. The court shall consider the wishes of the ~~child~~
6 minor in making the determination.

7 **SECTION 380.** 880.16 of the statutes is repealed.

8 **SECTION 381.** 880.17 of the statutes is renumbered 54.54 and amended to read:

9 **54.54 Successor guardian. (1) APPOINTMENT.** ~~When~~ If a guardian dies, is
10 removed by order of the court, or resigns and the resignation is accepted by the court,
11 the court, on its own motion or upon petition of any interested person, may appoint
12 a competent and suitable person as successor guardian. The court may, upon request
13 of any interested person or on its own motion, direct that a petition for appointment
14 of a successor guardian be heard in the same manner and subject to the same
15 requirements as provided under this chapter for an original appointment of a
16 guardian.

17 **(2) NOTICE.** If the appointment under sub. (1) is made without hearing, the
18 successor guardian shall provide notice to the ward and all interested persons of the
19 appointment, the right to counsel, and the right to petition for reconsideration of the
20 successor guardian. The notice shall be served personally or by mail not later than
21 10 days after the appointment.

22 **SECTION 382.** 880.173 (title) of the statutes is repealed.

23 **SECTION 383.** 880.173 (1) of the statutes is renumbered 54.20 (2) (h) and
24 amended to read:

SENATE BILL 391**SECTION 383**

1 54.20 (2) (h) ~~A guardian of the estate~~ If appointed under this chapter for a
2 married person may ward, exercise with the approval of the court, except as limited
3 under s. 880.37, any management and control right over the marital property or
4 property other than marital property and any right in the business affairs ~~which~~ that
5 the married person ward could exercise under ch. 766 if the person were not
6 determined under s. 880.12 to be a proper subject for guardianship. Under this
7 section, a guardian may ward were not an individual found incompetent, consent to
8 act together in or join in any transaction for which consent or joinder of both spouses
9 is required, or may execute under s. 766.58 a marital property agreement with the
10 ~~other ward's spouse~~ or, if appointed for a ward who intends to marry, with the ward's
11 intended spouse, but may not make, amend or revoke a will.

12 **SECTION 384.** 880.173 (2) of the statutes is repealed.

13 **SECTION 385.** 880.175 (title) of the statutes is repealed.

14 **SECTION 386.** 880.175 of the statutes is renumbered 54.20 (2) (b) and amended
15 to read:

16 54.20 (2) (b) ~~Upon petition by the guardian, a parent, the spouse, any issue or~~
17 ~~next of kin of any person, assets of the person may, in the discretion of the court and~~
18 ~~upon its order, after such notice as the court may require, be transferred~~ Transfer
19 assets of the ward to the trustee ~~or trustees~~ of an any existing revocable living trust
20 ~~created by the person for the benefit of~~ that the ward has created for himself or
21 herself and those dependent upon the person for support any dependents, or, if the
22 ward is a minor, to the trustee ~~or trustees~~ of ~~a~~ any trust created for the exclusive
23 benefit of the person, ~~if a minor, which~~ ward that distributes to him or her at age 18
24 or 21, or, if the ward dies before age 18 or 21, to his or her estate, or as ~~he or she~~

SENATE BILL 391**SECTION 386**

1 appoints if he or she dies prior to age 18 or 21 the ward has appointed by a written
2 instrument that is executed after the ward attains age 14.

3 **SECTION 387.** 880.18 (title) of the statutes is renumbered 54.60 (title).

4 **SECTION 388.** 880.18 of the statutes is renumbered 54.60 (1) and amended to
5 read:

6 54.60 (1) INVENTORY REQUIRED. ~~When a~~ The guardian of the estate has been
7 appointed an inventory shall be made in the same manner and subject to the same
8 requirements as are provided for the inventory of a decedent's estate. An appraisal
9 of all or any part of the ward's estate shall be made when ordered by the court prepare
10 an inventory that lists all of the ward's income and assets, including interests in
11 property and any marital property interest, regardless of how the asset is titled.

12 **SECTION 389.** 880.19 (title) of the statutes is repealed.

13 **SECTION 390.** 880.19 (1) (title) of the statutes is repealed.

14 **SECTION 391.** 880.19 (1) of the statutes is renumbered 54.19 (1) and amended
15 to read:

16 54.19 (1) ~~The guardian of the estate shall take~~ Take possession of all of the
17 ward's real and personal property, and of any rents, income, issues and benefits
18 therefrom, whether accruing before or after the guardian's appointment from the
19 property, and of the any proceeds arising from the sale, mortgage, lease, or exchange
20 thereof of the property and prepare an inventory of these. Subject to such this
21 possession, the title of all such estate the income and assets of the ward and to the
22 increment and proceeds thereof shall be of the income and assets of the ward in the
23 ward and not in the guardian. ~~It is the duty of the guardian of the estate to protect~~
24 ~~and preserve it, to retain, sell and invest it as hereinafter provided, to account for it~~
25 ~~faithfully, to perform all other duties required of the guardian by law and at the~~

SENATE BILL 391**SECTION 391**

1 ~~termination of the guardianship to deliver the assets of the ward to the persons~~
2 ~~entitled thereto.~~

3 **SECTION 392.** 880.19 (2) (title) of the statutes is repealed.

4 **SECTION 393.** 880.19 (2) (a) of the statutes is renumbered 54.20 (1) (intro.) and
5 amended to read:

6 54.20 (1) STANDARD. (intro.) The In exercising the powers under this section,
7 the guardian of the estate may, without the approval of the court, retain any real or
8 personal property possessed by the ward at the time of appointment of the guardian
9 or subsequently acquired by the ward by gift or inheritance without regard to ch. 881,
10 so long as such retention constitutes the exercise of shall use the judgment and care
11 under the circumstances then prevailing, which that persons of prudence, discretion,
12 and intelligence exercise in the management of their own affairs, not in regard to
13 speculation but in regard to including the permanent, rather than speculative,
14 disposition of their funds, considering and consideration of the probable income as
15 well as the probable and safety of their capital. In addition, in exercising powers and
16 duties under this section, the guardian of the estate shall consider, consistent with
17 the functional limitations of the ward, all of the following:

18 **SECTION 394.** 880.19 (2) (b) of the statutes is renumbered 54.20 (3) (f) and
19 amended to read:

20 54.20 (3) (f) ~~The guardian of the estate may, with the approval of the court, after~~
21 ~~such notice as the court directs, retain~~ Retain any real or personal property
22 ~~possessed by that the ward at the time of the appointment of the possesses when the~~
23 ~~guardian or subsequently acquired by is appointed or that the ward acquires~~ by gift
24 or inheritance for such period of time as shall be designated in the order of the court

SENATE BILL 391**SECTION 394**

1 ~~approving such retention, without regard to ch. 881 during the guardian's~~
2 ~~appointment.~~

3 **SECTION 395.** 880.19 (3) (title) of the statutes is repealed.

4 **SECTION 396.** 880.19 (3) of the statutes is renumbered 54.20 (2) (k) and
5 amended to read:

6 54.20 (2) (k) In all cases ~~where~~ in which the court deems it determines that it
7 is advantageous to continue the business of a ward, ~~such business may be continued~~
8 ~~by the guardian of the estate on such~~ continue the business on any terms and
9 conditions as ~~may be~~ specified in the order of the court.

10 **SECTION 397.** 880.19 (4) (title) of the statutes is repealed.

11 **SECTION 398.** 880.19 (4) (a) of the statutes is renumbered 54.20 (3) (h) and
12 amended to read:

13 54.20 (3) (h) ~~The guardian of the estate may, without approval of the court,~~
14 ~~invest~~ Invest and reinvest the proceeds of sale of any ~~guardianship assets of the ward~~
15 and any of the ward's other moneys in the guardian's possession in accordance with
16 ch. 881.

17 **SECTION 399.** 880.19 (4) (b) of the statutes is renumbered 54.20 (3) (i) and
18 amended to read:

19 54.20 (3) (i) ~~The guardian of the estate may, with the approval of the court, after~~
20 Notwithstanding ch. 881, after such notice as the court directs, and subject to ch. 786,
21 invest the proceeds of sale of any ~~guardianship assets of the ward~~ and any of the
22 ward's other moneys in the guardian's possession in ~~such~~ the real or personal
23 property as ~~the court determines that is determined by the court~~ to be in the best
24 interests of the ~~guardianship estate, without regard to ch. 881 of the ward.~~

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1 **SECTION 400.** 880.19 (4) (c) of the statutes is renumbered 54.18 (3) (a) and
2 amended to read:

3 54.18 (3) (a) ~~No guardian shall lend guardianship~~ Lend funds of the ward to
4 himself or herself.

5 **SECTION 401.** 880.19 (5) (title) of the statutes is repealed.

6 **SECTION 402.** 880.19 (5) (a) of the statutes is renumbered 54.20 (3) (g) and
7 amended to read:

8 54.20 (3) (g) ~~The guardian of the estate may, without approval of the court, sell~~
9 Subject to ch. 786, sell any property asset of the guardianship estate acquired by the
10 guardian pursuant to sub. (4) ward at fair market value.

11 **SECTION 403.** 880.19 (5) (b) of the statutes is renumbered 54.22 and amended
12 to read:

13 **54.22 Petition for authority to sell, mortgage, pledge, lease, or**
14 **exchange ward's property.** The court, on the ~~application~~ petition of the guardian
15 of the estate or of any other person interested in the estate of any a ward, after such
16 ~~notice if any, as~~ any notice that the court directs, may authorize or require the
17 guardian to sell, mortgage, pledge, lease, or exchange any property of the
18 guardianship estate of the ward upon such terms as the court may order, subject to
19 ch. 786, for the purpose of paying the ward's debts, providing for the ward's care,
20 maintenance, and education and the care, maintenance, and education of the ward's
21 dependents, investing the proceeds, or for any other purpose ~~which~~ that is in the best
22 interest of the ward.

23 **SECTION 404.** 880.19 (5) (c) of the statutes is renumbered 54.18 (3) (c) and
24 amended to read:

SENATE BILL 391**SECTION 404**

1 54.18 (3) (c) ~~No guardian shall purchase~~ Purchase property of the ward, ~~unless~~
2 ~~sold at public sale~~ except at fair market value, subject to ch. 786, and with the
3 approval of the court, ~~and then only if the guardian is a spouse, parent, child, brother~~
4 ~~or sister of the ward or is a cotenant with the ward in the property.~~

5 **SECTION 405.** 880.19 (5) (d) of the statutes is repealed.

6 **SECTION 406.** 880.19 (6) of the statutes is repealed.

7 **SECTION 407.** 880.191 (title) of the statutes is repealed.

8 **SECTION 408.** 880.191 (1) of the statutes is renumbered 54.60 (7) and amended
9 to read:

10 54.60 (7) VERIFICATION, EXAMINATION IN COURT. Every guardian of the estate
11 shall verify by ~~the guardian's oath to the best of the guardian's information and belief~~
12 that every inventory required of the guardian and verification shall be to the effect
13 ~~that the inventory is true of~~ of the estate includes all property which belongs to his
14 or her decedent's estate or his or her ward, which has come to the guardian's
15 possession or knowledge, and that upon diligent inquiry the guardian has not been
16 able to discover any property belonging to the estate or ward which is not included
17 therein income and assets of the ward. The court, at the request of any party
18 interested, or on its own motion, may examine the guardian of the estate on oath in
19 relation thereto, ~~as to the inventory or in relation to any supposed omission from the~~
20 inventory.

21 **SECTION 409.** 880.191 (2) of the statutes is renumbered 54.60 (8) and amended
22 to read:

23 54.60 (8) CITATION TO FILE INVENTORY AND TO ACCOUNT. If any guardian neglects
24 to file the inventory or account when required by law, the ~~circuit judge~~ court shall call
25 the guardian's attention of the guardian of the estate to the neglect. If the guardian

SENATE BILL 391**SECTION 409**

1 still neglects of the estate continues to neglect his or her duty in the premises, the
2 court shall order the guardian of the estate to file the inventory, and the costs may
3 be adjudged against the guardian of the estate.

4 **SECTION 410.** 880.192 of the statutes is repealed.

5 **SECTION 411.** 880.195 of the statutes is renumbered 54.625 and amended to
6 read:

7 **54.625 Transfer of Menominees guardianship funds to trust of a**
8 **Menominee.** The circuit court which that has appointed a guardian of the estate
9 of any minor or individual found incompetent who is a legally enrolled member of the
10 Menominee Indian tribe, as defined in s. 49.385, or a lawful distributee thereof, as
11 defined in s. 54.850 (3), of the member may direct the guardian to transfer the assets
12 in the guardian's possession of the minor or individual found incompetent in the
13 guardian's possession to the trustees of the trust created by the secretary of interior
14 or his or her delegate which that receives property of the minors or incompetents
15 individuals found incompetent that is transferred from the United States or any
16 agency thereof as provided by P.L. 83-399, as amended, and the assets shall
17 thereafter be held, administered, and distributed in accordance with the terms and
18 conditions of the trust.

19 **SECTION 412.** 880.21 of the statutes is repealed.

20 **SECTION 413.** 880.215 of the statutes is renumbered 54.47 and amended to
21 read:

22 **54.47 Lis pendens, void contracts.** A certified copy of the petition and order
23 for hearing provided for in ss. ~~880.07~~ 54.34 and ~~880.08~~ 54.38 may be filed in the office
24 of the register of deeds for the county; and if, If a guardian shall be is appointed upon
25 such application after a hearing on the petition and if the court's order includes a

SENATE BILL 391**SECTION 413**

1 ~~finding that the ward may not make contracts,~~ all contracts, except for necessities
2 at reasonable prices, and all gifts, sales, and transfers of property made by such
3 ~~insane or incompetent person or spendthrift,~~ the ward after the filing of a certified
4 copy of such ~~petition and the~~ order as aforesaid, shall be void. ~~The validity of a~~
5 ~~contract made by a person under limited guardianship is not void, however, unless~~
6 ~~the determination is made by the court in its finding under s. 880.33 (3) that the ward~~
7 ~~is incapable of exercising the power to make contracts~~ are void, unless notified by the
8 guardian in writing.

9 **SECTION 414.** 880.22 (title) of the statutes is repealed.

10 **SECTION 415.** 880.22 (1) (title) of the statutes is repealed.

11 **SECTION 416.** 880.22 (1) of the statutes is renumbered 54.19 (7) and amended
12 to read:

13 54.19 (7) ~~Every general guardian shall~~ With respect to claims, pay the just
14 legally enforceable debts of the ward ~~out of, including by filing tax returns and paying~~
15 any taxes owed, from the ward's personal estate and the income of the ward's real
16 estate, if sufficient, and if not, then out of the ward's real estate upon selling the same
17 as provided by law. ~~But a temporary guardian shall pay the debts of his or her ward~~
18 ~~only on order of the court~~ and assets.

19 **SECTION 417.** 880.22 (2) (title) of the statutes is repealed.

20 **SECTION 418.** 880.22 (2) of the statutes is renumbered 54.20 (2) (L) and
21 amended to read:

22 54.20 (2) (L) ~~The guardian or a creditor of any ward may apply~~ Apply to the
23 court for adjustment of any claims against the ward incurred ~~prior to~~ before entry
24 of the order appointing the guardian or the filing of a lis pendens as provided in s.
25 ~~880.215~~ 54.47. The court shall by order fix the time and place it will adjust claims

SENATE BILL 391**SECTION 418**

1 and the time within which all claims ~~must~~ shall be presented ~~or be barred~~. Notice
2 of the time and place ~~so fixed and limited~~ these times and the place shall be given by
3 publication as ~~in estates of decedents; and all statutes relating to claims against and~~
4 ~~in favor of estates of decedents~~ provided in s. 879.05 (4), and ch. 859 generally shall
5 apply. ~~As in the settlement of estates of deceased persons, after~~ After the court has
6 made the order, no action or proceeding may be commenced or maintained in any
7 court against the ward upon any claim ~~of~~ over which the circuit court has jurisdiction.

8 **SECTION 419.** 880.23 (title) of the statutes is repealed.

9 **SECTION 420.** 880.23 of the statutes is renumbered 54.20 (3) (j) and amended
10 to read:

11 54.20 (3) (j) ~~The guardian shall settle~~ Settle all claims and accounts of the ward
12 and may demand, sue for, collect and receive all debts and claims for damages due
13 him or her, or may, with the approval of the circuit court, compound and discharge
14 the same, and shall appear for and represent his or her the ward in all actions and
15 proceedings except where those for which another person is appointed for that
16 purpose.

17 **SECTION 421.** 880.24 (title) of the statutes is repealed.

18 **SECTION 422.** 880.24 (1) of the statutes is repealed.

19 **SECTION 423.** 880.24 (2) of the statutes is renumbered 54.42 (4) and amended
20 to read:

21 54.42 (4) WARD'S RIGHT TO PAYMENT OF EXPENSES IN CONTESTING PROCEEDINGS.
22 ~~When~~ If a guardian is appointed, the court may ~~may~~ shall, if the court determines it
23 reasonable, allow reasonable payment from the ward's income or assets of expenses
24 incurred by the ward in contesting the appointment. These expenses are payable
25 before other attorney or guardian ad litem fees.

SENATE BILL 391**SECTION 424**

1 **SECTION 424.** 880.24 (3) (title) of the statutes is renumbered 54.46 (3) (title) and
2 amended to read:

3 54.46 (3) (title) FEES AND COSTS OF PETITIONER.

4 **SECTION 425.** 880.24 (3) (a) (intro.) of the statutes is renumbered 54.46 (3) (a)
5 (intro.) and amended to read:

6 54.46 (3) (a) Petitioner's attorney fees and costs. (intro.) ~~Except as provided in~~
7 ~~par. (b), when~~ If a guardian is appointed, the court shall award from the ward's estate
8 income and assets payment of the petitioner's reasonable attorney fees and costs,
9 including those fees and costs, if any, related to protective placement of the ward,
10 unless the court finds, after considering all of the following, that it would be
11 inequitable to do so:

12 **SECTION 426.** 880.24 (3) (a) 1. to 3. of the statutes are renumbered 54.46 (3) (a)
13 1. to 3.

14 **SECTION 427.** 880.24 (3) (a) 4. of the statutes is renumbered 54.46 (3) (a) 5.

15 **SECTION 428.** 880.24 (3) (b) of the statutes is renumbered 54.46 (3) (a) 4. and
16 amended to read:

17 54.46 (3) (a) 4. ~~If the court finds that~~ Whether the ward had executed a durable
18 power of attorney under s. 243.07 or a power of attorney for health care under s.
19 155.05 or had engaged in other advance planning ~~to avoid guardianship, the court~~
20 ~~may not make the award specified in par. (a) for financial and health care decision~~
21 making.

22 **SECTION 429.** 880.245 of the statutes is renumbered 54.62 (6) and amended to
23 read:

24 54.62 (6) ACCOUNTING BY AGENT 3RD PARTIES TO GUARDIAN. ~~The circuit court, upon~~
25 ~~the application of any~~ If a guardian appointed by it a court so requests, the court may

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1 order any person ~~who has been~~ entrusted by the guardian with any part of the estate
2 of a decedent or ward to appear before the court, and may require the person to render
3 a full account, on oath, of any ~~property or papers belonging to the estate which have~~
4 ~~come to the person's possession~~ the income or assets and of his or her ~~proceedings~~
5 ~~thereon~~ action regarding the income or assets. If the person refuses to appear and
6 render an account, the court may proceed against him or her as for contempt.

7 **SECTION 430.** 880.25 (title) of the statutes is repealed.

8 **SECTION 431.** 880.25 (1) of the statutes is renumbered 54.62 (1) and amended
9 to read:

10 54.62 (1) ANNUAL REPORTS. ~~Every~~ Except as provided in sub. (3) or unless
11 waived by a court, every guardian, except including a corporate guardian, shall, prior
12 to April 15 of each year, file an account under oath specifying that specifies the
13 amount of ~~property~~ the ward's assets or income received and held or invested by the
14 guardian, the nature and manner of the investment, and the guardian's receipts and
15 expenditures during the preceding calendar year. ~~When ordered by the court, The~~
16 court may order the guardian ~~shall within 30 days to~~ render and file, within 30 days,
17 a like account for any ~~shorter term~~ less than a year. In lieu of the filing of these
18 accounts before April 15 of each year, the court may, by appropriate order upon
19 motion of the guardian, direct the guardian of an estate to ~~thereafter~~ render and file
20 the annual accountings within 60 days after the anniversary date of the guardian's
21 qualification as guardian, with the accounting period from the anniversary date of
22 qualification to the ensuing annual anniversary date. ~~When any guardian of a minor~~
23 ~~has custody of the ward and the care of the ward's education, the guardian's report~~
24 ~~shall state the time that the ward attended school during the time for which the~~
25 ~~account is rendered and the name of the school.~~ The guardian shall also report any

SENATE BILL 391**SECTION 431**

1 change in the status of the surety upon the guardian's bond. If the court determines
2 it to be in the ward's best interests, the court may specify the persons to whom the
3 guardian shall distribute copies of the account.

4 **SECTION 432.** 880.25 (2) of the statutes is renumbered 54.62 (2) and amended
5 to read:

6 54.62 (2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall
7 produce for examination by the court, or ~~some~~ by a person satisfactory to the court,
8 evidence of all of the ward's securities, evidences of deposit depository accounts, and
9 other investments reported, which shall be described in the account in sufficient
10 detail so that they may be readily identified. ~~It shall be ascertained~~ The court or
11 person satisfactory to the court shall ascertain whether the evidence of securities,
12 evidences of deposit depository accounts, and other investments correspond with the
13 account.

14 **SECTION 433.** 880.25 (3) of the statutes is renumbered 54.66 (2) and amended
15 to read:

16 54.66 (2) SMALL ESTATES. ~~When the whole estate of a ward or of several wards~~
17 ~~jointly, under the same guardianship, does not exceed \$1,000 in value, the~~ The
18 guardian shall be required to render of a ward with a small estate, as specified in s.
19 54.62 (3) (a), need not file a final account only upon the termination of the guardian's
20 guardianship, unless otherwise ordered by the court. The guardian shall instead
21 provide the court with a list of the ward's assets that remain at the time the
22 guardianship terminates, including at the death of the ward.

23 **SECTION 434.** 880.25 (4) of the statutes is renumbered 54.62 (5) and amended
24 to read:

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1 54.62 (5) EXAMINATION OF ACCOUNTS. The account shall be promptly examined
2 ~~under the court's direction and if it~~ as the court directs. If the account is not
3 satisfactory it shall be examined on 8 days' notice and, the court shall make such
4 ~~order thereon~~ order action as justice requires. ~~Notice~~ and shall direct that notice be
5 provided to the guardian ~~may be served~~ personally or by certified mail as the court
6 directs. ~~When the examination of a guardian's account is upon notice.~~ If notice is
7 provided to the guardian under this subsection, the court may appoint a guardian
8 ad litem of for the ward ~~may be appointed.~~

9 **SECTION 435.** 880.25 (5) of the statutes is renumbered 54.62 (7) (intro.) and
10 amended to read:

11 54.62 (7) NOTICE OF FINAL ACTION ON AN ACCOUNT. (intro.) No action by the court
12 ~~upon any on an~~ account shall be is final unless it is upon the guardian first provides
13 notice. to all of the following, as applicable:

14 **SECTION 436.** 880.251 of the statutes is repealed.

15 **SECTION 437.** 880.252 of the statutes is renumbered 54.62 (8) and amended to
16 read:

17 54.62 (8) ACCOUNTS; FAILURE OF A GUARDIAN TO FILE. If a guardian fails to file the
18 guardian's account as required by law or ordered by the court, the court may, upon
19 its own motion or upon the petition of any interested party ~~interested,~~ ~~issue an order~~
20 ~~to the sheriff ordering,~~ order the guardian to show cause before the court why the
21 guardian should not immediately make and file the guardian's reports or accounts.
22 The court shall direct that a copy of the order be served on the guardian at least 20
23 days before the date that the court has ordered the guardian to appear in court. If
24 a guardian fails, neglects or refuses to make and file any report or account after
25 having been cited by the court so to do so, or if the guardian fails to appear in court

SENATE BILL 391**SECTION 437**

1 as directed by a citation issued ~~under direction and by authority~~ of the court, the
2 court may, ~~upon~~ on its own motion or ~~upon~~ on the petition of any interested party,
3 issue a warrant directed to the sheriff ordering that the guardian be brought before
4 the court to show cause why the guardian should not be punished for contempt. If
5 the court finds that the failure, refusal, or neglect is willful or inexcusable, the
6 guardian may be fined not to exceed \$50 \$250 or imprisoned not to exceed 10 days
7 or both.

8 **SECTION 438.** 880.253 of the statutes is renumbered 54.62 (9) and amended to
9 read:

10 54.62 (9) ~~FORMAL ACCOUNTING~~ ACCOUNTING BY GUARDIANS AT ANY TIME. The judge
11 court may at any time require an accounting by any guardian at a hearing, after
12 providing notice to all interested persons, including sureties on the bond of a
13 guardian. ~~The sureties on a bond of a guardian may once in every 3-year period~~
14 ~~petition the court for such a hearing.~~

15 **SECTION 439.** 880.26 (title) of the statutes is repealed.

16 **SECTION 440.** 880.26 (1) (intro.) of the statutes is renumbered 54.64 (3) (intro.)
17 and amended to read:

18 54.64 (3) ~~GUARDIANSHIP~~ TERMINATION OF GUARDIANSHIP OF THE PERSON. (intro.)
19 A guardianship of the person shall terminate ~~when~~ if any of the following occurs:

20 **SECTION 441.** 880.26 (1) (a) of the statutes is renumbered 54.64 (3) (c) and
21 amended to read:

22 54.64 (3) (c) A formerly minor ward attains his or her majority, unless the minor
23 is incompetent age 18, unless the guardianship was ordered on the grounds of
24 incompetency.

SENATE BILL 391**SECTION 442**

1 **SECTION 442.** 880.26 (1) (b) of the statutes is renumbered 54.64 (3) (d) and
2 amended to read:

3 54.64 (3) (d) A minor ward ~~lawfully~~ whose guardianship was not ordered on the
4 grounds of incompetency marries.

5 **SECTION 443.** 880.26 (1) (c) of the statutes is renumbered 54.64 (3) (a) and
6 amended to read:

7 54.64 (3) (a) The court adjudicates a ~~former~~ ward who was formerly found to
8 be incompetent to be competent no longer incompetent or a ward who was formerly
9 found to be a spendthrift to be capable of handling his or her income and assets, or
10 terminates the guardianship under sub. (2) (d).

11 **SECTION 444.** 880.26 (2) (intro.) of the statutes is renumbered 54.64 (4) (intro.)
12 and amended to read:

13 54.64 (4) ~~GUARDIANSHIP~~ TERMINATION OF GUARDIANSHIP OF THE ESTATE. (intro.)
14 A guardianship of the estate shall terminate ~~when~~ if any of the following occurs:

15 **SECTION 445.** 880.26 (2) (a) of the statutes is renumbered 54.64 (4) (c) and
16 amended to read:

17 54.64 (4) (c) A ~~formerly~~ minor ward attains ~~his or her majority~~ age 18.

18 **SECTION 446.** 880.26 (2) (b) of the statutes is renumbered 54.64 (4) (d) and
19 amended to read:

20 54.64 (4) (d) A minor ward ~~lawfully~~ whose guardianship was not ordered on the
21 grounds of incompetency marries and the court approves the termination.

22 **SECTION 447.** 880.26 (2) (c) of the statutes is renumbered 54.64 (4) (a) and
23 amended to read:

24 54.64 (4) (a) The court adjudicates a ~~former~~ ward who was formerly found to
25 be incompetent or a spendthrift to be no longer incompetent or a ward who was

SENATE BILL 391**SECTION 447**

1 formerly found to be a spendthrift to be capable of handling his or her property
2 income and assets.

3 **SECTION 448.** 880.26 (2) (d) of the statutes is renumbered 54.64 (4) (e) and
4 amended to read:

5 54.64 (4) (e) A ward dies, except when the estate can be settled as provided by
6 s. ~~880.28~~ 54.66 (4).

7 **SECTION 449.** 880.26 (3) of the statutes is renumbered 54.64 (5) (intro.) and
8 amended to read:

9 54.64 (5) ~~DEPLETED GUARDIANSHIPS~~ GUARDIANSHIP (intro.) ~~When the~~ If a court
10 determines that the estate income and assets of the a ward is below \$5,000 do not
11 exceed the amount specified in s. 867.03 (1g) and are reduced to a point where it is
12 to the advantage of the ward to dispense with the guardianship, the court may
13 terminate do one of the following:

14 (a) Terminate the guardianship and ~~authorize~~ order disposition of the
15 remaining assets as provided by s. ~~880.04 (2)~~ 54.12 (1). The court, as a part of the
16 disposition, may order ~~a suitable amount paid to the county treasurer under order~~
17 ~~of the court or reserved in the guardianship to assure the ward a decent burial, a~~
18 ~~marker and care for the grave. In the case of an insolvent guardianship, the court~~
19 ~~may order an amount not exceeding \$400 reserved in the guardianship or paid to the~~
20 ~~county treasurer under order of the court to assure the ward a decent burial the~~
21 guardian to make appropriate financial arrangements for the burial or other
22 disposition of the remains of the ward.

23 **SECTION 450.** 880.27 of the statutes is renumbered 54.66 (1) and amended to
24 read:

SENATE BILL 391**SECTION 450**

1 54.66 (1) ~~SETTLEMENT OF ACCOUNTS~~ RENDER FINAL ACCOUNT. ~~Upon termination~~
2 of If a court terminates a guardianship, or ~~upon resignation, removal or death of a~~
3 guardian, ~~such resigns, is removed, or dies, the~~ guardian or the guardian's personal
4 representative or special administrator shall ~~forthwith~~ promptly render the
5 guardian's a final account to the court and to the ward or former ward, the successor
6 guardian, or the deceased ward's personal representative as ~~the case may be.~~ Upon
7 approval of the account and filing proper receipts ~~the guardian shall be discharged~~
8 and ~~the guardian's bond released~~ or special administrator, as appropriate. If the
9 ward dies and the guardian and the deceased ward's personal representative or
10 special administrator are the same person, the deceased ward's personal
11 representative or special administrator shall give notice of the termination and
12 rendering of the final account to all interested persons of the ward's estate.

13 **SECTION 451.** 880.28 of the statutes is renumbered 54.66 (4) and amended to
14 read:

15 54.66 (4) SUMMARY SETTLEMENT OF SMALL ESTATES. ~~When~~ If a ward dies leaving
16 an estate ~~which~~ that can be settled summarily under s. 867.01, the court may
17 approve ~~such~~ the settlement and distribution by the guardian, under the procedures
18 of s. 867.01 without the necessity of appointing a personal representative.

19 **SECTION 452.** 880.29 of the statutes is renumbered 54.64 (6) and amended to
20 read:

21 54.64 (6) DELIVERY OF PROPERTY TO FOREIGN GUARDIAN IN ANOTHER STATE. When
22 property of a nonresident ward is in the possession of or due from a guardian or
23 personal representative appointed in this state, the appointing court may order ~~such~~
24 the property delivered to the ~~foreign~~ guardian ~~upon filing~~ appointed in the state of
25 the nonresident ward after a verified petition, accompanied by a copy of ~~his or her~~

SENATE BILL 391**SECTION 452**

1 the nonresident guardian's appointment and bond, authenticated so as to be
2 admissible in evidence, is filed with the court and upon after 10 days' notice is
3 provided to the resident guardian or personal representative. ~~Such~~ The petition
4 shall be denied if granting it ~~shall appear~~ appears to be against the interests of the
5 ward. ~~The~~ Any receipt of obtained from the ~~foreign~~ nonresident guardian for the
6 property so delivered shall be taken and filed with the other papers in the proceeding,
7 and a certified copy ~~thereof~~ of the receipt shall be sent to the court ~~which~~ that
8 appointed ~~such~~ the nonresident guardian.

9 **SECTION 453.** 880.295 of the statutes is repealed.

10 **SECTION 454.** 880.31 (title) of the statutes is repealed.

11 **SECTION 455.** 880.31 (1) and (7) of the statutes are consolidated, renumbered
12 54.76 (1) and amended to read:

13 54.76 (1) Any adult resident who is unwilling or believes that he or she is
14 unable properly to manage his or her ~~property~~ assets or income may voluntarily
15 apply to the circuit court of the county of his or her residence for appointment of a
16 conservator of the estate. Upon receipt of the application, the court shall fix a time
17 and place for hearing the application and may direct to whom, including presumptive
18 heirs, and in what manner notice of the hearing shall be given. ~~(7) If an application~~
19 ~~for conservatorship is filed, the~~ to a potential recipient of the notice, unless the
20 potential recipient has waived receipt. The fee prescribed in s. 814.66 (1) (b) shall
21 be paid at the time of the filing of the inventory or other documents setting forth the
22 value of the estate assets and income.

23 **SECTION 456.** 880.31 (2) of the statutes is renumbered 54.76 (2) and amended
24 to read:

SENATE BILL 391**SECTION 456**

1 54.76 (2) ~~At the time of such hearing for appointment of a conservator, the~~
2 applicant shall be personally examined by the court and if the court is satisfied that
3 the applicant desires a conservator and that the fiduciary nominated is and any
4 proposed standby conservator are suitable, the court may appoint the nominee as
5 conservator and, if applicable, designate the proposed standby conservator as
6 standby conservator and issue letters of conservatorship to the nominee ~~upon the~~
7 ~~filing of~~ after he or she files a bond in the amount fixed by the court.

8 **SECTION 457.** 880.31 (3) of the statutes is renumbered 54.76 (3) and amended
9 to read:

10 54.76 (3) ~~A~~ Except as provided in sub. (3g), a conservator shall have has all
11 the powers and duties of a guardian of the ~~property of an incompetent person.~~ The
12 conservator's powers ~~shall cease upon being removed by the court or upon death of~~
13 ~~the person whose estate is being conserved~~ estate. An individual whose income and
14 assets are under conservatorship may make gifts of his or her income and assets,
15 subject to approval of the conservator.

16 **SECTION 458.** 880.31 (4) and (5) of the statutes are consolidated, renumbered
17 54.76 (4) and amended to read:

18 54.76 (4) Any person, including an individual whose estate is income and assets
19 are under conservatorship, may apply to the court at any time for termination
20 thereof of the conservatorship. Upon such receipt of the application, the court shall
21 fix a time and place for hearing and may direct that 10 days' notice by mail be given
22 to the person's individual's guardian, if any, of the person or agent under a power of
23 attorney for health care, the conservator, any standby conservator, and the
24 presumptive adult heirs of the applicant. Upon such individual whose income and
25 assets are under conservatorship. A potential recipient of the notice may waive its

SENATE BILL 391**SECTION 458**

1 receipt. At the hearing, the court shall, unless it is clearly shown that the applicant
2 individual whose income and assets are under conservatorship is incompetent,
3 remove the conservator and order the property income and assets restored to the
4 applicant, ~~or if the applicant so desires and the nominee is suitable, the court may~~
5 ~~appoint a successor conservator.~~ ~~(5) individual.~~ If, ~~however,~~ the court shall upon
6 such hearing determine determines at the hearing that the person individual whose
7 estate is income and assets are administered by a conservator ~~may be~~ is incapable
8 of handling his or her estate income and assets, the court shall order the
9 conservatorship continued, or, if the applicant so desires and ~~the~~ a nominee is
10 suitable, ~~the court may~~ appoint a successor conservator. A conservatorship may only
11 be terminated under a hearing under this subsection.

12 **SECTION 459.** 880.31 (6) of the statutes is renumbered 54.76 (5) and amended
13 to read:

14 54.76 (5) Appointment of a conservator ~~shall not be~~ does not constitute
15 evidence of the competency or incompetency of the person individual whose estate
16 is income and assets are being administered.

17 **SECTION 460.** 880.32 of the statutes is renumbered 45.55 and amended to read:

18 **45.55 Notes and mortgages of minor veterans.** Notwithstanding any
19 provision of this chapter or any other law to the contrary, any minor who served in
20 the active armed forces of the United States at any time after August 27, 1940, and
21 the husband or wife of such a minor may execute, in his or her own right, notes or
22 mortgages, as defined in s. 851.15, the payment of which is guaranteed or insured
23 by the U.S. department of veterans affairs or the federal housing administrator
24 under the servicemen's readjustment act of 1944 ~~or~~, the national housing act, or any
25 acts ~~supplementary thereto or amendatory thereof~~ supplementing or amending

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1 these acts. In connection with ~~such~~ these transactions, ~~such~~ the minors may sell,
2 release or convey ~~such~~ the mortgaged property and litigate or settle controversies
3 arising therefrom, including the execution of releases, deeds, and other necessary
4 papers or instruments. ~~Such~~ The notes, mortgages, releases, deeds and other
5 necessary papers or instruments when so executed shall are not be subject to
6 avoidance by ~~such~~ the minor or the husband or wife of ~~such~~ the minor upon either
7 or both of them attaining the age of 18 because of the minority of either or both of
8 them at the time of the execution thereof.

9 **SECTION 461.** 880.33 (title) of the statutes is repealed.

10 **SECTION 462.** 880.33 (1) of the statutes is renumbered 54.36 (1) and amended
11 to read:

12 **54.36 Examination of proposed ward.** (1) Whenever it is proposed to
13 appoint a guardian on the ground of a proposed ward's alleged incompetency, a
14 licensed physician or licensed psychologist, or both, shall examine the proposed ward
15 and furnish a written statement concerning the mental condition report stating the
16 physician's or psychologist's professional opinion regarding the presence and likely
17 duration of any medical or other condition causing incapacity of the proposed ward,
18 based upon examination. The privilege under s. 905.04 shall does not apply to this
19 the statement. ~~A~~ The petitioner shall provide a copy of the statement shall be
20 provided report to the proposed ward, or his or her counsel, the guardian ad litem,
21 and the petitioner's attorney, if any. Prior to the examination, ~~under this subsection,~~
22 ~~of a person alleged to be not competent to refuse psychotropic medication under s.~~
23 ~~880.07 (1m), the person shall be informed that his or her~~ on which the report is based,
24 the guardian ad litem, physician, or psychologist shall inform the proposed ward that
25 statements made by the proposed ward may be used as a basis for a finding of

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1 ~~incompetency and an order for protective services, including psychotropic~~
2 ~~medication. The person shall also be informed, that he or she has a right to remain~~
3 ~~silent refuse to participate in the examination, absent a court order, or speak to the~~
4 ~~physician or psychologist and that the examiner physician or psychologist is~~
5 ~~required to report to the court even if the person remains silent proposed ward does~~
6 ~~not speak to the physician or psychologist. The issuance of such a warning to the~~
7 ~~person proposed ward prior to each examination establishes a presumption that the~~
8 ~~person proposed ward understands that he or she need not speak to the examiner.~~
9 ~~physician or psychologist. Nothing in this section prohibits the use of a report by a~~
10 ~~physician or psychologist that is based on an examination of the proposed ward by~~
11 ~~the physician or psychologist before filing the petition for appointment of a guardian,~~
12 ~~but the court will consider the recency of the report in determining whether the~~
13 ~~report sufficiently describes the proposed ward's current state and in determining~~
14 ~~the weight to be given to the report.~~

15 **SECTION 463.** 880.33 (2) (a) 1. of the statutes is renumbered 54.42 (1) (a) (intro.)
16 and amended to read:

17 54.42 (1) (a) (intro.) The proposed ward or ward has the right to counsel
18 ~~whether or not present at the hearing on determination of competency. The court~~
19 ~~shall in all cases require the appointment of an attorney as guardian ad litem in~~
20 ~~accordance with s. 757.48 (1) and shall in addition require representation by full~~
21 ~~legal counsel whenever the petition contains the allegations under s. 880.07 (1m) or~~
22 ~~if, at least 72 hours before the hearing, the alleged incompetent requests; the~~
23 ~~guardian ad litem or any other person states that the alleged incompetent is opposed~~
24 ~~to the guardianship petition; or the court determines that the interests of justice~~
25 ~~require it. The proposed ward has the right to a trial by a jury if demanded by the~~

SENATE BILL 391**SECTION 463**

1 ~~proposed ward, attorney or guardian ad litem, except that if the petition contains the~~
2 ~~allegations under s. 880.07 (1m) and if notice of the time set for the hearing has~~
3 ~~previously been provided to the proposed ward and his or her counsel, a jury trial is~~
4 ~~deemed waived unless demanded at least 48 hours prior to the time set for the~~
5 ~~hearing. The number of jurors shall be determined under s. 756.06 (2) (b). The~~
6 ~~proposed ward, attorney or guardian ad litem shall have the right to present and~~
7 ~~cross-examine witnesses, including the physician or psychologist reporting to the~~
8 ~~court under sub. (1). The attorney or guardian ad litem for the proposed ward shall~~
9 ~~be provided with a copy of the report of the physician or psychologist at least 96 hours~~
10 ~~in advance of the hearing. Any final decision of the court is subject to the right of~~
11 ~~appeal. if any of the following occurs:~~

12 **SECTION 464.** 880.33 (2) (a) 2. of the statutes is renumbered 54.42 (1) (c) and
13 amended to read:

14 54.42 (1) (c) ~~If the person requests but is par. (a) 1., 2., or 3. applies but the~~
15 ~~proposed ward or ward is unable to obtain legal counsel, the court shall appoint legal~~
16 ~~counsel. If the person is represented by counsel appointed under s. 977.08 in a~~
17 ~~proceeding for a protective placement under s. 55.06 or for the appointment of a~~
18 ~~guardian under s. 880.07 (1m), the court shall order the counsel appointed under s.~~
19 ~~977.08 to represent the person.~~

20 **SECTION 465.** 880.33 (2) (a) 3. of the statutes is renumbered 54.46 (3) (b) and
21 amended to read:

22 54.46 (3) (b) *Guardian ad litem and defense fees for indigents; liability.* If the
23 ~~person proposed ward is an adult who is indigent, the county of legal settlement shall~~
24 ~~be in which venue lies for the guardianship proceeding is the county liable for any~~
25 ~~fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for~~

SENATE BILL 391**SECTION 465**

1 any legal fees due the person's proposed ward's legal counsel. ~~If the person is a minor,~~
2 ~~the person's parents or the county of legal settlement shall be liable for any fees due~~
3 ~~the guardian ad litem as provided in s. 48.235 (8).~~

4 **SECTION 466.** 880.33 (2) (b) of the statutes is renumbered 54.42 (3) and
5 amended to read:

6 54.42 (3) RIGHT TO INDEPENDENT EXAMINATION. If requested by the proposed
7 ward, ward, or anyone on the proposed ward's or ward's behalf, the proposed ward
8 or ward has the right at his or her own expense, or if indigent at the expense of the
9 county where the petition is filed heard on the merits, to secure an independent
10 medical or psychological examination relevant to the issue involved in any hearing
11 under this chapter, and to present a report of this independent evaluation or the
12 evaluator's personal testimony as evidence at the hearing.

13 **SECTION 467.** 880.33 (2) (d) of the statutes is repealed.

14 **SECTION 468.** 880.33 (2) (e) of the statutes is renumbered 54.44 (5) and
15 amended to read:

16 54.44 (5) PRIVACY OF HEARING. Every hearing ~~on a petition under s. 880.07 (1m)~~
17 under this chapter shall be ~~open~~ closed, unless the proposed ward or his or her
18 attorney acting with the proposed ward's consent moves that it be ~~closed~~ open. If the
19 hearing is closed, only ~~persons in interest, including representatives of providers of~~
20 ~~service and~~ interested persons, their attorneys, and witnesses, may be present.

21 **SECTION 469.** 880.33 (3) of the statutes is repealed.

22 **SECTION 470.** 880.33 (4) of the statutes is repealed.

23 **SECTION 471.** 880.33 (4m) and (4r) of the statutes are repealed.

24 **SECTION 472.** 880.33 (5) of the statutes is renumbered 54.15 (1) and amended
25 to read:

SENATE BILL 391**SECTION 472**

1 54.15 (1) OPINIONS OF PROPOSED WARD AND FAMILY. ~~In appointing a guardian, the~~
2 The court shall take into consideration the opinions of the alleged incompetent
3 proposed ward and of the members of the his or her family as to what is in the best
4 interests of the proposed incompetent ward. However, the best interests of the
5 proposed incompetent ward shall control in making the determination when the
6 opinions of the family are in conflict with ~~the clearly appropriate decision~~ those best
7 interests. The court shall also consider potential conflicts of interest resulting from
8 the prospective guardian's employment or other potential conflicts of interest. ~~If the~~
9 ~~proposed incompetent has executed a power of attorney for health care under ch. 155,~~
10 ~~the court shall give consideration to the appointment of the health care agent for the~~
11 ~~individual as the individual's guardian.~~

12 **SECTION 473.** 880.33 (5m) of the statutes is renumbered 54.15 (9) and amended
13 to read:

14 54.15 (9) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. ~~No person, except a~~
15 ~~nonprofit corporation approved by the department of health and family services~~
16 ~~under s. 880.35, who has~~ individual may have guardianship of the person of more
17 than 5 or more adult wards who are unrelated to the person ~~may accept appointment~~
18 individual, except that a court may, under circumstances that the court determines
19 are appropriate, waive this limitation to authorize appointment of the individual as
20 guardian of the person of another adult ward unrelated to the person, unless
21 approved by the department. ~~No such person may accept appointment as guardian~~
22 ~~of more than 10 such~~ additional adult wards who are unrelated to the person
23 individual. A corporation or association that is approved by the department under
24 sub. (7) is not limited in the number of adult wards for which the corporation or
25 association may accept appointment by a court as guardian.

SENATE BILL 391**SECTION 474**

1 **SECTION 474.** 880.33 (6) of the statutes is renumbered 54.75 and amended to
2 read:

3 **54.75 Access to court records.** All court records pertinent to the finding of
4 incompetency are closed but subject to access as provided in s. ~~55.06 (17)~~ 51.30 (5).
5 The fact that a person has been found incompetent is accessible to any person who
6 demonstrates to the custodian of the records a need for that information.

7 **SECTION 475.** 880.33 (7) of the statutes is renumbered 54.48 and amended to
8 read:

9 **54.48 Protective placement and protective services.** A finding of
10 incompetency and appointment of a guardian under this ~~subchapter~~ chapter is not
11 grounds for involuntary protective placement. ~~Such~~ or the provision of protective
12 services. Protective placement and the provision of protective services may be made
13 only in accordance with s. ~~55.06~~ ch. 55.

14 **SECTION 476.** 880.33 (8) (intro.) of the statutes is repealed.

15 **SECTION 477.** 880.33 (8) (a) of the statutes is repealed.

16 **SECTION 478.** 880.33 (8) (b) of the statutes is renumbered 54.46 (2) (b) and
17 amended to read:

18 **54.46 (2) (b) Power of attorney for health care.** If the proposed incompetent has
19 ward executed a power of attorney for health care under ch. 155, ~~find that~~ before a
20 finding of incompetency and appointment of a guardian is made for the ward under
21 this chapter, the power of attorney for health care instrument should remain remains
22 in effect. If the court so finds, the court shall so order and shall, except that the court
23 may, only for good cause shown, revoke the power of attorney for health care or limit
24 the power of the guardian to make those health care decisions for the ward that are
25 not to be made by the health care authority of the agent under the terms of the power

SENATE BILL 391**SECTION 478**

1 of attorney for health care instrument. Unless the court makes this revocation or
2 limitation, the ward's guardian may not make health care decisions for the ward that
3 may be made by the health care agent, unless the guardian is the health care agent
4 under those terms.

5 **SECTION 479.** 880.33 (9) of the statutes is renumbered 54.25 (2) (c) 1. g. and
6 amended to read:

7 54.25 (2) (c) 1. g. ~~All the rights and privileges afforded a proposed incompetent~~
8 ~~under this section shall be given to any person who is alleged to be ineligible to~~
9 ~~register to vote or to vote in an election by reason that such person is incapable of~~
10 ~~understanding the objective of the elective process. The determination of the court~~
11 ~~shall be limited to a finding that the elector is either eligible or ineligible~~ The right
12 to register to vote or to vote in an election by reason that the person is or is not
13 capable, if the court finds that the individual is incapable of understanding the
14 objective of the elective process. Also, in accordance with s. 6.03 (3), any elector of
15 a municipality may petition the circuit court for a determination that an individual
16 residing in the municipality is incapable of understanding the objective of the
17 elective process and thereby ineligible to register to vote or to vote in an election. This
18 determination shall be made by the court in accordance with the procedures specified
19 in this paragraph. If a petition is filed under this subd. 1. g., the finding of the court
20 shall be limited to a determination as to voting eligibility. The appointment of a
21 guardian is not required for an individual whose sole limitation is ineligibility to
22 vote. The determination of the court shall be communicated in writing by the clerk
23 of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93
24 with the responsibility for determining challenges to registration and voting which
25 that may be directed against that elector. The determination may be reviewed as

SENATE BILL 391**SECTION 479**

1 provided in s. 880.34 (4) and (5) 54.64 (2) and any subsequent determination of the
2 court shall be likewise communicated by the clerk of court.

3 **SECTION 480.** 880.331 (title) of the statutes is renumbered 54.40 (title) and
4 amended to read:

5 **54.40 (title) Guardian ad litem in incompetency cases; appointment;**
6 **duties; termination.**

7 **SECTION 481.** 880.331 (1) of the statutes is renumbered 54.40 (1) and amended
8 to read:

9 54.40 (1) APPOINTMENT. The court shall appoint a guardian ad litem whenever
10 it is proposed that the court appoint a guardian on the ground of incompetency under
11 s. 880.33, when a petition for appointment of a guardian is brought under s. 54.34,
12 to review the scope of a guardianship, to protectively place a person or order
13 protective services under s. 55.06, to review any protective placement or protective
14 service order under s. 55.06 or, to terminate a protective placement under s. 55.06,
15 to expand an order of guardianship under s. 54.63, to review incompetency and
16 terminate a guardianship under s. 54.64, to review the conduct of a guardian under
17 s. 54.68, to expand an order of guardianship under s. 54.3, to review incompetency
18 and terminate a guardianship under s. 54.64, to review the conduct of a guardian
19 under s. 54.68, or at any other time that the court determines it is necessary.

20 **SECTION 482.** 880.331 (2) of the statutes is renumbered 54.40 (2) and amended
21 to read:

22 54.40 (2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted
23 to practice in this state and in compliance with SCR chapter 36. No ~~person~~ one who
24 is an interested ~~party~~ person in a proceeding, appears as counsel in a proceeding on
25 behalf of any party, or is a relative or representative of an interested ~~party~~ person

SENATE BILL 391**SECTION 482**

1 may be appointed guardian ad litem in that proceeding or in any other proceeding
2 that involves the same proposed ward or ward.

3 **SECTION 483.** 880.331 (3) of the statutes is renumbered 54.40 (3) and amended
4 to read:

5 54.40 (3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the
6 best interests of the proposed ward or ~~alleged incompetent~~ ward as to guardianship,
7 protective placement, and protective services. The guardian ad litem shall function
8 independently, in the same manner as an attorney for a party to the action, and shall
9 consider, but ~~shall not be~~ is not bound by, the wishes of the proposed ward or ~~alleged~~
10 ~~incompetent~~ ward or the positions of others as to the best interests of the proposed
11 ward or ~~alleged incompetent~~ ward. The guardian ad litem has none of the rights or
12 duties of a general guardian.

13 **SECTION 484.** 880.331 (4) (intro.) of the statutes is renumbered 54.40 (4)
14 (intro.).

15 **SECTION 485.** 880.331 (4) (a) of the statutes is renumbered 54.40 (4) (a) and
16 amended to read:

17 54.40 (4) (a) Interview the proposed ward or ~~alleged incompetent~~ ward and
18 explain the contents of the petition, the applicable hearing procedure, the right to
19 counsel, and the right to request or continue a limited guardianship.

20 **SECTION 486.** 880.331 (4) (b) of the statutes is renumbered 54.40 (4) (b) and
21 amended to read:

22 54.40 (4) (b) Advise the proposed ward or ~~alleged incompetent~~ ward, both orally
23 and in writing, of that person's rights to be present at the hearing, to a jury trial, to
24 an appeal, to counsel, and to an independent medical or psychological examination
25 on the issue of competency, at county expense if the person is indigent.

SENATE BILL 391**SECTION 487**

1 **SECTION 487.** 880.331 (4) (c) of the statutes is renumbered 54.40 (4) (e) and
2 amended to read:

3 54.40 (4) (e) Request that the court order additional medical, psychological, or
4 other evaluation, if necessary.

5 **SECTION 488.** 880.331 (4) (d) of the statutes is renumbered 54.40 (4) (f) and
6 amended to read:

7 54.40 (4) (f) If applicable, inform the court and petitioner's attorney or, if none,
8 the petitioner that the proposed ward or ~~alleged incompetent~~ ward objects to a
9 finding of incompetency, the present or proposed placement, or the recommendation
10 of the guardian ad litem as to the proposed ward's or ~~alleged incompetent's~~ ward's
11 best interests or that the proposed ward's or ~~alleged incompetent's~~ ward's position
12 on these matters is ambiguous. If the guardian ad litem recommends that the
13 hearing be held in a place other than a courtroom, the guardian ad litem shall provide
14 the information under this paragraph as soon as possible.

15 **SECTION 489.** 880.331 (4) (e) of the statutes is renumbered 54.40 (4) (i) and
16 amended to read:

17 54.40 (4) (i) Present evidence concerning the best interests of the proposed
18 ward or ~~alleged incompetent~~ ward, if necessary.

19 **SECTION 490.** 880.331 (4) (f) of the statutes is renumbered 54.40 (4) (j) and
20 amended to read:

21 54.40 (4) (j) Report to the court on any ~~other relevant~~ matter that the court
22 requests.

23 **SECTION 491.** 880.331 (5) (intro.) of the statutes is renumbered 55.195 (intro.)
24 and amended to read:

SENATE BILL 391**SECTION 491**

1 **55.195 Duties in of guardian ad litem for reviews.** (intro.) In any review
2 of a protective placement under s. 55.06 or of a protective ~~service~~ services order under
3 s. 55.05, except as provided in s. 55.19 (2), the guardian ad litem shall do all of the
4 following:

5 **SECTION 492.** 880.331 (5) (a) of the statutes is renumbered 55.195 (1) and
6 amended to read:

7 55.195 (1) Interview the ward to explain the review procedure, the right to an
8 independent evaluation, the right to counsel, and the right to a hearing.

9 **SECTION 493.** 880.331 (5) (b) of the statutes is renumbered 55.195 (2) and
10 amended to read:

11 55.195 (2) Provide the information under ~~par. (a)~~ sub. (1) to the ward in writing.

12 **SECTION 494.** 880.331 (5) (c) of the statutes is renumbered 55.195 (3) and
13 amended to read:

14 55.195 (3) ~~Secure~~ Request that the court order an additional medical,
15 psychological, or other evaluation of the ward, if necessary.

16 **SECTION 495.** 880.331 (5) (d) of the statutes is renumbered 55.195 (4).

17 **SECTION 496.** 880.331 (5) (e) of the statutes is renumbered 55.195 (5) and
18 amended to read:

19 55.195 (5) Review the ward's condition, placement, and rights with the
20 guardian.

21 **SECTION 497.** 880.331 (5) (f) of the statutes is renumbered 55.195 (6) and
22 amended to read:

23 55.195 (6) If relevant, report to the court that the ward objects to the finding
24 of continuing incompetency, the present or proposed placement, the position of the

SENATE BILL 391**SECTION 497**

1 guardian, or the recommendation of the guardian ad litem as to the best interests of
2 the ward or if there is ambiguity about the ward's position on these matters.

3 **SECTION 498.** 880.331 (5) (g) of the statutes is renumbered 55.195 (8).

4 **SECTION 499.** 880.331 (6) of the statutes is renumbered 54.40 (5) and amended
5 to read:

6 54.40 (5) COMMUNICATION TO A JURY. In jury trials under this chapter or ch. 55
7 ~~or 880~~, the court or guardian ad litem may tell the jury that the guardian ad litem
8 represents the best interests of the proposed ward or ~~alleged incompetent~~ ward.

9 **SECTION 500.** 880.331 (7) of the statutes is renumbered 54.40 (6) and amended
10 to read:

11 54.40 (6) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a
12 guardian ad litem under sub. (1) terminates upon the entry of the court's final order
13 or upon the termination of any appeal in which the guardian ad litem participates,
14 even if counsel has been appointed for the proposed ward or ~~alleged incompetent~~
15 ward. The court may extend that appointment, or reappoint a guardian ad litem
16 whose appointment under this section has terminated, by an order specifying the
17 scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem,
18 any party, or the ~~person~~ individual for whom the appointment is made may request
19 that the court terminate any extension or reappointment. The guardian ad litem
20 may appeal, or may participate in an appeal ~~or may do neither~~. If an appeal is taken
21 by any party and the guardian ad litem chooses not to participate in that appeal, he
22 or she shall file with the appellate court a statement of reasons for not participating.
23 Irrespective of the guardian ad litem's decision not to participate in an appeal, the
24 appellate court may order the guardian ad litem to participate in the appeal.

SENATE BILL 391**SECTION 501**

1 **SECTION 501.** 880.331 (8) of the statutes is renumbered 54.74 and amended to
2 read:

3 **54.74 Compensation of guardian ad litem.** ~~On order of the court, the~~
4 ~~guardian ad litem appointed under this chapter shall be allowed reasonable~~
5 ~~compensation to be paid by the county of venue, unless~~ Unless the court otherwise
6 ~~directs or unless the guardian ad litem is appointed for a minor, in which case the~~
7 ~~compensation of the guardian ad litem shall be paid by the minor's parents or the~~
8 ~~county of venue as provided in s. 48.235 (8), the court shall order reasonable~~
9 compensation to be paid to a guardian ad litem appointed under s. 54.40 (1) from the
10 ward's income or assets, if sufficient, or, if insufficient, by the county of venue. If the
11 court orders a county to pay the compensation of the guardian ad litem, the amount
12 ordered may not exceed the compensation paid to a private attorneys attorney under
13 s. 977.08 (4m) (b). The guardian ad litem shall receive compensation for performing
14 all duties required under s. 54.40 (4) and for any other acts that are approved by the
15 court and are reasonably necessary to promote the ward's best interests.

16 **SECTION 502.** 880.34 (title) of the statutes is renumbered 54.64 (title) and
17 amended to read:

18 **54.64 (title) Duration Review of incompetency and termination of**
19 **guardianship; review.**

20 **SECTION 503.** 880.34 (1) of the statutes is renumbered 54.64 (1) and amended
21 to read:

22 **54.64 (1) DURATION.** Any guardianship of an individual found to be incompetent
23 under this chapter shall continue during the life of the ~~incompetent, or ward,~~ until
24 terminated by the court, or as provided under sub. (3) or (4). ~~Upon reaching the age~~
25 ~~of majority, an incompetent subject to guardianship under this chapter shall be~~

SENATE BILL 391**SECTION 503**

1 reviewed by the court for the purpose of determining whether the guardianship
2 should be continued or modified. The court shall make a specific finding of any rights
3 under s. 880.33 (3) which the individual is competent to exercise at the time.

4 **SECTION 504.** 880.34 (2) of the statutes is renumbered 54.64 (2) (d) and
5 amended to read:

6 54.64 (2) (d) The court shall review and may terminate the guardianship of the
7 person of an individual found incompetent upon marriage to any person who is not
8 subject to a guardianship.

9 **SECTION 505.** 880.34 (3) of the statutes is repealed.

10 **SECTION 506.** 880.34 (4) of the statutes is renumbered 54.64 (2) (a) (intro.) and
11 amended to read:

12 54.64 (2) (a) (intro.) A ward who is 18 years of age or older, any interested
13 person acting on the ward's behalf, or the ward's guardian may petition for a review
14 of incompetency. Upon such, to have the guardian discharged and a new guardian
15 appointed, or to have the guardianship limited and specific rights restored. The
16 petition may be filed at any time after 180 days after any previous hearing under s.
17 54.44, or at any time if the court determines that exigent circumstances, including
18 presentation of new evidence, require a review. If a petition for review is filed, the
19 court shall conduct do all of the following:

20 4. Conduct a hearing at which the ward shall be is present and shall have has
21 the right to a jury trial, if demanded. The ward shall also have the right to counsel
22 and the court shall appoint counsel if the ward is unable to obtain counsel. If the
23 ward is indigent, counsel shall be provided at the expense of the ward's county of legal
24 settlement.

SENATE BILL 391**SECTION 507**

1 **SECTION 507.** 880.34 (5) of the statutes is renumbered 54.64 (2) (c) and
2 amended to read:

3 54.64 (2) (c) After a hearing under ~~sub. (4) par. (a)~~ or on its own motion, a court
4 may terminate or modify ~~a the guardianship of an incompetent, including restoring~~
5 certain of the ward's rights.

6 **SECTION 508.** 880.34 (6) of the statutes is repealed.

7 **SECTION 509.** 880.35 of the statutes is renumbered 54.15 (7) and amended to
8 read:

9 54.15 (7) ~~NONPROFIT CORPORATION AS GUARDIAN~~ PRIVATE NONPROFIT CORPORATION
10 OR OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188
11 is ~~qualified to act~~ or an unincorporated association that is approved by the court may
12 be appointed as guardian of the person or of the property estate or both, of an
13 ~~individual found to be in need of guardianship under s. 880.33, if a proposed ward,~~
14 if no suitable individual is available as guardian and the department of health and
15 family services, under rules established promulgated under ch. 55 this chapter, finds
16 the corporation or association to be a suitable agency to perform such duties.

17 **SECTION 510.** 880.36 (title) of the statutes is renumbered 54.52 (title).

18 **SECTION 511.** 880.36 (1) of the statutes is renumbered 54.52 (1) and amended
19 to read:

20 54.52 (1) A person may at any time bring a petition for the appointment of a
21 standby guardian of the person or property or both estate of a minor or person found
22 incompetent under s. 880.08 to assume the duty and authority of guardianship on
23 the death, incapacity or resignation of the initially appointed guardian may be
24 brought under this chapter at any time. A an individual who is determined under
25 s. 54.10 to be incompetent, a minor, or a spendthrift, except that, as specified in s.

SENATE BILL 391**SECTION 511**

1 48.97 a petition for the appointment of a standby guardian of the person or property
2 or both of a minor to assume the duty and authority of guardianship on the
3 incapacity, death, or debilitation and consent, of the minor's parent shall may be
4 brought under s. 48.978.

5 **SECTION 512.** 880.36 (2) of the statutes is renumbered 54.52 (2) and amended
6 to read:

7 54.52 (2) At any hearing conducted under this section the court may designate
8 one or more standby guardians of the person or ~~property~~ estate whose appointment
9 shall become effective immediately upon the death, ~~incapacity~~ unwillingness, or
10 inability to act, or resignation or court's removal of the initially appointed guardian
11 or during a period, as determined by the initially appointed guardian, when the
12 initially appointed guardian or the court is temporarily unable to fulfill his or her
13 duties, including during an extended vacation or illness. The powers and duties of
14 the standby guardian shall be the same as those of the initially appointed guardian.
15 The standby guardian shall receive a copy of the court order establishing or
16 modifying the initial guardianship, and the order designating the standby guardian.
17 Upon assuming office, the standby guardian shall so notify the court. Upon
18 notification, the court shall issue new letters of guardianship that specify that the
19 standby guardianship is permanent or that specify the time period for a limited
20 standby guardianship.

21 **SECTION 513.** 880.37 of the statutes is repealed.

22 **SECTION 514.** 880.38 (title) of the statutes is renumbered 54.25 (title) and
23 amended to read:

24 **54.25 (title) Guardian Duties and powers of guardian of the person of**
25 **incompetent.**

SENATE BILL 391**SECTION 515**

1 **SECTION 515.** 880.38 (1) of the statutes is repealed.

2 **SECTION 516.** 880.38 (2) of the statutes is renumbered 54.25 (1) (b) (intro.) and
3 amended to read:

4 54.25 (1) (b) (intro.) ~~A guardian of the person shall endeavor~~ Endeavor to
5 secure any necessary care, or services ~~or appropriate protective placement on behalf~~
6 ~~of for the ward. that are in the ward's best interests, based on all of the following:~~

7 **SECTION 517.** 880.38 (3) of the statutes is renumbered 54.25 (1) (a) and
8 amended to read:

9 54.25 (1) (a) ~~A guardian of the person of an incompetent appointed under s.~~
10 ~~880.33 shall make~~ Make an annual report on the condition of the ward to the court
11 that ordered the guardianship and to the county department designated under s.
12 55.02. That county department shall develop reporting requirements for the
13 guardian of the person. The report shall include, ~~but not be limited to,~~ the location
14 of the ward, the health condition of the ward, any recommendations regarding the
15 ward, and a statement of as to whether or not the ward is living in the least restrictive
16 environment consistent with the needs of the ward. ~~The guardian may fulfill the~~
17 ~~requirement under this subsection by submitting the report required under s. 55.06~~
18 ~~(10).~~

19 **SECTION 518.** 880.39 (title) of the statutes is repealed.

20 **SECTION 519.** 880.39 of the statutes is renumbered 54.18 (4) and amended to
21 read:

22 54.18 (4) ~~Any~~ A guardian of the person or of the estate is immune from civil
23 liability for his or her acts or omissions in performing the duties of the guardianship
24 if he or she performs the duties in good faith, in the best interests of the ward, and

SENATE BILL 391**SECTION 519**

1 with the degree of diligence and prudence that an ordinarily prudent person
2 exercises in his or her own affairs.

3 **SECTION 520.** Subchapter II (title) of chapter 880 [precedes 880.60] of the
4 statutes is repealed.

5 **SECTION 521.** 880.60 of the statutes is renumbered 54.852, and 54.852 (1) (d)
6 and (g), (10) (a) and (12), as renumbered, are amended to read:

7 54.852 (1) (d) “Guardian” Notwithstanding s. 54.01 (10), “guardian” means any
8 fiduciary for the person or estate of a ward.

9 (g) “Ward” Notwithstanding s. 54.01 (37), “ward” means –a beneficiary of an
10 individual who receives benefits from the U.S. department of veterans affairs.

11 (10) (a) Every guardian shall file his or her accounts as required by this chapter
12 and shall be excused from filing accounts in the case as provided by s. ~~880.25 (3)~~ 54.66
13 (2).

14 (12) COMPENSATION OF GUARDIANS. Guardians shall be compensated as provided
15 in s. ~~880.24 (1)~~ 54.72.

16 **SECTION 522.** Subchapter III (title) of chapter 880 [precedes 880.61] of the
17 statutes is repealed.

18 **SECTION 523.** 880.61 of the statutes is renumbered 54.854, and 54.854 (intro.),
19 (3) to (6), (10), (11), (13) and (14), as renumbered, are amended to read:

20 **54.854** (title) **Definitions Uniform transfers to minors act; definitions.**
21 (intro.) In ss. ~~880.61 to 880.72~~ 54.854 to 54.898:

22 (3) “Conservator” Notwithstanding s. 54.01 (3), “conservator” means a person
23 appointed or qualified by a court to act as general, limited or temporary guardian of
24 a minor’s property or a person legally authorized to perform substantially the same
25 functions.

SENATE BILL 391

1 (4) “Court” Notwithstanding s. 54.01 (4), “court” means the circuit court.

2 (5) “Custodial property” means any interest in property transferred to a
3 custodian under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 and the income from and
4 proceeds of that interest in property.

5 (6) “Custodian” means a person so designated under s. ~~880.65~~ 54.870 or a
6 successor or substitute custodian designated under s. ~~880.695~~ 54.888.

7 (10) “Minor” Notwithstanding s. 54.01 (20), “minor” means an individual who
8 has not attained the age of 21 years.

9 (11) “Personal representative” Notwithstanding s. 54.01 (23), “personal
10 representative” means an executor, administrator, successor personal
11 representative or special administrator of a decedent’s estate or a person legally
12 authorized to perform substantially the same functions.

13 (13) “Transfer” means a transaction that creates custodial property under s.
14 ~~880.65~~ 54.870.

15 (14) “Transferor” means a person who makes a transfer under ss. ~~880.61 to~~
16 ~~880.72~~ 54.854 to 54.898.

17 **SECTION 524.** ~~880.615~~ of the statutes is renumbered 54.856, and 54.856 (1) and
18 (2), as renumbered, are amended to read:

19 54.856 (1) Sections ~~880.61 to 880.72~~ 54.854 to 54.898 apply to a transfer that
20 refers to ss. ~~880.61 to 880.72~~ 54.854 to 54.898 in the designation under s. ~~880.65~~
21 54.870 (1) by which the transfer is made if at the time of the transfer the transferor,
22 the minor or the custodian is a resident of this state or the custodial property is
23 located in this state. The custodianship so created remains subject to ss. ~~880.61 to~~
24 ~~880.72~~ 54.854 to 54.898 despite a subsequent change in residence of a transferor, the
25 minor or the custodian, or the removal of custodial property from this state.

SENATE BILL 391**SECTION 524**

1 (2) A person designated as custodian under s. ~~880.65 to 880.695~~ 54.870 to
2 54.888 is subject to personal jurisdiction in this state with respect to any matter
3 relating to the custodianship.

4 **SECTION 525.** 880.62 of the statutes is renumbered 54.858, and 54.858 (2) and
5 (3), as renumbered, are amended to read:

6 54.858 (2) A custodian nominated under this section must be a person to whom
7 a transfer of property of that kind may be made under s. ~~880.65~~ 54.870 (1).

8 (3) The nomination of a custodian under this section does not create custodial
9 property until the nominating instrument becomes irrevocable or a transfer to the
10 nominated custodian is completed under s. ~~880.65~~ 54.870. Unless the nomination
11 of a custodian has been revoked, upon the occurrence of the future event the
12 custodianship becomes effective and the custodian shall enforce a transfer of the
13 custodial property under s. ~~880.65~~ 54.870.

14 **SECTION 526.** 880.625 of the statutes is renumbered 54.860 and amended to
15 read:

16 **54.860 Transfer by gift or exercise of power of appointment.** A person
17 may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of
18 appointment in favor of, a custodian for the benefit of a minor under s. ~~880.65~~ 54.870.

19 **SECTION 527.** 880.63 of the statutes is renumbered 54.862 and amended to
20 read:

21 **54.862 Transfer authorized by will or trust.** (1) A personal representative
22 or trustee may make an irrevocable transfer under s. ~~880.65~~ 54.870 to a custodian
23 for the benefit of a minor as authorized in the governing will or trust.

24 (2) If the testator or settlor has nominated a custodian under s. ~~880.62~~ 54.858
25 to receive the custodial property, the transfer must be made to that person.

SENATE BILL 391**SECTION 527**

1 **(3)** If the testator or settlor has not nominated a custodian under s. ~~880.62~~
2 ~~54.858~~, or all persons so nominated as custodian die before the transfer or are unable,
3 decline or are ineligible to serve, the personal representative or the trustee, as the
4 case may be, shall designate the custodian from among those eligible to serve as
5 custodian for property of that kind under s. ~~880.65~~ 54.870 (1).

6 **SECTION 528.** ~~880.635~~ of the statutes is renumbered ~~54.864~~, and ~~54.864~~ (1) and
7 (2), as renumbered, are amended to read:

8 ~~54.864~~ **(1)** Subject to sub. (3), a personal representative or trustee may make
9 an irrevocable transfer to another adult or trust company as custodian for the benefit
10 of a minor under s. ~~880.65~~ 54.870 in the absence of a will or under a will or trust that
11 does not contain an authorization to do so.

12 **(2)** Subject to sub. (3), a conservator may make an irrevocable transfer to
13 another adult or trust company as custodian for the benefit of the minor under s.
14 ~~880.65~~ 54.870.

15 **SECTION 529.** ~~880.64~~ of the statutes is renumbered ~~54.866~~ and amended to
16 read:

17 **54.866 Transfer by obligor.** **(1)** Subject to subs. (2) and (3), a person not
18 subject to s. ~~880.63~~ or ~~880.635~~ 54.862 or 54.864 who holds property of or owes a
19 liquidated debt to a minor not having a conservator may make an irrevocable
20 transfer to a custodian for the benefit of the minor under s. ~~880.65~~ 54.870.

21 **(2)** If a person having the right to do so under s. ~~880.62~~ 54.858 has nominated
22 a custodian under that section to receive the custodial property, the transfer must
23 be made to that person.

24 **(3)** If no custodian has been nominated under s. ~~880.62~~ 54.858, or all persons
25 so nominated as custodian die before the transfer or are unable, decline or are

SENATE BILL 391**SECTION 529**

1 ineligible to serve, a transfer under this section may be made to an adult member of
2 the minor's family or to a trust company unless the property exceeds \$10,000 in
3 value.

4 **SECTION 530.** 880.645 of the statutes is renumbered 54.868 and amended to
5 read:

6 **54.868 Receipt for custodial property.** A written acknowledgment of
7 delivery by a custodian constitutes a sufficient receipt and discharge for custodial
8 property transferred to the custodian under ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

9 **SECTION 531.** 880.65 of the statutes is renumbered 54.870.

10 **SECTION 532.** 880.655 of the statutes is renumbered 54.872 and amended to
11 read:

12 **54.872 Single custodianship.** A transfer may be made only for one minor,
13 and only one person may be the custodian. All custodial property held under ss.
14 ~~880.61 to 880.72~~ 54.854 to 54.898 by the same custodian for the benefit of the same
15 minor constitutes a single custodianship.

16 **SECTION 533.** 880.66 of the statutes is renumbered 54.874 and amended to
17 read:

18 **54.874 Validity and effect of transfer. (1)** The validity of a transfer made
19 in a manner prescribed in ss. ~~880.61 to 880.72~~ 54.854 to 54.898 is not affected by:

20 (a) Failure of the transferor to comply with s. ~~880.65~~ 54.870 (3) concerning
21 possession and control;

22 (b) Designation of an ineligible custodian, except designation of the transferor
23 in the case of property for which the transferor is ineligible to serve as custodian
24 under s. ~~880.65~~ 54.870 (1); or

SENATE BILL 391**SECTION 533**

1 (c) Death or incapacity of a person nominated under s. ~~880.62~~ 54.858 or
2 designated under s. ~~880.65~~ 54.870 as custodian or the disclaimer of the office by that
3 person.

4 (2) A transfer made under s. ~~880.65~~ 54.870 is irrevocable, and the custodial
5 property is indefeasibly vested in the minor, but the custodian has all the rights,
6 powers, duties and authority provided in ss. ~~880.61 to 880.72~~ 54.854 to 54.898, and
7 neither the minor nor the minor's legal representative has any right, power, duty or
8 authority with respect to the custodial property except as provided in ss. ~~880.61 to~~
9 ~~880.72~~ 54.854 to 54.898.

10 (3) By making a transfer, the transferor incorporates in the disposition all of
11 the provisions of ss. ~~880.61 to 880.72~~ 54.854 to 54.898 and grants to the custodian,
12 and to any 3rd person dealing with a person designated as custodian, the respective
13 powers, rights and immunities provided in ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

14 **SECTION 534.** 880.665 of the statutes is renumbered 54.876.

15 **SECTION 535.** 880.67 of the statutes is renumbered 54.878, and 54.878 (2), as
16 renumbered, is amended to read:

17 54.878 (2) This section does not relieve a custodian from liability for breach of
18 s. ~~880.665~~ 54.876.

19 **SECTION 536.** 880.675 of the statutes is renumbered 54.880.

20 **SECTION 537.** 880.68 of the statutes is renumbered 54.882, and 54.882 (2) and
21 (3), as renumbered, are amended to read:

22 54.882 (2) Except for a person who is a transferor under s. ~~880.625~~ 54.860, a
23 custodian has a noncumulative election during each calendar year to charge
24 reasonable compensation for services performed during that year.

25 (3) Except as provided in s. ~~880.695~~ 54.888 (6), a custodian need not give a bond.

SENATE BILL 391**SECTION 538**

1 **SECTION 538.** 880.685 of the statutes is renumbered 54.884, and 54.884 (2) and
2 (3), as renumbered, are amended to read:

3 54.884 (2) The propriety of, or the authority under ss. ~~880.61 to 880.72~~ 54.854
4 to 54.898 for, any act of the purported custodian.

5 (3) The validity or propriety under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 of any
6 instrument or instructions executed or given either by the person purporting to make
7 a transfer or by the purported custodian.

8 **SECTION 539.** 880.69 of the statutes is renumbered 54.886.

9 **SECTION 540.** 880.695 of the statutes is renumbered 54.888, and 54.888 (1), (2)
10 and (6), as renumbered are amended to read:

11 54.888 (1) A person nominated under s. ~~880.62~~ 54.858 or designated under s.
12 ~~880.65~~ 54.870 as custodian may decline to serve by delivering a valid disclaimer
13 under s. 854.13 to the person who made the nomination or to the transferor or the
14 transferor's legal representative. If the event giving rise to a transfer has not
15 occurred and no substitute custodian able, willing and eligible to serve was
16 nominated under s. ~~880.62~~ 54.858, the person who made the nomination may
17 nominate a substitute custodian under s. ~~880.62~~ 54.858; otherwise the transferor or
18 the transferor's legal representative shall designate a substitute custodian at the
19 time of the transfer, in either case from among the persons eligible to serve as
20 custodian for that kind of property under s. ~~880.65~~ 54.870 (1). The custodian so
21 designated has the rights of a successor custodian.

22 (2) A custodian at any time may designate a trust company or an adult other
23 than a transferor under s. ~~880.625~~ 54.860 as successor custodian by executing and
24 dating an instrument of designation before a subscribing witness other than the
25 successor. If the instrument of designation does not contain or is not accompanied

SENATE BILL 391**SECTION 540**

1 by the resignation of the custodian, the designation of the successor does not take
2 effect until the custodian resigns, dies, becomes incapacitated or is removed.

3 (6) A transferor, the legal representative of a transferor, an adult member of
4 the minor's family, a guardian of the person of the minor, the conservator of the minor
5 or the minor if the minor has attained the age of 14 years may petition the court to
6 remove the custodian for cause and to designate a successor custodian other than a
7 transferor under s. ~~880.625~~ 54.860 or to require the custodian to give appropriate
8 bond.

9 **SECTION 541.** 880.70 of the statutes is renumbered 54.890, and 54.890 (1) (b),
10 (3) and (4), as renumbered, are amended to read:

11 54.890 (1) (b) For a determination of responsibility, as between the custodial
12 property and the custodian personally, for claims against the custodial property
13 unless the responsibility has been adjudicated in an action under s. ~~880.69~~ 54.886
14 to which the minor or the minor's legal representative was a party.

15 (3) The court, in a proceeding under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 or
16 in any other proceeding, may require or permit the custodian or the custodian's legal
17 representative to account.

18 (4) If a custodian is removed under s. ~~880.695~~ 54.888 (6), the court shall require
19 an accounting and order delivery of the custodial property and records to the
20 successor custodian and the execution of all instruments required for transfer of the
21 custodial property.

22 **SECTION 542.** 880.705 of the statutes is renumbered 54.892, and 54.892 (1) and
23 (2), as renumbered, are amended to read:

24 54.892 (1) The minor's attainment of 21 years of age with respect to custodial
25 property transferred under s. ~~880.625 or 880.63~~ 54.860 or 54.862;

SENATE BILL 391**SECTION 542**

1 (2) The minor’s attainment of 18 years of age with respect to custodial property
2 transferred under s. ~~880.635 or 880.64~~ 54.864 or 54.866; or

3 **SECTION 543.** 880.71 of the statutes is renumbered 54.894, and 54.894 (intro.)
4 and (2), as renumbered, are amended to read:

5 **54.894 Applicability.** (intro.) Sections ~~880.61 to 880.72~~ 54.854 to 54.898
6 apply to a transfer within the scope of s. ~~880.615~~ 54.856 made after April 8, 1988, if:

7 (2) The instrument by which the transfer purports to have been made uses in
8 substance the designation “as custodian under the Uniform Gifts to Minors Act” or
9 “as custodian under the Uniform Transfers to Minors Act” of any other state, and the
10 application of ss. ~~880.61 to 880.72~~ 54.854 to 54.898 is necessary to validate the
11 transfer.

12 **SECTION 544.** 880.715 of the statutes is renumbered 54.896 and amended to
13 read:

14 **54.896 Effect on existing custodianships.** (1) Any transfer of custodial
15 property as defined in ss. ~~880.61 to 880.72~~ 54.854 to 54.898 made before April 8, 1988,
16 is validated notwithstanding that there was no specific authority in ss. 880.61 to
17 880.71, 1985 stats., for the coverage of custodial property of that kind or for a transfer
18 from that source at the time the transfer was made.

19 (2) Sections ~~880.61 to 880.72~~ 54.854 to 54.898 apply to all transfers made before
20 April 8, 1988, in a manner and form prescribed in ss. 880.61 to 880.71, 1985 stats.,
21 except insofar as the application impairs constitutionally vested rights or extends
22 the duration of custodianships in existence on April 8, 1988.

23 (3) Sections ~~880.61 to 880.705~~ 54.854 to 54.892 with respect to the age of a
24 minor for whom custodial property is held under ss. ~~880.61 to 880.72~~ 54.854 to 54.898
25 do not apply to custodial property held in a custodianship that terminated because

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1 of the minor's attainment of the age of 18 after March 23, 1972 and before April 8,
2 1988.

3 (4) To the extent that ss. ~~880.61 to 880.72~~ 54.854 to 54.898, by virtue of sub.
4 (2), do not apply to transfers made in a manner prescribed in ss. 880.61 to 880.71,
5 1985 stats., or to the powers, duties and immunities conferred by transfers in that
6 manner upon custodians and persons dealing with custodians, the repeal of ss.
7 880.61 to 880.71, 1985 stats., does not affect those transfers, powers, duties and
8 immunities.

9 **SECTION 545.** 880.72 of the statutes is renumbered 54.898 and amended to
10 read:

11 **54.898 Uniformity of application and construction.** Sections ~~880.61 to~~
12 ~~880.72~~ 54.854 to 54.898 shall be applied and construed to effectuate their general
13 purpose to make uniform the law with respect to the subject of ss. ~~880.61 to 880.72~~
14 54.854 to 54.898 among states enacting it.

15 **SECTION 546.** Subchapter IV (title) of chapter 880 [precedes 880.75] of the
16 statutes is repealed.

17 **SECTION 547.** 880.75 of the statutes is renumbered 54.92.

18 **SECTION 548.** 880.76 of the statutes is renumbered 54.93, and 54.93 (1), (2) and
19 (3), as renumbered, are amended to read:

20 **54.93 (1) DEFINITIONS.** All definitions in s. ~~880.75~~ 54.92 (1) (a) to (e) and (g) shall
21 apply in this section, unless the context otherwise requires. "Third party" is a person
22 other than a bank, broker, transfer agent or issuer who with respect to a security held
23 by an incompetent or spendthrift effects a transaction otherwise than directly with
24 the incompetent or spendthrift.

SENATE BILL 391**SECTION 548****(2) SECURITY TRANSACTIONS INVOLVING INCOMPETENT OR SPENDTHRIFT; LIABILITY.**

A bank, broker, issuer, ~~third~~ 3rd party, or transfer agent incurs no liability by reason of his or her treating an incompetent or spendthrift as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, ~~third~~ 3rd party, or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, ~~third~~ 3rd party, or transfer agent had actual knowledge that the holder of the security is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. ~~880.215~~ 54.47. Except as otherwise provided in this section, such a bank, broker, issuer, ~~third~~ 3rd party, or transfer agent may assume without inquiry that the holder of a security is not an incompetent or spendthrift.

(3) ACTS NOT SUBJECT TO DISAFFIRMANCE OR AVOIDANCE. An incompetent or

spendthrift, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, ~~third~~ 3rd party, or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, ~~third~~ 3rd party, or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a person who has been

SENATE BILL 391**SECTION 548**

1 adjudicated an incompetent or a spendthrift or unless an individual conducting the
2 transaction for the bank, broker, issuer, ~~third~~ 3rd party, or transfer agent had actual
3 knowledge that the holder is a person who has been adjudicated an incompetent or
4 a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 880.215
5 54.47.

6 **SECTION 549.** Subchapter V (title) of chapter 880 [precedes 880.81] of the
7 statutes is repealed.

8 **SECTION 550.** 880.81 of the statutes is renumbered 54.950, and 54.950 (3), (4),
9 (7) and (12), as renumbered, are amended to read:

10 54.950 (3) "~~Conservator~~" Notwithstanding s. 54.01 (3), "conservator" means a
11 person appointed or qualified by a court by voluntary proceedings to manage the
12 estate of an individual, or a person legally authorized to perform substantially the
13 same functions.

14 (4) "~~Court~~" Notwithstanding s. 54.01 (4), "court" means the circuit court of this
15 state.

16 (7) "~~Guardian~~" Notwithstanding s. 54.01 (10), "guardian" means a person
17 appointed or qualified by a court as a guardian of the person or estate, or both, of an
18 individual, including a limited guardian with limited powers, but not a person who
19 is only a guardian ad litem.

20 (12) "~~Personal representative~~" Notwithstanding s. 54.01 (23), "personal
21 representative" means an executor, administrator or special administrator of a
22 decedent's estate, a person legally authorized to perform substantially the same
23 functions or a successor to any of them.

24 **SECTION 551.** 880.815 of the statutes is renumbered 54.952, and 54.952 (8), as
25 renumbered, is amended to read:

SENATE BILL 391**SECTION 551**

1 54.952 (8) ~~This subchapter does~~ Sections 54.950 to 54.988 do not displace or
2 restrict other means of creating trusts. A trust whose terms do not conform to this
3 subchapter may be enforceable according to its terms under other law.

4 **SECTION 552.** 880.82 of the statutes is renumbered 54.954.

5 **SECTION 553.** 880.825 of the statutes is renumbered 54.956.

6 **SECTION 554.** 880.83 of the statutes is renumbered 54.958, and 54.958 (1), as
7 renumbered, is amended to read:

8 54.958 (1) Unless otherwise directed by an instrument designating a custodial
9 trustee pursuant to s. ~~880.82~~ 54.954, a person, including a fiduciary other than a
10 custodial trustee, who holds property of or owes a debt to an incapacitated individual
11 not having a conservator or guardian of the estate may make a transfer to an adult
12 member of the beneficiary's family or to a trust company as custodial trustee for the
13 use and benefit of the incapacitated individual. If the value of the property or the
14 debt exceeds \$10,000, the transfer is not effective unless authorized by the court.

15 **SECTION 555.** 880.835 of the statutes is renumbered 54.960, and 54.960 (3), as
16 renumbered, is amended to read:

17 54.960 (3) A custodial trustee of custodial trust property held for more than one
18 beneficiary shall separately account to each beneficiary pursuant to ss. ~~880.84 and~~
19 ~~880.88~~ 54.962 and 54.978 for the administration of the custodial trust.

20 **SECTION 556.** 880.84 of the statutes is renumbered 54.962.

21 **SECTION 557.** 880.845 of the statutes is renumbered 54.964, and 54.964 (2), as
22 renumbered, is amended to read:

23 54.964 (2) This section does not relieve a custodial trustee from liability for a
24 violation of s. ~~880.84~~ 54.962.

25 **SECTION 558.** 880.85 of the statutes is renumbered 54.966.

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1 **SECTION 559.** 880.855 of the statutes is renumbered 54.968, and 54.968 (1) (a),
2 as renumbered, is amended to read:

3 54.968 (1) (a) The custodial trust was created under s. ~~880.83~~ 54.958.

4 **SECTION 560.** 880.86 of the statutes is renumbered 54.970.

5 **SECTION 561.** 880.865 of the statutes is renumbered 54.972.

6 **SECTION 562.** 880.87 of the statutes is renumbered 54.974, and 54.974 (1) and
7 (3), as renumbered, are amended to read:

8 54.974 (1) Before accepting the custodial trust property, a person designated
9 as custodial trustee may decline to serve by notifying the person who made the
10 designation, the transferor or the transferor's legal representative. If an event
11 giving rise to a transfer has not occurred, the substitute custodial trustee designated
12 under s. ~~880.82~~ 54.954 becomes the custodial trustee, or, if a substitute custodial
13 trustee has not been designated, the person who made the designation may
14 designate a substitute custodial trustee pursuant to s. ~~880.82~~ 54.954. In other cases,
15 the transferor or the transferor's legal representative may designate a substitute
16 custodial trustee.

17 **(3)** If a custodial trustee or successor custodial trustee is ineligible, resigns,
18 dies or becomes incapacitated, the successor designated under s. ~~880.815 (7)~~ or
19 ~~880.82~~ 54.952 (7) or 54.954 becomes custodial trustee. If there is no effective
20 provision for a successor, the beneficiary, if not incapacitated, may designate a
21 successor custodial trustee. If the beneficiary is incapacitated or fails to act within
22 90 days after the ineligibility, resignation, death or incapacity of the custodial
23 trustee, the beneficiary's conservator or guardian of the estate becomes successor
24 custodial trustee. If the beneficiary does not have a conservator or a guardian of the

SENATE BILL 391**SECTION 562**

1 estate, or the conservator or guardian of the estate fails to act, the resigning custodial
2 trustee may designate a successor custodial trustee.

3 **SECTION 563.** 880.875 of the statutes is renumbered 54.976.

4 **SECTION 564.** 880.88 of the statutes is renumbered 54.978.

5 **SECTION 565.** 880.885 of the statutes is renumbered 54.980.

6 **SECTION 566.** 880.89 of the statutes is renumbered 54.982, and 54.982 (2) (b),
7 as renumbered, is amended to read:

8 54.982 (2) (b) To the survivor of multiple beneficiaries if survivorship is
9 provided for pursuant to s. ~~880.835~~ 54.960.

10 **SECTION 567.** 880.895 of the statutes is renumbered 54.984, and 54.984 (1)
11 (intro.), as renumbered, is amended to read:

12 54.984 (1) (intro.) If a transaction, including a declaration with respect to or
13 a transfer of specific property, otherwise satisfies applicable law, the criteria of s.
14 ~~880.815~~ 54.952 are satisfied by any of the following:

15 **SECTION 568.** 880.90 of the statutes is renumbered 54.986, and 54.986 (1), as
16 renumbered, is amended to read:

17 54.986 (1) ~~This subchapter applies~~ Sections 54.950 to 54.988 apply to a transfer
18 or declaration creating a custodial trust that refers to this subchapter if, at the time
19 of the transfer or declaration, the transferor, beneficiary or custodial trustee is a
20 resident of or has its principal place of business in this state or custodial trust
21 property is located in this state. The custodial trust remains subject to this
22 subchapter despite a later change in residence or principal place of business of the
23 transferor, beneficiary or custodial trustee, or removal of the custodial trust property
24 from this state.

SENATE BILL 391**SECTION 569**

1 **SECTION 569.** 880.905 of the statutes is renumbered 54.988 and amended to
2 read:

3 **54.988 Uniformity of application and construction.** ~~This subchapter~~
4 Sections 54.950 to 54.988 shall be applied and construed to effectuate its general
5 purpose to make uniform the law with respect to the subject of this subchapter
6 among states enacting it.

7 **SECTION 570.** 885.17 of the statutes is amended to read:

8 **885.17 Transactions with deceased agent.** No party, and no person from,
9 through, or under whom a party derives the party's interest or title ~~shall,~~ may be
10 examined as a witness in respect to any transaction or communication by the party
11 or person personally with an agent of the adverse party or an agent of the person
12 from, through, or under whom such adverse party derives his or her interest or title,
13 ~~when such~~ if the agent is dead or insane, or otherwise legally, mentally ill, or
14 adjudicated incompetent as a witness, unless the opposite party shall first be
15 examined or ~~examine~~ some other witness in his or her behalf examined in respect to
16 some transaction or communication between ~~such~~ the agent and ~~such~~ the other party
17 or person; or unless the testimony of ~~such~~ the agent, at any time taken, be first read
18 or given in evidence by the opposite party; and then, in either case respectively, only
19 in respect to such the transaction or communication of which testimony is so given
20 or to the matters to which ~~such~~ the testimony relates.

21 **SECTION 571.** 905.04 (4) (a) of the statutes is amended to read:

22 905.04 (4) (a) *Proceedings for hospitalization, guardianship, protective services*
23 *or protective placement.* There is no privilege under this rule as to communications
24 and information relevant to an issue in proceedings to hospitalize the patient for
25 mental illness, to appoint a guardian ~~under s. 880.33~~ in this state, for court-ordered

SENATE BILL 391**SECTION 571**

1 protective services or protective placement, or for review of guardianship, protective
2 services or protective placement orders, if the physician, registered nurse,
3 chiropractor, psychologist, social worker, marriage and family therapist or
4 professional counselor in the course of diagnosis or treatment has determined that
5 the patient is in need of hospitalization, guardianship, protective services, or
6 protective placement.

7 **SECTION 572.** 905.04 (4) (am) of the statutes is amended to read:

8 905.04 (4) (am) *Proceedings for guardianship.* There is no privilege under this
9 rule as to information contained in a statement concerning the mental condition of
10 the patient furnished to the court by a physician or psychologist under s. 54.36 (1)
11 or s. 880.33 (1), 2003 stats.

12 **SECTION 573.** 938.02 (20m) (a) 5. of the statutes is amended to read:

13 938.02 (20m) (a) 5. If a person specified in subd. 1. has been ~~determined to be~~
14 adjudicated incompetent under ch. 880 in this state, the guardian of the person
15 appointed under ~~ch. 880~~ for him or her.

16 **SECTION 574.** 938.345 (1) (e) of the statutes is amended to read:

17 938.345 (1) (e) Place any juvenile not specifically found under chs. 46, 49, 51,
18 54. or 115 and or ch. 880, 2003 stats., to be developmentally disabled or mentally ill
19 or to be a child with a disability, as defined in s. 115.76 (5), in facilities ~~which~~ that
20 exclusively treat those categories of juveniles.

21 **SECTION 575.** 949.04 (1) (b) of the statutes is amended to read:

22 949.04 (1) (b) Application by an individual adjudicated incompetent may be
23 made on the ~~incompetent's~~ individual's behalf by the guardian or other person
24 authorized to administer the ~~incompetent's~~ individual's estate.

25 **SECTION 576.** 950.02 (4) (a) 5. of the statutes is amended to read:

SENATE BILL 391**SECTION 576**

1 950.02 (4) (a) 5. If a person specified in subd. 1. has been ~~determined to be~~
2 ~~adjudicated incompetent under ch. 880 in this state~~, the guardian of the person
3 ~~appointed under ch. 880 for him or her.~~

4 **SECTION 577.** 968.20 (1m) (a) 1. of the statutes is amended to read:

5 968.20 (1m) (a) 1. "Crime" includes an act committed by a juvenile or by an
6 adult who is adjudicated incompetent adult ~~which~~ that would have been a crime if
7 the act had been committed by a competent adult.

8 **SECTION 578.** 992.08 of the statutes is amended to read:

9 **992.08 Evidence as to county lands; minors.** Whenever in any action it is
10 material to any party to show that the title to any tract of land is vested in any county,
11 under chapter 132 of the general laws of 1866, by having been bid in for such county
12 for 5 successive years on sales for taxes and that the tract remains unredeemed, the
13 statement of such sales made by the county treasurer, or the record of such statement
14 in the book kept for that purpose in the treasurer's office, or the certificates of such
15 sales executed by the treasurer to the county shall be prima facie evidence of the
16 regularity of the tax proceedings from and including the valuation of any such tract
17 of land up to and inclusive of the sale thereof and of the existence of all conditions
18 precedent in any way affecting the validity of such sales, or requisite to make the title
19 of such land absolutely vest in the county in which the same is situate. This section
20 does not apply to any such lands if it appears that they were owned at the time of the
21 sales by minors or persons individuals who were adjudicated incompetent, insane or
22 mentally ill or were under guardianship.

23 **SECTION 579. Nonstatutory provisions.**

24 (1) REVIEW OF ORDER; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.

25 For an individual who is subject to an order appointing a guardian under section

SENATE BILL 391**SECTION 579**

1 880.33 (4m), 2003 stats., and to an order initially issued under section 880.33 (4r),
2 2003 stats., that is in effect on the effective date of this subsection, the county
3 department of the individual's county of residence shall, no later than 9 months after
4 the effective date of this subsection, review the individual's status under the
5 requirements of section 55.19 of the statutes, as created by this act.

6 (2) TRANSITION; INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION.
7 Notwithstanding the treatment of sections 880.07 (1m), 880.33 (2) (d), (4m), and (4r),
8 and 880.34 (6) of the statutes by this act, all orders issued under section 880.33 (4m)
9 and (4r), 2003 stats., in effect on the effective date of this subsection, remain in effect
10 until modified or terminated by a court order under section 55.19 (3) (e) 2. or 3. of the
11 statutes, as created by this act.

12 (3) COMPLIANCE BY FACILITIES WITH REQUIREMENTS FOR ADMINISTRATION OF
13 PSYCHOTROPIC MEDICATION.

14 (a) The department of health and family services shall submit in proposed form
15 the rules required under section 50.02 (2) (ad), as created in this act, to the legislative
16 council staff under section 227.15 (1) of the statutes no later than the first day of the
17 4th month beginning after the effective date of this paragraph.

18 (b) Using the procedure under section 227.24 of the statutes, the department
19 of health and family services may promulgate rules required under section 50.02 (2)
20 (ad) of the statutes, as created by this act, for the period before the effective date of
21 the rules submitted under paragraph (a), but not to exceed the period authorized
22 under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24
23 (1) (a), (2) (b), and (3) of the statutes, the department of health and family services
24 is not required to provide evidence that promulgating a rule under this paragraph
25 as an emergency rule is necessary for the preservation of the public peace, health,

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1 safety, or welfare and is not required to provide a finding of emergency for a rule
2 promulgated under this paragraph.

3 **SECTION 580. Initial applicability.**

4 (1) VENUE; COUNTY OF RESIDENCE; COUNTY OF RESPONSIBILITY. The treatment of
5 sections 51.01 (4g), (4r), (14), (14t), 51.05 (2), 51.20 (13) (g) 4., 51.22 (4), 51.40 (title),
6 (1) (e), (em), (hm), (j), and (m) and (2) (intro.), (a) 1. and 2., (b) (intro.), 1., 2. (intro.),
7 a., b., c., d., and g., (f), and (g) 1. and 6., 55.06 (3) (c) and (d), 880.05, 880.06 (title),
8 (1), and (2), and 880.33 (2) (a) 3. of the statutes first applies to determinations of the
9 county of residence made on the effective date of this subsection.

10 (2) REQUIREMENTS FOR FINDING OF INCOMPETENCY AND APPOINTMENT OF GUARDIAN.
11 The treatment of sections 46.977 (1) (a) and (2) (a), (b) 1., and (c) 2., 48.14 (2) (b) and
12 (11), 48.345 (intro.), 48.347 (intro.), 48.62 (2), 48.831 (1) and (1m) (e), 48.977 (8) (title),
13 (a), and (b), 48.978 (7) (title) and (a) to (c), 50.03 (14) (c) 8. e., 50.06 (2) (c), 51.30 (4)
14 (b) 8m. and 18. a. and c. and (5) (e), 51.40 (1) (f), 51.45 (2) (e) and (13) (c) and (e), 54.01
15 (title) and (intro.), (1), (4) to (7), (10) to (15), (17) (a) and (b), (18), (19), (23) to (27),
16 (29), (30), (33), (35), (36), and (38), 54.10, 54.15 (2), (3), (4) (title), and (8), 54.25 (1)
17 (title), (intro.) and (b) 1. to 5. and (2), 54.34 (1) (k) to (p), 54.36 (2) and (3), 54.38 (title),
18 (1), and (2) (b), 54.40 (4) (c), (d), (g), and (h), 54.42 (title), (1) (a) 1. to 3. and (b), (2),
19 (3) (title), (5), and (6), 54.44 (1) to (4) and (6), 54.46 (title), (intro.), (1), (2) (title),
20 (intro.), (a) and (c), and (3) (c), 54.60 (2) to (6), 55.06 (1) (a), 223.10, 243.07 (3) (b),
21 757.48 (1) (a), 814.66 (1) (b) 2. and (m), 880.01 (intro.), (1) to (7), and (8) to (10), 880.02,
22 880.03, 880.04 (1), 880.05, 880.06 (title), (1), and (2), 880.07 (title), (1) (intro.), (a) to
23 (j), (2), and (4), 880.08 (intro.), (2), (3) (title), (am) (intro.), and 1. to 4. and (e), and (4),
24 880.09 (intro.), (2), and (4), 880.10, 880.12, 880.125, 880.13 (title), (1), (2) (title), (a),
25 and (b), and (3), 880.14, 880.33 (title), (1) to (4), (5), (5m), (8), and (9), 880.331 (title),

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1 (1) to (3), (4) (intro.) and (a) to (f), and (6) to (8), 880.35, and 880.81 (7), subchapters
2 I (title), II (title), III (title), IV (title), and V (title) of chapter 54, subchapter I (title)
3 of chapter 880, and chapters 54 (title) and 880 (title) of the statutes, the repeal of
4 sections 880.075 (title), 880.08 (1) (title), and 880.09 (1) (title), (3) (title), and (7) (title)
5 of the statutes, and the renumbering and amendment of sections 880.075, 880.08 (1),
6 and 880.09 (1), (3), and (7) of the statutes first apply to a petition for guardianship
7 filed on the effective date of this subsection.

8 (3) EXCEPTIONS TO APPOINTMENT OF GUARDIAN. The treatment of sections 54.12
9 (1) (e) and (f), 814.61 (12) (a) 1., 814.66 (1) (n), and 880.04 (title), (2), (2m), and (3) of
10 the statutes first applies to an action or proceeding pending on the effective date of
11 this subsection.

12 (4) STANDBY GUARDIANSHIP. The treatment of section 880.36 (title) and (1) of the
13 statutes first applies to a petition for appointment of a standby guardian filed on the
14 effective date of this subsection.

15 (5) SUCCESSOR GUARDIANSHIP. The treatment of section 880.17 of the statutes
16 first applies to a petition filed or motion brought on the effective date of this
17 subsection.

18 (6) ELIMINATION OF LIMITED GUARDIANSHIP OF PROPERTY. The treatment of
19 sections 6.03 (1) (a) and (3), 17.03 (6), 51.35 (7), 54.34 (1) (m), 55.06 (14), 155.60 (2),
20 706.03 (4), 880.215, and 880.37 of the statutes first applies to a procedure for
21 appointment of a limited guardian that is conducted on the effective date of this
22 subsection.

23 (7) TEMPORARY GUARDIANSHIP. The treatment of sections 50.94 (6), 54.50 (title),
24 (1), and (3), and 880.15 (title), (1), (1m), (1s), (2), and (3) of the statutes first applies
25 to petitions filed on the effective date of this subsection.

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1 (8) **POWER OF ATTORNEY FOR HEALTH CARE.** The treatment of sections 155.05 (1),
2 155.40 (2m), 155.60 (2), and 880.33 (3) and (8) (b) of the statutes first applies to the
3 appointment of a guardian under section 54.46 (2) of the statutes, as created by this
4 act, on the effective date of this subsection.

5 (9) **DURABLE POWER OF ATTORNEY.** The treatment of sections 54.46 (2) (c), 54.76
6 (3) and (3g), and 243.07 (3) (a) and (b) and (7) (c) of the statutes first applies to the
7 appointment of a guardian under section 54.46 (2) of the statutes, as created by this
8 act, or to the appointment of a conservator under section 54.76 (2) of the statutes, as
9 created by this act, on the effective date of this subsection.

10 (10) **DUTIES AND POWERS OF GUARDIAN OF THE ESTATE.** The treatment of sections
11 54.18 (title) and (1) to (3) (intro.) and (b), 54.19 (title), (intro.), (2) to (6), (8), and (9),
12 54.20 (title), (1) (a) to (c), (2) (title), (intro.), (a), (c) to (g), (i), and (j), (3) (title), (intro.),
13 (a) to (e), and (k), 54.21, 880.173 (title), (1), and (2), 880.19 (title), (2) (title), (a) and
14 (b), (4) (title) and (a) to (c), and (5) (title) and (a) to (d), 880.191 (title), (1), and (2),
15 880.192, 880.195, 880.21, 880.215, 880.22 (title), and 880.24 (title), (1), (2), and (3)
16 (title), (a) (intro.) and 1. to 4., and (b) of the statutes, the repeal of section 880.175
17 (title), 880.18 (title), 880.19 (1) (title) and (3) (title), 880.22 (1) (title) and (2) (title),
18 and 880.23 (title) of the statutes, and the renumbering and amendment of sections
19 880.175, 880.18, 880.19 (1) and (3), 880.22 (1) and (2), and 880.23 of the statutes first
20 apply to a guardianship of the estate in effect on the effective date of this subsection.

21 (11) **DUTIES AND POWERS OF GUARDIAN OF THE PERSON.** The treatment of sections
22 54.18 (title) and (1) to (3) (intro.) and (b), 54.25 (1) (title), (intro.) and (b) 1. to 5. and
23 (2), 880.33 (9), and 880.38 (title) and (1) to (3) of the statutes first applies to a
24 guardianship of the person in effect on the effective date of this subsection and to a
25 petition for guardianship filed on the effective date of this subsection.

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1 (12) NOTES AND MORTGAGES OF MINOR VETERANS. The treatment of section 880.32
2 of the statutes first applies to a note or mortgage executed on the effective date of this
3 subsection.

4 (13) PSYCHOTROPIC MEDICATIONS. The treatment of sections 51.03 (3) (a) 6., 54.01
5 (6), (28), and (30), 54.25 (2) (d) 2. a., 55.01 (1v), (6t), and (6v), 55.05 (2) (d), 55.14,
6 55.19, 609.65 (1) (intro.), 880.01 (2), (7m), and (8), 880.07 (1m), 880.33 (2) (d), (4m),
7 and (4r), 880.34 (6), and 905.04 (4) (am) of the statutes, the repeal of section 51.20
8 (7) (d) 1. a. and b. of the statutes, the renumbering and amendment of section 51.20
9 (7) (d) 1. (intro.) of the statutes first applies to petitions for involuntary
10 administration of psychotropic medication that are filed on the effective date of this
11 subsection.

12 (14) HUNTING, PATRON, AND GUIDE LICENSES. The treatment of sections 29.024
13 (2u), 29.161, 29.164 (3) (e), 29.171 (1), 29.173 (1), 29.182 (4m), 29.184 (6) (c) 1r. and
14 2., 29.231 (1), 29.235 (1), and 29.512 (1) of the statutes first applies to receipt by the
15 department of natural resources of a declaration issued by a court that an individual
16 is incapable of understanding the nature and risks of the licensed or credentialed
17 activity.

18 (15) ACCOUNTS. The treatment of sections 54.62 (title), (3), (4), and (7) (a) to (c),
19 808.075 (4) (f) 8., 880.245, 880.25 (title) and (1) to (5), 880.252, and 880.253 of the
20 statutes first applies to annual accounts that are due before April 15, 2006.

21 (16) EXPANSION OF ORDER OF GUARDIANSHIP. The treatment of section 54.63 of the
22 statutes first applies to submittal of a written statement to the court on the effective
23 date of this subsection.

24 (17) REVOCATION OR SUSPENSION OF LICENSES AND CREDENTIALS. The treatment
25 of sections 343.06 (1) (L), 343.31 (title), (2x), and (3) (a), and 440.121 of the statutes

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1 first applies to receipt by an administrative agency of a record of a declaration on the
2 effective date of this subsection.

3 (18) SETTLEMENTS AND JUDGMENTS. The treatment of section 807.10 (title) and
4 (1) to (3) of the statutes first applies to settlements or judgments made on the
5 effective date of this subsection.

6 (19) REVIEW OF INCOMPETENCY AND TERMINATION OF GUARDIANSHIP. The treatment
7 of sections 54.64 (2) (title), (a) 1. to 3., and (b), 880.26 (title), (1) (intro.) and (a) to (c),
8 (2) (intro.) and (a) to (d), and (3), 880.29, and 880.34 (title) and (1) to (5) of the statutes
9 first applies to a petition for review of incompetency filed on the effective date of this
10 subsection.

11 (20) REVIEW OF CONDUCT OF GUARDIAN. The treatment of section 54.68 of the
12 statutes first applies to commitment by a guardian of any action specified under
13 section 54.68 (2) (a) to (j) of the statutes, as created by this act, on the effective date
14 of this subsection.

15 (21) FINAL ACCOUNTS. The treatment of sections 54.66 (title) and (3), 808.075
16 (4) (f) 8., 880.25 (3), 880.27, 880.28, and 880.60 (10) (a) of the statutes first applies
17 to the termination or the resignation, removal, or death of a guardian or the death
18 of a ward on the effective date of this subsection.

19 (22) APPOINTMENT OF CONSERVATOR AND STANDBY CONSERVATOR. The treatment of
20 sections 54.01 (3), (32), and (34), 54.34 (1) (p), 54.46 (1) (b), 54.76 (title), (3g), (3m) and
21 (3n), and (6) to (9), 243.07 (3) (a) to (c), 814.66 (1) (b) 2., 880.13 (3), 880.295, and 880.33
22 (8) (intro.) and (a) and subchapter VI (title) of chapter 54 of the statutes, the repeal
23 of section 880.31 (title) of the statutes, the renumbering and amendment of section
24 880.31 (2), (3), and (6) of the statutes, and the consolidation, renumbering, and
25 amendment of section 880.31 (1), (4), (5), and (7) of the statutes first apply to an

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1 application or petition for appointment of a conservator made on the effective date
2 of this subsection.

3 (23) **TERMINATION OF CONSERVATORSHIP.** The treatment of section 54.76 (6) to (9)
4 of the statutes first applies to commitment by a conservator of any action specified
5 under section 54.76 (6) (a) to (h) of the statutes, as created by this act, or appointment
6 of a guardian, death of a conservatee, or change of residence of a conservator or
7 conservatee on the effective date of this subsection.

8 (24) **DEGENERATIVE BRAIN DISORDER.** The treatment of section 51.01 (5) (a) of the
9 statutes first applies to a diagnosis of developmental disability made on the effective
10 date of this subsection.

11 (25) **PROTECTIVE PLACEMENT OR PROTECTIVE SERVICES.** The treatment of sections
12 55.05 (2) (d), 55.06 (1) (a), (3) (c) and (d), (6), and (8) (c), and 880.33 (7) of the statutes
13 first applies to a petition for protective placement or protective services filed on the
14 effective date of this subsection.

15 (26) **REVIEW OF PROTECTIVE PLACEMENT OR PROTECTIVE SERVICES.** The treatment
16 of sections 55.195 (7) and (9) and 880.331 (5) (intro.) and (a) to (g) of the statutes first
17 applies to a review of protective placement or of protective services conducted on the
18 effective date of this subsection.

19 **SECTION 581. Effective dates.** This act takes effect on the first day of the 7th
20 month beginning after publication, except as follows:

21 (1) **COMPLIANCE BY FACILITIES WITH REQUIREMENTS FOR ADMINISTRATION OF**
22 **PSYCHOTROPIC MEDICATION.** The treatment of SECTION 579 (3) of this act takes effect
23 on the day after publication.

24 (2) **TRANSITION; GUARDIANSHIP APPOINTMENTS.**

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1 (a) 1. Notwithstanding the treatment of sections 880.03 and 880.12 of the
2 statutes by this act, except as provided in subsection (3), all guardianships of the
3 person appointed under section 880.03, 2003 stats., in effect on the effective date of
4 this subsection, remain in effect until modified by court order under section 54.64 (2),
5 of the statutes, as affected by this act, terminated by court order under section 54.64
6 (3) of the statutes, as affected by this act, or removed by court order under section
7 54.68 (4) (d) or (5) of the statutes, as created by this act.

8 2. Notwithstanding the treatment of sections 880.03 and 880.12 of the statutes
9 by this act, except as provided in subsection (3), all guardianships of the estate
10 appointed under section 880.03, 2003 stats., in effect on the effective date of this
11 subsection, remain in effect until modified by court order under section 54.64 (2) of
12 the statutes, as affected by this act, terminated by court order under section 54.64
13 (4) of the statutes, as affected by this act, or removed by court order under section
14 54.68 (4) (d) or (5) of the statutes, as created by this act.

15 (b) Notwithstanding the treatment of sections 880.295 and 880.33 (4) of the
16 statutes, by this act, except as provided in subsection (3), all guardianships
17 appointed under section 880.295 or 880.33 (4), 2003 stats., in effect on the effective
18 date of this subsection, remain in effect until modified by court order under section
19 54.64 (2) of the statutes, as affected by this act, terminated by court order under
20 section 54.64 (3) or (4) of the statutes, as affected by this act, or removed by court
21 order under section 54.68 (4) (d) or (5) of the statutes, as created by this act.

22 (3) TRANSITION; GUARDIANSHIP REVIEW AND REMOVAL.

23 (a) Notwithstanding the treatment of section 880.16 and 880.192 of the
24 statutes by this act, all actions for removal of a guardian under section 880.16, 2003
25 stats., in effect on the effective date of this subsection, remain in effect until

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1 determined by the court under that section, and all actions for review of an account
2 or removal of a guardian under section 880.192, 2003 stats., in effect on the effective
3 date of this subsection, remain in effect until determined by the court under that
4 section.

5 (b) Notwithstanding the treatment of sections 880.251 and 880.34 (3) of the
6 statutes by this act, all actions for removal of a guardian under section 880.251, 2003
7 stats., in effect on the effective date of this subsection remain in effect until the court
8 issues an order of removal or dismisses the action, and all actions under section
9 880.34 (3), 2003 stats., for discharge of a guardian or limitation of a guardianship in
10 effect on the effective date of this subsection remain in effect until determined by the
11 court under that subsection.

12 (4) TRANSITION; LIMITED GUARDIANSHIP. Notwithstanding the treatment of
13 sections 880.33 (3) and 880.37 of the statutes by this act, all limited guardianships
14 appointed under sections 880.33 (3) and 880.37, 2003 stats., in effect on the effective
15 date of this subsection remain in effect until modified by court order under section
16 54.64 (2) of the statutes, as affected by this act, terminated by court order under
17 section 54.64 (3) or (4) of the statutes, as affected by this act, or removed by court
18 order under section 54.68 (4) (d) or (5) of the statutes, as created by this act.

19 (END)