

2011 Wisconsin Code
Chapter 55. Protective service system.
55.135 Emergency and temporary protective placement.

55.135

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55.135(1)

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

55.135(2)

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

55.135(3)

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

55.135(4)

(4) When an individual is detained under this section, a petition shall be filed under s. 55.075 by the person making the emergency protective placement and a preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, to establish probable cause to believe the grounds for protective placement under s. 55.08 (1). The sheriff or other person making emergency protective placement under sub. (1) shall provide the individual with written notice and orally inform him or her of the time and place of the preliminary hearing. If the detainee is not under guardianship, a petition for guardianship shall accompany the protective

placement petition, except in the case of a minor who is alleged to have a developmental disability. In the event that protective placement is not appropriate, the court may elect to treat a petition for protective placement as a petition for commitment under s. 51.20 or 51.45 (13).

55.135(5)

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

55.135(6)

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

55.135 - ANNOT.

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

55.135 - ANNOT.

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

55.135 - ANNOT.

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

55.135 - ANNOT.

An emergency protective placement must be based on personal observation by one of the individuals listed in former s. 55.06 (11) (a) [now sub. (1)]. Costs could not be assessed against

the subject of an emergency placement proceeding that was outside the statutory guidelines. Ethelyn I.C. v. Waukesha County, 221 Wis. 2d 109, 584 N.W.2d 211 (Ct. App. 1998), 97-2236. 55.135 - ANNOT.

A circuit court loses competence if the hearing under former s. 55.06 (11) (b) [now sub. (4)] is not held within 72 hours after the person is first taken into custody. The filing of a new petition does not start the clock anew. Kindcare, Inc. v. Judith G. 2002 WI App 36, 250 Wis. 2d 817, 640 N.W.2d 839, 00-3450. 55.135 - ANNOT.

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

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