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

[55.11(1)](https://docs.legis.wisconsin.gov/document/statutes/55.11%281%29)**(1)** Before ordering protective placement or protective services for any individual, the court shall require a comprehensive evaluation of the individual sought to be protected, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for protective placement or protective services. The county department or an agency with which it contracts under s. [55.02 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.02%282%29) shall cooperate with the court in securing available resources. The court or the cooperating agency obtaining the evaluation shall request appropriate information which shall include at least the following:

[55.11(1)(a)](https://docs.legis.wisconsin.gov/document/statutes/55.11%281%29%28a%29) **(a)** The address of the place where the individual is residing and the person or agency who is providing services at present, if any.

[55.11(1)(b)](https://docs.legis.wisconsin.gov/document/statutes/55.11%281%29%28b%29) **(b)** A resume of any professional treatment and services provided to the individual by the department or agency in connection with the problem creating the need for protective placement or protective services.

[55.11(1)(c)](https://docs.legis.wisconsin.gov/document/statutes/55.11%281%29%28c%29) **(c)** A medical, psychological, social, vocational, and educational evaluation and review, if necessary, and any recommendations for or against maintenance of partial legal rights as provided in s. [54.25 (2)](https://docs.legis.wisconsin.gov/document/statutes/54.25%282%29). The evaluation and review shall include recommendations for the individual's placement that are consistent with the requirements of s. [55.12 (3)](https://docs.legis.wisconsin.gov/document/statutes/55.12%283%29), [(4)](https://docs.legis.wisconsin.gov/document/statutes/55.12%284%29), and [(5)](https://docs.legis.wisconsin.gov/document/statutes/55.12%285%29).

[55.11(2)](https://docs.legis.wisconsin.gov/document/statutes/55.11%282%29) **(2)**If requested by the individual sought to be protected, or anyone on the individual's behalf, the individual sought to be protected has the right at his or her own expense, or, if indigent, at the expense of the county where the petition is filed, to secure an independent comprehensive evaluation, if an independent comprehensive evaluation has not already been made. The individual, or anyone on the individual's behalf, may present a report of this independent comprehensive evaluation or the evaluator's personal testimony as evidence at the hearing.

[55.11(3)](https://docs.legis.wisconsin.gov/document/statutes/55.11%283%29) **(3)**A copy of the comprehensive evaluation and any independent comprehensive evaluation shall be provided to the individual's guardian, agent under any activated health care power of attorney, and guardian ad litem, and to the individual or the individual's attorney at least 96 hours in advance of the hearing to determine protective placement or protective services.

[55.11(4)](https://docs.legis.wisconsin.gov/document/statutes/55.11%284%29) **(4)**Where applicable by reason of the particular disability, the county department or an agency with which it contracts under s. [55.02 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.02%282%29) that has responsibility where the individual has legal residence shall make a recommendation for protective placement or protective services.

[55.11(5)](https://docs.legis.wisconsin.gov/document/statutes/55.11%285%29) **(5)**If the court is considering protective placement of the individual in a center for the developmentally disabled, the court shall request a statement or testimony from the department regarding whether the protective placement is appropriate for the individual's needs and whether it is consistent with the purpose of the center under s. [51.06 (1)](https://docs.legis.wisconsin.gov/document/statutes/51.06%281%29).

[55.11(6)](https://docs.legis.wisconsin.gov/document/statutes/55.11%286%29) **(6)**If the individual has a developmental disability and the court is considering protective placement of the individual in an intermediate facility or a nursing facility, the court shall request a statement or testimony from the county department of the individual's county of residence that is participating in the program under s. [46.278](https://docs.legis.wisconsin.gov/document/statutes/46.278) as to whether the individual's needs could be met in a noninstitutional setting, except that, if s. [46.279 (4m)](https://docs.legis.wisconsin.gov/document/statutes/46.279%284m%29) applies to the individual, the court shall request the statement or testimony from the department, rather than the county department.

55.11 History **History:** [2005 a. 264](https://docs.legis.wisconsin.gov/document/acts/2005/264) ss. [131](https://docs.legis.wisconsin.gov/document/acts/2005/264%2C%20s.%20131) to [134](https://docs.legis.wisconsin.gov/document/acts/2005/264%2C%20s.%20134), [161](https://docs.legis.wisconsin.gov/document/acts/2005/264%2C%20s.%20161); [2005 a. 387](https://docs.legis.wisconsin.gov/document/acts/2005/387) s. [117](https://docs.legis.wisconsin.gov/document/acts/2005/387%2C%20s.%20117); [2007 a. 45](https://docs.legis.wisconsin.gov/document/acts/2007/45).

55.11 AnnotationA proposed ward's rightful refusal to participate in a court-ordered evaluation will not obstruct a guardianship and protective placement proceeding. Due process requires that the examining professional, when confronted with an uncooperative individual, engage in an independent review of all records that are available. Due process prevents the examining professional from regurgitating the opinions of other physicians and psychologists, without independently confirming the facts those opinions are based upon. Walworth County v. Therese B. [2003 WI App 223](https://docs.legis.wisconsin.gov/document/courts/2003%20WI%20App%20223), [267 Wis. 2d 310](https://docs.legis.wisconsin.gov/document/courts/267%20Wis.%202d%20310), [671 N.W.2d 377](https://docs.legis.wisconsin.gov/document/courts/671%20N.W.2d%20377), [03-0967](https://docs.legis.wisconsin.gov/document/wicourtofappeals/03-0967).

55.11 Note **NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by** [**2005 Wis. Act 264**](https://docs.legis.wisconsin.gov/document/acts/2005/264)**.**

[55.12](https://docs.legis.wisconsin.gov/document/statutes/55.12) **55.12  Order for protective services or protective placement.**

[55.12(1)](https://docs.legis.wisconsin.gov/document/statutes/55.12%281%29)**(1)** When ordering protective placement under the standards specified in s. [55.08 (1)](https://docs.legis.wisconsin.gov/document/statutes/55.08%281%29) or protective services under the standards specified in s. [55.08 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.08%282%29), the court, on the basis of the evaluation and other relevant evidence, shall order the county department or agency with which it contracts under s. [55.02 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.02%282%29) to provide protective placement or protective services to the individual.

[55.12(2)](https://docs.legis.wisconsin.gov/document/statutes/55.12%282%29) **(2)**Subject to s. [46.279](https://docs.legis.wisconsin.gov/document/statutes/46.279), protective placement may be made to nursing homes, public medical institutions, centers for the developmentally disabled under the requirements of s. [51.06 (3)](https://docs.legis.wisconsin.gov/document/statutes/51.06%283%29), foster care services or other home placements, or to other appropriate facilities, but may not be made to units for the acutely mentally ill. An individual who is subject to an order for protective placement or protective services may be detained on an emergency basis under s. [51.15](https://docs.legis.wisconsin.gov/document/statutes/51.15) or involuntarily committed under s. [51.20](https://docs.legis.wisconsin.gov/document/statutes/51.20) or may be voluntarily admitted to a treatment facility for inpatient care under s. [51.10 (8)](https://docs.legis.wisconsin.gov/document/statutes/51.10%288%29). No individual who is subject to an order for protective placement or services may be involuntarily transferred to, detained in, or committed to a treatment facility for care except under s. [51.15](https://docs.legis.wisconsin.gov/document/statutes/51.15) or [51.20](https://docs.legis.wisconsin.gov/document/statutes/51.20). Protective placement in a locked unit shall require a specific finding of the court as to the need for the action.

[55.12(3)](https://docs.legis.wisconsin.gov/document/statutes/55.12%283%29) **(3)**Protective placement or protective services provided by a county department or an agency with which it contracts under s. [55.02 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.02%282%29) are subject to s. [46.279](https://docs.legis.wisconsin.gov/document/statutes/46.279) and shall be provided in the least restrictive environment and in the least restrictive manner consistent with the needs of the individual to be protected and with the resources of the county department.

[55.12(4)](https://docs.legis.wisconsin.gov/document/statutes/55.12%284%29) **(4)**Factors that a county department shall consider in providing protective placement or protective services shall include the needs of the individual to be protected for health, social, or rehabilitative services; the level of supervision needed; the reasonableness of the placement or services given the cost and the actual benefits in the level of functioning to be realized by the individual; the limits of available state and federal funds and of county funds required to be appropriated to match state funds; and the reasonableness of the protective placement or protective services given the number or projected number of individuals who will need protective placement or protective services and given the limited funds available.

[55.12(5)](https://docs.legis.wisconsin.gov/document/statutes/55.12%285%29) **(5)**Except as provided in s. [49.45 (30m)](https://docs.legis.wisconsin.gov/document/statutes/49.45%2830m%29), the county may not be required to provide funding, in addition to its funds that are required to be appropriated to match state funds, in order to provide protective placement or protective services to an individual. Protective placement under this section does not replace commitment of an individual in need of acute psychiatric treatment under s. [51.20](https://docs.legis.wisconsin.gov/document/statutes/51.20) or [51.45 (13)](https://docs.legis.wisconsin.gov/document/statutes/51.45%2813%29).

[55.12(6)](https://docs.legis.wisconsin.gov/document/statutes/55.12%286%29) **(6)**If the county department or agency with which it contracts under s. [55.02 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.02%282%29) proposes to provide protective placement to an individual who has a developmental disability in an intermediate facility or a nursing facility under an order under this section, the county department or agency, or, if s. [46.279 (4m)](https://docs.legis.wisconsin.gov/document/statutes/46.279%284m%29) applies to the individual, the department or the department's contractor shall develop a plan under s. [46.279 (4)](https://docs.legis.wisconsin.gov/document/statutes/46.279%284%29) and furnish the plan to the county department or agency and to the individual's guardian. The county department or agency with which it contracts under s. [55.02 (2)](https://docs.legis.wisconsin.gov/document/statutes/55.02%282%29) shall provide protective placement to the individual in a noninstitutional community setting in accord with the plan unless the court finds that protective placement in the intermediate facility or nursing facility is the most integrated setting, as defined in s. [46.279 (1) (bm)](https://docs.legis.wisconsin.gov/document/statutes/46.279%281%29%28bm%29), that is appropriate to the needs of the individual, taking into account information presented by all affected parties.

[55.12(7)](https://docs.legis.wisconsin.gov/document/statutes/55.12%287%29) **(7)**If an individual to be protectively placed is a resident of a facility licensed for 16 or more beds, the court may consider whether moving the individual would create a serious risk of harm to that individual.

[55.12(8)](https://docs.legis.wisconsin.gov/document/statutes/55.12%288%29) **(8)**The court may order protective services as an alternative to protective placement.

[55.12(9)](https://docs.legis.wisconsin.gov/document/statutes/55.12%289%29) **(9)**The court may order psychotropic medication as a protective service only as provided in s. [55.14](https://docs.legis.wisconsin.gov/document/statutes/55.14).

[55.12(10)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29) **(10)**

[55.12(10)(a)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28a%29)**(a)** If a court orders protective services or protective placement of an individual under this section and if an order has not been made under s. [54.10 (3) (f)](https://docs.legis.wisconsin.gov/document/statutes/54.10%283%29%28f%29) for the individual, the court shall determine if, under [18 USC 922](https://docs.legis.wisconsin.gov/document/usc/18%20USC%20922) (g) (4), the individual is prohibited from possessing a firearm. If the individual is prohibited, the court shall order the individual not to possess a firearm, order the seizure of any firearm owned by the individual, and inform the individual of the requirements and penalties under s. [941.29](https://docs.legis.wisconsin.gov/document/statutes/941.29).

[55.12(10)(b)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28b%29) **(b)**

[55.12(10)(b)1.](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28b%291.)**1.** If a court orders under par. [(a)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28a%29) an individual not to possess a firearm, the individual may petition that court or the court in the county where the individual resides to cancel the order.

[55.12(10)(b)2.](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28b%292.) **2.** The court considering the petition under subd. [1.](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28b%291.) shall grant the petition if the court determines that the circumstances regarding the protective services or protective placement order under this section and the individual's record and reputation indicate that the individual is not likely to act in a manner dangerous to public safety and that the granting of the petition would not be contrary to public interest.

[55.12(10)(b)3.](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28b%293.) **3.** If the court grants the petition under subd. [2.](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28b%292.), the court shall cancel the order under par. [(a)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28a%29) and order the return of any firearm ordered seized under par. [(a)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28a%29).

[55.12(10)(c)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28c%29) **(c)** In lieu of ordering the seizure under par. [(a)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28a%29), the court may designate a person to store the firearm until the order under par. [(a)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28a%29) is canceled under par. [(b) 3.](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28b%293.)

[55.12(10)(d)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28d%29) **(d)** If the court orders under par. [(a)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28a%29) an individual not to possess a firearm or cancels under par. [(b) 3.](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28b%293.) an order issued under par. [(a)](https://docs.legis.wisconsin.gov/document/statutes/55.12%2810%29%28a%29), the court clerk shall notify the department of justice of the order or cancellation and provide any information identifying the individual that is necessary to permit an accurate firearms restrictions record search under s. [175.35 (2g) (c)](https://docs.legis.wisconsin.gov/document/statutes/175.35%282g%29%28c%29), a background check under s. [175.60 (9g) (a)](https://docs.legis.wisconsin.gov/document/statutes/175.60%289g%29%28a%29), or an accurate response under s. [165.63](https://docs.legis.wisconsin.gov/document/statutes/165.63). No other information from the individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this paragraph only to respond to a request under s. [165.63](https://docs.legis.wisconsin.gov/document/statutes/165.63), as part of a firearms restrictions record search under s. [175.35 (2g) (c)](https://docs.legis.wisconsin.gov/document/statutes/175.35%282g%29%28c%29), under rules the department of justice promulgates under s. [175.35 (2g) (d)](https://docs.legis.wisconsin.gov/document/statutes/175.35%282g%29%28d%29), or as part of a background check under s. [175.60 (9g) (a)](https://docs.legis.wisconsin.gov/document/statutes/175.60%289g%29%28a%29).

55.12 History **History:** [2005 a. 264](https://docs.legis.wisconsin.gov/document/acts/2005/264) ss. [135](https://docs.legis.wisconsin.gov/document/acts/2005/264%2C%20s.%20135), [162](https://docs.legis.wisconsin.gov/document/acts/2005/264%2C%20s.%20162); [2007 a. 45](https://docs.legis.wisconsin.gov/document/acts/2007/45); [2009 a. 258](https://docs.legis.wisconsin.gov/document/acts/2009/258); [2013 a. 168](https://docs.legis.wisconsin.gov/document/acts/2013/168) s. [21](https://docs.legis.wisconsin.gov/document/acts/2013/168%2C%20s.%2021); [2013 a. 223](https://docs.legis.wisconsin.gov/document/acts/2013/223).

55.12 AnnotationA county's duty under former s. 55.06 (9) (a) [now sub. (1)] to provide the least restrictive environment is not limited according to funds available through state and federal funds and those that the county appropriates as matching funds. Protective Placement of D.E.R. [155 Wis. 2d 240](https://docs.legis.wisconsin.gov/document/courts/155%20Wis.%202d%20240), [455 N.W.2d 239](https://docs.legis.wisconsin.gov/document/courts/455%20N.W.2d%20239) (1990).

55.12 AnnotationA court may order an agency to do planning and implementation work necessary to fulfill the obligation to order placement conforming to former s. 55.06 (9) (a) [now sub. (1)] and s. 51.61 (1) (e). In Matter of J.G.S. [159 Wis. 2d 685](https://docs.legis.wisconsin.gov/document/courts/159%20Wis.%202d%20685), [465 N.W.2d 227](https://docs.legis.wisconsin.gov/document/courts/465%20N.W.2d%20227) (Ct. App. 1990).

55.12 AnnotationIn protective placements under former s. 55.06 (9) (a) [now sub. (1)], counties must make an affirmative showing of a good faith, reasonable effort to find an appropriate placement and to secure funding to pay for an appropriate placement. Counties bear the burden of showing whether funds are available and whether appropriate placements may be developed within the limits of required funds. Dunn County v. Judy K. [2002 WI 87](https://docs.legis.wisconsin.gov/document/courts/2002%20WI%2087), [254 Wis. 2d 383](https://docs.legis.wisconsin.gov/document/courts/254%20Wis.%202d%20383), [647 N.W.2d 799](https://docs.legis.wisconsin.gov/document/courts/647%20N.W.2d%20799), [00-3135](https://docs.legis.wisconsin.gov/document/wisupremecourt/00-3135).

55.12 Note **NOTE: The above annotations relate to protective placements under ch. 55, stats., prior to the revision of that chapter by** [**2005 Wis. Act 264**](https://docs.legis.wisconsin.gov/document/acts/2005/264)**.**

55.12 AnnotationSection 752.31 (2) (d) and (3) provide that appeals in protective placement cases under ch. 55 are heard by a single court of appeals judge while the general rule under s. 752.31 (1) is that cases disposed of on the merits, including guardianship orders under ch. 54, are heard by a 3-judge panel. When an appeal is taken from a single action granting both a guardianship and protective placement petition, the appeal is to be decided by a 3-judge panel. Waukesha County v. Genevieve M. [2009 WI App 173](https://docs.legis.wisconsin.gov/document/courts/2009%20WI%20App%20173), [322 Wis. 2d 131](https://docs.legis.wisconsin.gov/document/courts/322%20Wis.%202d%20131), [776 N.W.2d 640](https://docs.legis.wisconsin.gov/document/courts/776%20N.W.2d%20640), [09-1755](https://docs.legis.wisconsin.gov/document/wicourtofappeals/09-1755).

55.12 AnnotationThe Department of Workforce Development does not possess authority to independently determine, for worker's compensation purposes, the reasonableness and medical necessity of a protectively placed injured employee's court-ordered transfer to the least restrictive environment under ch. 55. The department's authority is limited to resolving disputes regarding the reasonableness or necessity of treatment provided to an injured employee, which permits the department to evaluate the treatment an employee receives within a placement, but not the placement itself. LaBeree v. LIRC, [2010 WI App 148](https://docs.legis.wisconsin.gov/document/courts/2010%20WI%20App%20148), [330 Wis. 2d 101](https://docs.legis.wisconsin.gov/document/courts/330%20Wis.%202d%20101), [793 N.W.2d 77](https://docs.legis.wisconsin.gov/document/courts/793%20N.W.2d%2077), [09-1628](https://docs.legis.wisconsin.gov/document/wicourtofappeals/09-1628).