2013 DRAFTING REQUEST

Bill

Received:	**1/24/2013**	Received By:	**tdodge**
Wanted:	**As time permits**	Same as LRB:	
For:	**Legislative Council - JLC 266-0932**	By/Representing:	**Mary Matthias**
May Contact:		Drafter:	**tdodge**
Subject:	**Mental Health - grdnshp/prt plc**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Mary.Matthias@legis.wisconsin.gov**
Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Psychiatric and behavioral care and treatment for individuals with dementia.

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tdodge 5/22/2013			_____ _____			
/P1	tdodge 10/22/2013	scalvin 7/2/2013	jmurphy 7/2/2013	_____ _____	lparisi 7/2/2013		State S&L Crime
/P2	tdodge 12/3/2013	scalvin 10/24/2013	rschluet 10/25/2013	_____ _____	srose 10/25/2013		State S&L

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
							Crime
/1		scalvin 12/6/2013	rschluet 12/6/2013	_____ _____	srose 12/6/2013	lparisi 12/6/2013	State S&L Crime

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at
intro

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/P2		scalvin 10/24/2013	rschluet 10/25/2013		srose 10/25/2013		State S&L
		/1 sac 12/5/2013	/1 sac 12/06/2013				

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tdodge		LC Conversion 1/30 pth	_____ _____			
FE Sent For:		/P1 sac 06/05/2013	1/2	RS 1/2			

<END>

1 AN ACT *to amend* 51.01 (13) (b), 51.15 (1) (a) (intro.), 51.61 (1) (intro.), 51.67, 55.02
2 (3), 55.10 (1), 55.12 (2), 55.135 (1), 55.14 (1) (b) 2., 55.14 (2), 55.14 (3) (e) (intro.)
3 and (4), 55.15 (1) and 55.18 (1) (b); and *to create* 51.01 (4v), 51.12, 51.15 (1m),
4 51.20 (1) (a) 1m., 55.01 (1x), 55.01 (3), 55.13 (6), 55.14 (3) (em) and (4m),
5 subchapter II (title) of chapter 55 [precedes 55.48], 55.48, 55.50, 55.53, 55.55,
6 55.57, 55.59, 55.61, 55.63, 55.65 and 55.67 of the statutes; **relating to:** psychiatric
7 and behavioral care and treatment for individuals with dementia.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Legal Interventions for Persons With Alzheimer's Disease and Related Dementias.

Overview

The draft creates a new subchapter in ch. 55 titled "Psychiatric and Behavioral Care for Individuals With Dementia". The subchapter applies to the provision of behavioral and psychiatric evaluation, diagnosis, services and treatment and the involuntary administration of psychotropic medication to individuals with dementia to address or alleviate symptoms or conditions associated with dementia, mental illness, and other psychiatric conditions.

The draft specifies that individuals with dementia are not subject to ch. 51 emergency detention and involuntary commitment procedures. The draft creates alternative procedures within ch. 55 under which individuals with dementia may be protectively placed or transferred to dementia crisis units, in a planned manner or in an emergency situation, for the purpose of behavioral or psychiatric evaluation, diagnosis, services, or treatment.

"Dementia" is defined under the draft for purposes of chs. 51 and 55 as deterioration or loss of intellectual faculties, reasoning power, memory, and will due to organic brain disease characterized by confusion,

disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and from which recovery is impossible. Dementia includes, but is not limited to, Alzheimer's disease.

The draft specifies that for the purposes of chs. 51 and 55, a person who is competent is not considered to have dementia. This distinction is made because there may be cases in which an individual is diagnosed with dementia but is still legally competent. This could be the case if a person is diagnosed at a very early stage of the disease. Because the person is still competent, they would not be eligible for protective services or treatment under ch. 55. However, the draft provides that a person with dementia is not subject to ch. 51. Thus, the draft states that an individual who is competent is not considered to have dementia so that there is a legal avenue to have a competent person with dementia involuntarily admitted for psychiatric care or treatment.

"Dementia crisis unit" is defined as a unit or part of a unit of a public or private facility that has been identified by a county department as qualified and equipped to provide, and competent in providing, diagnosis, evaluation, and treatment of dementia and medical, psychiatric, and behavioral care, services, and treatment to individuals with dementia and that provides a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals with dementia. Medical facilities need not be located on the premises, but the capacity to provide diagnosis and treatment for medical conditions must be available.

Applicability of Ch. 51 Emergency Detention, Involuntary Commitment, and Conversion to Individuals With Dementia

The draft specifies that "mental illness", for purposes of ch. 51 involuntary commitment, does not include dementia.

The draft specifies that a law enforcement officer may take a person into custody for emergency detention or involuntary commitment under ch. 51 only if, based on observation and currently available information, the individual does not appear to have dementia.

The draft specifies that a person who has dementia or who, based on observation and currently available information, appears to have dementia, may not be detained or involuntarily committed under ch. 51.

Under current law, if the court determines, after a hearing on probable cause for involuntary commitment under ch. 51, that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may appoint a temporary guardian and order temporary protective placement or

services under ch. 55 for a period not to exceed 30 days, and must proceed as if a petition had been made for guardianship and protective placement or services. This procedure is commonly referred to as a "conversion" from ch. 51 to ch. 55. Under current law, if the individual is in a ch. 51 treatment facility at the time of conversion, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available.

The draft specifies that if an individual is in a ch. 51 treatment facility at the time of conversion, and the individual has dementia, the individual may continue to be held in that facility only if the facility is identified by a county as a dementia crisis unit, as described below, and the unit provides an environment that is appropriate for the individual.

Requirement That Corporation Counsel Assist in Prosecuting Conversion Cases

Current law provides that the corporation counsel of the county in which a petition under ch. 55 is brought may, or if requested by the court, must, assist in conducting proceedings under this chapter.

The draft specifies that the corporation counsel of the county in which a petition under ch. 55 is brought must assist in conducting ch. 55 proceedings if both of the following are true: (a) the proceedings were initiated under ch. 51 and subsequently converted to ch. 55 proceedings; and (b) the subject individual has dementia.

County Designation of Dementia Crisis Unit for Emergency and Temporary Protective Placements

The draft requires each county department to identify at least one location as a dementia crisis unit for the purpose of emergency and temporary protective placement for behavioral or psychiatric evaluation, diagnosis, services, or treatment. The county may not identify a location as a dementia crisis unit under this subdivision unless it finds that the location is qualified and equipped to provide, and competent in providing, the diagnosis, evaluation and treatment of dementia and medical, psychiatric, and behavioral care to individuals with dementia and it provides a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals with dementia. Medical facilities need not be located on the premises, but the capacity to provide diagnosis and treatment for medical conditions must be available.

The draft requires the county department to solicit information and advice from the public, including family caregivers of individuals with dementia, organizations concerned with Alzheimer's disease and dementia, the treatment of mental illness or the provision of long–term

care, and any other appropriate individuals or organizations, to aid it in carrying out its responsibility to designate one or more locations as dementia crisis units.

The county department must implement a procedure to periodically review and update the designation of one or more locations as dementia crisis units as necessary and appropriate.

County and Department of Health Services Reports

The draft requires each county department to prepare and submit a report to the Department of Health Services (DHS) that identifies each location that it has designated as a dementia crisis unit for the purpose of emergency and temporary protective placements. The report must specify the capacity of each designated unit, describe the process used to solicit information and advice from the public and summarize the information and advice received. The report must be updated whenever the county newly designates a unit or revokes a unit's designation.

The draft also requires each county department to annually prepare and submit a report to DHS that states the total number of petitions for emergency protective placement or temporary transfer of an individual with dementia to a dementia crisis unit filed in the county and the total number of those petitions that resulted in a placement in a dementia crisis unit.

The draft requires DHS, by June 30 of each even–numbered year, to submit to the legislature a report that includes all of the following:

(a) Identification of the dementia crisis units designated by counties and the capacity of those units, as provided in reports submitted to DHS by county departments.

(b) A summary of the procedures used by counties to solicit information and advice from the public when making dementia crisis unit designations, as provided in reports submitted to DHS by county departments.

(c) A summary of the information provided to DHS by counties regarding the number of petitions filed for emergency protective placement or temporary transfer of an individual with dementia to a dementia crisis unit.

IAPM as an Emergency Protective Service for Individuals With Dementia

Current Law

Under current law, involuntary administration of psychotropic medication (IAPM) may be ordered as a protective service under s. 55.14, stats. "Involuntary administration of psychotropic medication" means any of the following:

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

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

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

Under current law, all of the requirements applicable to a petition for protective services must be met, including the filing of a petition for guardianship if the individual does not already have a guardian. In addition, a petition continuing extensive allegations specific to the issue of IAPM must be filed, a guardian ad litem must make a report to the court, the individual's physician must provide a detailed written statement, and the individual has a right to an independent medical or psychological examination. The court must hold a hearing on the petition for IAPM within 30 days. If the individual does not already have a guardian, a petition for guardianship must be heard, and a guardian appointed, before the hearing on the petition for IAPM. IAPM may not begin until the court has issued the order.

Under current law, emergency protective services may be provided to an individual for up to 72 hours, without a court order, if there is reason to believe that if those services are not provided, the individual, or others, will incur a substantial risk of serious physical harm. The services may not be provided for longer than 72 hours unless a petition for protective services is filed, a hearing is held, and the court finds probable cause to believe the criteria for the provision of protective services exist. If the individual is not under guardianship, a petition for guardianship must accompany the petition for protective services.

There is some disagreement as to whether, under current law, IAPM may be provided as an emergency protective service under s. 55.135, stats.

The Draft

The draft creates a procedure under which IAPM may be provided as an emergency protective service to an individual with dementia, or a person who, based on observation and currently available information, appears to have dementia. The draft specifies that IAPM may be provided as an emergency protective service to these individuals only by following the procedures created in the draft.

The draft does not specify whether, or by what procedures, IAPM may be provided as an emergency protective service to individuals who do not have, or do not appear to have, dementia.

Under the draft, IAPM may be provided as an emergency protective service for an individual with dementia only if all of the following are true:

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

(b) The individual is not competent to refuse psychotropic medication. "Not competent to refuse psychotropic medication" means that, as a result of dementia, serious and persistent mental illness, or other like incapacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

(1) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment.

(2) The individual is substantially incapable of applying an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment to his or her condition in order to make an informed choice as to whether to accept or refuse psychotropic medication.

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

(d) Unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.

(e) If the individual is not currently placed in a dementia crisis unit, unless psychotropic medication is administered involuntarily, there is a

substantial likelihood that the individual may be subject to involuntary admission to a dementia crisis unit for psychiatric treatment.

(f) If the individual resides in a nursing home, community–based residential facility, adult family home, or residential care apartment complex ("a facility"), all of the following are true:

1. A physical examination of the individual has been conducted, and a physician has determined with reasonable probability and documented in writing that the behavior is not caused by a physical condition or illness that could be treated successfully by means other than psychotropic medication.

2. The facility has made reasonable efforts to address or accommodate the behavior or condition for which involuntary administration of psychotropic medications is requested and these efforts are documented in the individual's plan of care.

3. The facility has prepared detailed documentation of the behaviors or condition of the individual leading to the request for involuntary administration of psychotropic medications.

(g) The individual meets the standards for protective services under s. 55.08 (2), stats.

If the individual is under guardianship, a good faith effort to obtain the consent of the guardian must be made before involuntary administration of psychiatric medication is provided as an emergency protective service.

A county department or agency with which the county department contracts that provides IAPM as an emergency protective service to an individual must immediately file a petition for IAPM to the individual as a protective service under s. 55.14, stats. The petition must meet all of the requirements of s. 55.14, stats. (The draft makes changes to the required contents of a petition for IAPM as a protective service for an individual with dementia. Those changes are described below.)

The petition must be served on the individual, the individual's guardian, the individual's legal counsel and guardian ad litem, if any, and the county department.

A preliminary hearing must be held within 72 hours of administration of the first dose of psychotropic medication, excluding Saturdays, Sundays, and legal holidays, to establish probable cause that the criteria under s. 55.14, stats., are present.

The county department or agency that provides IAPM as an emergency protective service must provide the individual with written notice and

orally inform the individual of the time and place of the preliminary hearing.

If the court finds probable cause to believe that the criteria under s. 55.14, stats., are present and that the medication will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings, it may order IAPM to continue to be provided as an emergency protective service for up to 30 days pending the hearing under s. 55.14, stats.

If the individual is not under guardianship, a petition for guardianship must be filed at the same time that the petition for IAPM as a protective service is filed. If IAPM is ordered for an individual who does not have a guardian, the court must appoint a temporary guardian for the individual.

IAPM as a Non–Emergency Protective Service for Individuals With Dementia

Evidence of Harm, Impairment, Injury or Debilitation

Current Law. Under current law, IAPM may not be ordered as a protective service unless, in addition to other requirements, it is shown that unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury, or debilitation must be evidenced by one of the following:

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

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

The Draft. The evidence of the substantial probability of physical harm, impairment, injury, or debilitation that is required under current law is linked to standards and findings under ch. 51, stats. The draft specifies that individuals with dementia are not subject to ch. 51 detention and involuntary commitment procedures. Accordingly, the draft changes the evidence required to prove a substantial probability of physical harm,

impairment, injury, or debilitation for cases in which the individual who is the subject of the petition has dementia. Specifically, the draft removes specific references to provisions in ch. 51 and replaces them with new provisions which are modeled on the standards of ch. 51 but modified to be more appropriate for cases involving individuals with dementia. Under the draft, for individuals with dementia, the substantial probability of physical harm, impairment, injury, or debilitation must be shown by evidence of recent acts, attempts, or behavior of the individual, a pattern of recent acts or omissions of the individual, or by evidence that the individual or others are placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual.

Physician Statement

Current Law. Under current law, a petition for IAPM as a protective service must include a written statement signed by a physician who has personal knowledge of the individual that provides general clinical information regarding the appropriate use of psychotropic medication for the individual's condition and specific data that indicates that the individual's current condition necessitates the use of psychotropic medication.

The Draft. Under the draft, if the individual has dementia, the physician statement must also state that a physical examination of the individual has been conducted and, based on that examination, a physician has determined with reasonable probability that the behavior for which treatment with psychotropic medication is sought is not caused by a physical condition or illness that could be treated successfully by means other than psychoptropic medication.

Requirement Applicable to Certain Long–Term Care Facilities

Current Law. Current law authorizing IAPM as a protective service does not contain any requirements regarding efforts made by a long–term care facility to address behaviors by means other than psychotropic medication.

The Draft. Under the draft, if the individual who is the subject of a petition for IAPM has dementia and resides in a nursing home, a community–based residential facility, an adult family home, or a residential care apartment complex, the petition must allege that reasonable efforts have been made to address or accommodate the behavior or condition for which treatment with psychotropic medication is sought. Evidence of the facility's response to the individual's behavior or condition, as documented in records maintained by the facility, must be attached to the petition.

Emergency Protective Placement of an Individual With Dementia in an Dementia Crisis Unit

Current Law

Under current law, an individual may be placed in a protective placement facility (but not a dementia crisis unit) without a court order if 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. This is referred to as an "emergency protective placement".

The person making the emergency protective placement must file a petition for permanent protective placement, and a probable cause hearing must be held within 72 hours. If probable cause for permanent protective placement is found, the court may order temporary protective placement in the dementia crisis unit for up to 30 days pending the final hearing on permanent placement.

Under current law, emergency protective placement may not be made to a unit for the acutely mentally ill, and 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 or 51.20.

The Draft

The draft allows a sheriff, police officer, fire fighter, guardian, or authorized representative of a county department or an agency with which it contracts to take an individual into custody and transport them to a medical facility or a dementia crisis unit if it appears probable that the 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 dementia, mental illness, or a psychiatric condition if not immediately placed and, in addition, all of the following are true:

(a) The individual has dementia, or based on observation and currently available information, it appears probable that the individual has dementia.

(b) The individual has engaged in behavior that creates a substantial risk of serious physical harm to himself or herself or others as manifested by recent acts or omissions.

(c) It appears probable that unless the individual is admitted to a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability shall be manifested by evidence of recent acts, attempts, or behavior of the individual, a pattern of recent acts or omissions by the individual, or by evidence that the individual or others are placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual.

An individual who has been detained as described above may be admitted to a dementia crisis unit as an emergency protective placement if both of the following are true:

(a) A physical examination of the individual has been conducted and a physician has determined with reasonable probability and documented in writing that the behavior is not caused by a physical condition or illness that could be treated safely and appropriately in a setting other than a dementia crisis unit and the physician recommends that the individual be placed in a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment.

(b) The placement is in an environment that is appropriate for the individual.

The person who takes an individual into custody must 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. If the individual is admitted to a dementia crisis unit, the statement must be filed with the director of the dementia crisis unit. The director or designee must provide the individual with a copy of the statement by the person making emergency protective placement.

If the individual was detained at a facility other than the dementia crisis unit to which they are admitted, an individual who is authorized to detain the individual may transport them to the dementia crisis unit.

At the time of admission, the director of the dementia crisis unit, or the director's designee, must inform the individual, 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.

False Statements; Liability. The draft provides that whoever signs a statement, described above, while knowing the information in the statement is false, is guilty of a Class H felony. The draft also provides that a person who acts in accordance with any of the provisions pertaining to emergency protective placement is not liable for any actions performed in good faith.

Petition. The person making the emergency protective placement must file a petition for protective placement that alleges that all of the items listed in items (a) through (e), above, are true.

Probable Cause Hearing. A probable cause hearing must be held within 96 hours of detention, excluding Saturdays, Sundays, and legal holidays. An individual is considered to be detained when he or she is taken into custody for the purpose of emergency protective placement. At the request of the subject individual, his or her counsel or guardian ad litem, the probable cause hearing may be postponed, but in no case may the postponement exceed 7 days from the date of emergency protective placement. If the individual is not under guardianship, a petition for guardianship must accompany the petition for protective placement. The draft provides that if the court finds that protective placement is not appropriate, the court may elect to treat a petition for protective placement under this section as a petition for involuntary commitment under ch. 51. This is identical to a provision in current law that applies to petitions for emergency protective placement.

Order for Temporary Protective Placement in a Dementia Crisis Unit. The court may, at the probable cause hearing, order temporary protective placement of the individual in a dementia crisis unit for up to 45 days, pending the hearing on the petition for permanent protective placement. The court may make this order if it finds probable cause to believe that the existing grounds for emergency protective placement exist and all of the allegations listed in items (a) through (e), above, are true. The court may order protective services as may be required.

Transportation Upon Discharge. The order, and any subsequent extension of the order, must state that the county in which the original order for protective placement of the individual was issued is responsible for transportation of the individual to any facility to which placement of the individual is ordered upon discharge of the individual from the dementia crisis unit.

Final Hearing on Protective Placement. The hearing on permanent protective placement must be held within 45 days after the emergency protective placement in a dementia crisis unit. At the hearing on the permanent protective placement petition, the court may order placement

in a protective placement facility, but not a dementia crisis unit. If continued placement in the dementia crisis unit is desired, a petition for extension of the order for temporary placement must be filed, as described below. Current law provides the right to a jury trial if demanded by the individual sought to be protected or his or her attorney or guardian ad litem. The court must require a comprehensive evaluation of the individual, and the individual has the right to secure an independent evaluation as provided in s. 55.11 (2).

Extension of Temporary Protective Placement in a Dementia Crisis Unit

Under the draft, the order for temporary placement in the dementia crisis unit may be extended for 60 days beyond the initial 45–day temporary placement period if certain requirements are met. A petition for extension of the temporary placement must be filed prior to the hearing on the petition for permanent protective placement. If the court orders permanent protective placement of the individual, the hearing on the petition for extension is held immediately after that order is issued. If the court does not order permanent protective placement of the individual, the petition for extension must be dismissed. If requested, a jury trial must be held. Allegations similar to those required to be proven at the probable cause hearing must be proven. The court must also appoint 2 examiners, as is required for involuntary commitments under ch. 51, to examine the individual and provide a report to the court before the hearing or trial. The court may order an extension for a period of not more than 60 days.

Subsequent Extensions of Temporary Protective Placement in an Dementia Crisis Unit

Temporary placement in the dementia crisis unit may be extended in subsequent increments of no more than 60 days each. For each such extension, a petition alleging that the individual meets the standards for temporary placement in the dementia crisis unit must be filed no later than 10 days prior to the expiration of the most–recently issued order for temporary placement. If an emergency makes it impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration of the period of temporary protective placement. The petition must be served on the individual, the individual's guardian, the individual's legal counsel, and guardian ad litem, if any, and the county department. Examination by 2 experts must be conducted and a hearing must be held. A trial by a jury must be provided if demanded by the individual or his or her attorney or guardian ad litem. After the hearing, if grounds for continued placement of the individual are proven, the court may issue an order extending the temporary placement for up to 60 days.

Temporary Transfer of a Protectively Placed Individual With Dementia to a Dementia Crisis Unit

Current Law

Under current law, an individual under a protective placement order may not be transferred to any facility for which commitment procedures are required under ch. 51.

The Draft

The draft authorizes the court to order the transfer of an individual with dementia who is under a protective placement order to a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment, for a period not to exceed 45 days, as described below.

Petition. The draft provides that any of the following may file a petition for transfer of an individual to a dementia crisis unit: the individual's guardian, a county department (or agency with which it contracts), DHS, or the protective placement facility.

A petition for transfer of an individual who is under a protective placement order to a dementia crisis unit must allege all of the following:

(a) The individual has been diagnosed with dementia or appears to have dementia.

(b) The individual has engaged in behavior that creates a substantial risk of serious physical harm to himself or herself or others as manifested by recent acts or omissions.

(c) A physician who has personal knowledge of the individual has conducted a physical examination of the individual within the past 7 days and, based on that examination, the following are true:

1. The physician has determined with reasonable probability and documented in writing that the behavior is not caused by a physical condition or illness that could be treated safely and appropriately in a setting other than a dementia crisis unit.

2. The physician has determined with reasonable probability that the individual's behavior or condition may be improved by transfer to a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment.

(d) Unless the individual is temporarily transferred to a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability of being subject to a change in permanent placement to a more restrictive setting due to the inability of the current placement facility to provide for the

safety of the individual or others due to the behavior of the individual. The substantial probability of a change in placement to a more restrictive setting must be shown by the following:

1. Evidence of recent acts, attempts, or behavior of the individual, a pattern of recent acts or omissions by the individual, or by evidence that the individual or others are placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual.

2. Evidence of the facility's response to the individual's acts, attempts, omissions, or threats described above, as documented in records maintained by the facility.

(e) The protective placement facility has made reasonable efforts to address or accommodate the behavior or condition for which behavioral or psychiatric evaluation, diagnosis, services, or treatment in a dementia crisis unit is sought and these steps are documented in the individual's plan of care.

(f) The proposed placement is in an environment that is appropriate for the individual.

(g) The protective placement facility has prepared detailed documentation of the behaviors or condition of the individual that necessitate inpatient behavioral or psychiatric evaluation, diagnosis, services, or treatment, including detailed information regarding the physical examination conducted and efforts taken by the facility to address or accommodate the individual's behavior, and provides this documentation to the dementia crisis unit.

(h) One of the following is true:

1. The protective placement facility has a plan in place for the orderly return of the individual upon discharge from the dementia crisis unit, which specifies the conditions under which the individual will be readmitted to the facility, and a copy of the plan is included with the petition.

2. The protective placement facility has determined that readmission of the individual to the facility upon discharge from the dementia crisis unit is not in the best interests of the individual, and includes, with the petition, specific factual information supporting this conclusion.

Consent of Guardian and County Department Required. Under the draft, the written consent of the individual's guardian and the county department are required in order to carry out a transfer to a dementia

crisis unit, except in the case of an emergency transfer, as described below.

Hearing; Order to Transfer. The court must hold a hearing within 72 hours after the filing of a petition for transfer. At the request of the individual or his or her counsel or a guardian ad litem, the hearing may be postponed for up to 7 days from the date of emergency transfer.

At the hearing, the court must consider whether the standards for transfer described above have been met and whether the proposed transfer to a dementia crisis unit is in the best interests of the person under protective placement.

Following the hearing, the court must do one of the following:

(a) If the court finds that the individual continues to meet the standards for protective placement and the proposed transfer to a dementia crisis unit does not meet the standards for transfer, the court must issue an order prohibiting the transfer. The court must include the information relied upon as a basis for the order and make findings based on those standards in support of the denial of the transfer.

(b) If the court finds that the individual continues to meet the standards for protective placement and the proposed transfer to a dementia crisis unit meets the standards for transfer, the court may order the transfer of the individual to a dementia crisis unit for a period not to exceed 45 days.

(c) If the court finds that the individual no longer meets the standards for protective placement the court must terminate the protective placement.

Emergency Transfer of Placement of an Individual With Dementia to Dementia Crisis Unit; Probable Cause Hearing; Order

If an emergency makes it impossible to file a petition prior to transfer to a dementia crisis unit or to obtain the prior written consent of the guardian, the individual may be transferred without the prior written consent of the guardian and without a prior court order. A petition containing all of the allegations required for temporary transfer to a dementia crisis unit, and identification of the specific facts and circumstances which made it impossible to carry out the transfer under the nonemergency procedures, must be filed immediately upon transfer.

The court must hold a hearing within 72 hours of the transfer. At the request of the subject individual, his or her counsel or guardian ad litem, the probable cause hearing may be postponed for up to 7 days from the date of the emergency transfer.

After the hearing, the court must issue an order based upon its findings, as set forth above in the description of nonemergency temporary transfer procedures. In addition to the factors that must be considered for nonemergency transfers, the court must also consider whether there is probable cause to believe the allegations that an emergency made it impossible to file a petition and carry out the transfer as a nonemergency transfer.

Transportation Upon Discharge. The order for transfer to a dementia crisis unit, and any subsequent extension of the order, must state that the county in which the original order for protective placement of the individual was issued is responsible for transportation of the individual to any facility to which placement of the individual is ordered upon discharge of the individual from the dementia crisis unit.

Extension of Temporary Transfer to a Dementia Crisis Unit

The order for temporary transfer to a dementia crisis unit may be extended for 60 days beyond the initial 45–day period of transfer if a petition for extension of the temporary placement is filed before expiration of the order for temporary placement, and the court orders the extension after a hearing. If requested, a jury trial must be held. Allegations similar to those required to be proven at the probable cause hearing must be proven. The court must also appoint 2 examiners, as is required for involuntary commitments under ch. 51, to examine the individual and provide a report to the court before the hearing or trial.

Subsequent Extensions of Temporary Transfer to a Dementia Crisis Unit

Temporary transfer to a dementia crisis unit may be subsequently extended in increments of no more than 60 days. For each such extension, a petition alleging that the individual meets the standards for temporary transfer to the dementia crisis unit must be filed no later than 10 days prior to the expiration of the most–recently issued order for temporary transfer. If an emergency makes it impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration of the period of temporary transfer.

The petition must be served on the individual, the individual's guardian, the individual's legal counsel, and guardian ad litem, if any, and the county department. Examination by 2 experts must be conducted and a hearing must be held. The examiner's reports must be made available 72 hours in advance of the hearing. A trial by a jury must be provided if demanded by the individual sought to be protected or his or her attorney or guardian ad litem. After the hearing, if grounds for continued transfer

to the dementia crisis unit are proven, the court may issue an order extending the temporary placement for up to 60 days.

Medication and Treatment of an Individual With Dementia in a Dementia Crisis Unit

When an individual with dementia is placed or remains in a dementia crisis unit under any of the new procedures created in the draft, the director and staff of the dementia crisis unit may evaluate, diagnose and treat the individual if the individual consents. The individual has a right to refuse medication and treatment, except as provided in an order for involuntary administration of psychotropic medication as a protective service or an emergency protective service, or in a situation in which medication or treatment is necessary to prevent serious physical harm to the individual or others. The individual must be advised of these rights by the director of the dementia crisis unit or his or her designee.

Provisions Applicable to Dementia Crisis Units Used for Emergency or Temporary Protective Placements; Liability

Discharge

The draft provides that when, upon the advice of the treatment staff, the director of a dementia crisis unit to which an individual has been transferred or placed for emergency protective placement determines that the grounds for transfer or emergency placement no longer exist, he or she must notify the county department in order to arrange for transfer of the individual to a protective placement facility.

Liability

Any individual who acts in accordance with the provisions of the draft, including making a determination that an individual has or does not have dementia or evidences or does not evidence a substantial probability of harm, is not liable for any actions taken in good faith. The good faith of the actor shall be presumed in any civil action. The draft states that whoever asserts that the individual who acts in accordance with this section has not acted in good faith has the burden of proving that assertion by evidence that is clear, satisfactory, and convincing.

1 **SECTION 1.** 51.01 (4v) of the statutes is created to read:

2 51.01 **(4v)** "Dementia" means deterioration or loss of intellectual faculties, reasoning
3 power, memory, and will due to organic brain disease characterized by confusion,
4 disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and

1 from which recovery is impossible. Dementia includes, but is not limited to, Alzheimer's
2 disease. For the purpose of this chapter, an individual who is competent is not considered to
3 have dementia.

4 **SECTION 2.** 51.01 (13) (b) of the statutes is amended to read:

5 51.01 **(13)** (b) "Mental illness", for purposes of involuntary commitment, means a
6 substantial disorder of thought, mood, perception, orientation, or memory which grossly
7 impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary
8 demands of life, but does not include alcoholism <u>or dementia</u>.

9 **SECTION 3.** 51.12 of the statutes is created to read:

10 **51.12 Involuntary admissions under protective placement procedures.** Admission
11 to a dementia crisis unit under s. 55.01 (3) may be made under protective placement
12 procedures as provided under ss. 55.59 and 55.65.

13 **SECTION 4.** 51.15 (1) (a) (intro.) of the statutes is amended to read:

14 51.15 **(1)** (a) (intro.) A law enforcement officer or other person authorized to take a child
15 into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an
16 individual into custody if the officer or person has cause to believe that the individual is
17 mentally ill, is drug dependent, or is developmentally disabled <u>and, based on observation and</u>
18 <u>currently available information, that the individual does not have or appear to have dementia,</u>
19 and that the individual evidences any of the following:

20 **SECTION 5.** 51.15 (1m) of the statutes is created to read:

21 51.15 **(1m)** DETENTION OF INDIVIDUALS WITH DEMENTIA. A person who has dementia or
22 who, based on observation and currently available information, appears to have dementia,
23 may not be detained under this section. A person who has dementia or who, based on
24 observation and currently available information, appears to have dementia, may be detained

1 only as provided under s. 55.59 for purposes of emergency protective placement or as
2 provided under s. 55.65 for purposes transfer of protective placement.

3 **SECTION 6.** 51.20 (1) (a) 1m. of the statutes is created to read:

4 51.20 **(1)** (a) 1m. Based on observation and currently available information, the
5 individual does not have or appear to have dementia.

6 **SECTION 7.** 51.61 (1) (intro.) of the statutes is amended to read:

7 51.61 **(1)** (intro.) In this section, "patient" means any individual who is receiving
8 services for mental illness, developmental disabilities, alcoholism or drug dependency,
9 including any individual who is admitted to a treatment facility in accordance with this chapter
10 or ch. 48 or 55 or who is detained, committed or placed under this chapter or ch. 48, 55, 971,
11 975 or 980, or who is transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is
12 receiving care or treatment for those conditions through the department or a county
13 department under s. 51.42 or 51.437 or in a private treatment facility. <u>In this section, "patient"</u>
14 <u>also means any individual who is receiving psychiatric or behavioral care or services in a</u>
15 <u>dementia crisis unit under s. 55.01 (3), pursuant to subch. II of ch. 55, to the extent that</u>
16 <u>provisions of this section do not conflict with provisions of ch. 55 applicable to that individual.</u>
17 "Patient" does not include persons committed under ch. 975 who are transferred to or residing
18 in any state prison listed under s. 302.01. In private hospitals and in public general hospitals,
19 "patient" includes any individual who is admitted for the primary purpose of treatment of
20 mental illness, developmental disability, alcoholism or drug abuse but does not include an
21 individual who receives treatment in a hospital emergency room nor an individual who
22 receives treatment on an outpatient basis at those hospitals, unless the individual is otherwise
23 covered under this subsection. Except as provided in sub. (2), each patient shall:

24 **SECTION 8.** 51.67 of the statutes is amended to read:

1 **51.67 Alternate procedure; protective services.** If, after a hearing under s. 51.13 (4)
2 or 51.20, the court finds that commitment under this chapter is not warranted and that the
3 subject individual is a fit subject for guardianship and protective placement or services, the
4 court may, without further notice, appoint a temporary guardian for the subject individual and
5 order temporary protective placement or services under ch. 55 for a period not to exceed 30
6 days. Temporary protective placement for an individual in a center for the developmentally
7 disabled is subject to s. 51.06 (3). Any interested party may then file a petition for permanent
8 guardianship or protective placement or services, including medication, under ch. 55. If the
9 individual is in a treatment facility, and the individual does not have or, based on observation
10 and currently available information, appear to have, dementia, the individual may remain in
11 the facility during the period of temporary protective placement if no other appropriate facility
12 is available. If the individual is in a treatment facility, and the individual has, or based on
13 currently available information appears to have, dementia, the individual may remain in the
14 facility during the period of temporary protective placement only if the facility is identified
15 by a county as a dementia crisis unit under s. 55.55, and the facility provides an environment
16 that is appropriate for the individual. The court may order psychotropic medication as a
17 temporary protective service under this section for an individual who has or, based on
18 currently available information, appears to have dementia only as provided in s. 55.57. The
19 court may order psychotropic medication as a temporary protective service under this section
20 for an individual who does not have or appear to have dementia if it finds that there is probable
21 cause to believe the individual is not competent to refuse psychotropic medication and that
22 the medication ordered will have therapeutic value and will not unreasonably impair the
23 ability of the individual to prepare for and participate in subsequent legal proceedings. An
24 individual is not competent to refuse psychotropic medication if, because of serious and

1 persistent mental illness, and after the advantages and disadvantages of and alternatives to
2 accepting the particular psychotropic medication have been explained to the individual, one
3 of the following is true:

4 **SECTION 9.** 55.01 (1x) of the statutes is created to read:

5 55.01 **(1x)** "Dementia" means deterioration or loss of intellectual faculties, reasoning
6 power, memory, and will due to organic brain disease characterized by confusion,
7 disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and
8 from which recovery is impossible. Dementia includes, but is not limited to, Alzheimer's
9 disease. For the purposes of this chapter, an individual who is competent is not considered
10 to have dementia.

11 **SECTION 10.** 55.01 (3) of the statutes is created to read:

12 55.01 **(3)** "Dementia crisis unit" means a unit or part of a unit of a public or private
13 facility that has been designated by a county department as qualified and equipped to provide,
14 and competent in providing, diagnosis, evaluation, and treatment of dementia and medical,
15 psychiatric and behavioral care to individuals with dementia under s. 55.55, and that provides
16 a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals
17 with dementia. Medical facilities need not be located on the premises, but the capacity to
18 provide diagnosis and treatment for medical conditions must be available.

NOTE: Creates a definition of "dementia crisis unit" for the purpose of ch. 55.

19 **SECTION 11.** 55.02 (3) of the statutes is amended to read:

20 55.02 **(3)** CORPORATION COUNSEL. The corporation counsel of the county in which the
21 petition is brought may or, if requested by the court, shall assist in conducting proceedings

1 under this chapter. The corporation counsel shall assist in conducting any proceedings under
2 this chapter in which both of the following are true:
3 (a) The proceedings were initiated under s. 51.20 (7) (d) 1. or 51.67.
4 (b) The subject individual has or appears to have dementia.
5 **SECTION 12.** 55.10 (1) of the statutes is amended to read:
6 55.10 **(1)** TIME LIMITS. A petition for protective placement or protective services shall
7 be heard within 60 days after it is filed unless an extension of this time is requested by the
8 petitioner, the individual sought to be protected or the individual's guardian ad litem, or the
9 county department, in which case the court may extend the date for hearing by up to 45 days.
10 A petition for protective placement that is filed under s. 55.59 (4) in conjunction with an
11 emergency protective placement in a dementia crisis unit shall be heard within 45 days after
12 it is filed. The court may not extend the time for hearing a petition for protective placement
13 that is filed under s. 55.59 (4) in conjunction with an emergency protective placement in a
14 dementia crisis unit. If an individual under s. 50.06 (3) alleges that another individual is
15 making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the
16 incapacitated individual or if the incapacitated individual verbally objects to or otherwise
17 actively protests the admission, the petition shall be heard as soon as possible within the
18 60–day period.
19 **SECTION 13.** 55.12 (2) of the statutes is amended to read:
20 55.12 **(2)** Subject to s. 46.279, protective placement may be made to nursing homes,
21 public medical institutions, centers for the developmentally disabled under the requirements
22 of s. 51.06 (3), foster care services or other home placements, or to other appropriate facilities~~,~~
23 ~~but~~. Protective placement may not be made to ~~units~~ a unit for the acutely mentally ill unless
24 the unit is designated as a dementia crisis unit under s. 55.55 and appropriate procedures under

1 subch. II are followed. A protective placement that is otherwise permissible under subch. I
2 is not prohibited solely because the placement facility has one or more units or locations
3 designated under s. 55.55 or is associated with a facility that is designated under s. 55.55. An
4 individual other than an individual who has dementia or who, based on observation and
5 currently available information appears to have dementia, who is subject to an order for
6 protective placement or protective services may be detained on an emergency basis under s.
7 51.15 or involuntarily committed under s. 51.20 ~~or.~~ An individual who is subject to an order
8 for protective placement or protective services may be voluntarily admitted to a treatment
9 facility or a dementia crisis unit for inpatient care under s. 51.10 (8). No individual who is
10 subject to an order for protective placement or services may be involuntarily transferred to,
11 detained in, or committed to a treatment facility for care except under s. 51.15 or 51.20. This
12 subsection does not prohibit the placement in or the transfer of an individual who has dementia
13 or who, based on currently available information, appears to have dementia, to a dementia
14 crisis unit as provided in s. 55.59 or 55.65. Protective placement in a locked unit shall require
15 a specific finding of the court as to the need for the action.

16 **SECTION 14.** 55.13 (6) of the statutes is created to read:

17 55.13 **(6)** For an individual with dementia, or who, based on observation and currently
18 available information, appears to have dementia, involuntary administration of psychotropic
19 medications may be provided as an emergency protective service only as provided under s.
20 55.57.

21 **SECTION 15.** 55.135 (1) of the statutes is amended to read:

22 55.135 **(1)** If, from personal observation of, or a reliable report made by a person who
23 identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if any, or
24 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. An individual may be transported to a dementia crisis unit for emergency protective placement only if the individual has dementia or, based on observation and currently available information, appears to have dementia and only as provided under s. 55.59. 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.

SECTION 16. 55.14 (1) (b) 2. of the statutes is amended to read:

55.14 **(1)** (b) 2. The individual is substantially incapable of applying an understanding of the advantages~~,~~ and disadvantages of accepting treatment and the alternatives to accepting treatment to his or her condition in order to make an informed choice as to whether to accept or refuse psychotropic medication.

1 **SECTION 17.** 55.14 (2) of the statutes is amended to read:

2 55.14 **(2)** Involuntary administration of psychotropic medication, with consent of a
3 guardian, may be ordered as a protective service only under the requirements of this section.
4 If an individual has dementia, or, based on currently available information, appears to have
5 dementia, the requirements of s. 55.63 shall also be met.

6 **SECTION 18.** 55.14 (3) (e) (intro.) and (4) of the statutes are amended to read:

7 55.14 **(3)** (e) (intro.) Unless psychotropic medication is administered involuntarily, the
8 individual will incur a substantial probability of physical harm, impairment, injury, or
9 debilitation or will present a substantial probability of physical harm to others. ~~The~~ Except
10 as provided in par. (em), the substantial probability of physical harm, impairment, injury, or
11 debilitation shall be evidenced by one of the following:

12 **(4)** A petition under this section ~~must~~ shall include a written statement signed by a
13 physician who has personal knowledge of the individual that provides general clinical
14 information regarding the appropriate use of psychotropic medication for the individual's
15 condition and specific data that indicates that the individual's current condition necessitates
16 the use of psychotropic medication. If the individual has, or appears to have, dementia, the
17 statement shall, in addition, meet the requirements of s. 55.63 (2).

18 **SECTION 19.** 55.14 (3) (em) and (4m) of the statutes are created to read:

19 55.14 **(3)** (em) In the case of an individual who has, or appears to have, dementia, the
20 substantial probability of physical harm, impairment, injury, or debilitation under par. (e) shall
21 be shown as provided in s. 55.63 (1).

22 **(4m)** In the case of an individual who has, or appears to have, dementia, and who resides
23 in a nursing home, as defined in s. 50.01 (3), a community–based residential facility, as defined
24 in s. 50.01 (1g), an adult family home, as defined in s. 50.01 (1), or a residential care apartment

complex, as defined in s. 50.01 (6d), the petition shall also include the allegations specified in s. 55.63 (3).

SECTION 20. 55.15 (1) of the statutes is amended to read:

55.15 **(1)** TRANSFERS AUTHORIZED. An individual under a protective placement order may be transferred between protective placement units, between protective placement facilities, or from a protective placement unit to a medical facility. The individual may not be transferred, under ~~the~~ a protective placement order, to any facility for which commitment procedures are required under ch. 51. This provision does not prohibit temporary transfer of an individual who has dementia or who, based on currently available information, appears to have dementia, to a dementia crisis unit as provided in s. 55.65.

SECTION 21. 55.18 (1) (b) of the statutes is amended to read:

55.18 **(1)** (b) If, following an annual review of an individual's status under par. (a), the individual or the individual's guardian or guardian ad litem requests modification or termination of the individual's protective placement and a hearing under the requirements of s. 55.10 (2) to (4) is provided, or if a hearing under the requirements of s. 55.10 (2) to (4) is provided pursuant to a petition for modification or termination of the protective placement, the county is not required to initiate a subsequent review of the individual's status under par. (a) until the first day of the 11th month after the date that the court issues a final order after the hearing. A petition under s. 55.61, 55.65, or 55.67 is not a request for modification or termination of an individual's protective placement for purposes of this paragraph, and the fact that a hearing has been held at any time under any of those provisions with respect to an individual does not affect the duty of the county to perform an annual review of the individual's protective placement as required under par. (a).

1 **SECTION 22.** Subchapter II (title) of chapter 55 [precedes 55.48] of the statutes is created
2 to read:

3 **CHAPTER 55**

4 SUBCHAPTER II

5 PSYCHIATRIC AND BEHAVIORAL CARE AND TREATMENT FOR INDIVIDUALS
6 WITH DEMENTIA

7 **SECTION 23.** 55.48 of the statutes is created to read:

8 **55.48 Applicability.** This subchapter applies to the provision of behavioral and
9 psychiatric evaluation, diagnosis, services, and treatment to individuals with dementia, which
10 may be provided to address or alleviate symptoms or conditions associated with dementia or
11 to address a mental illness or psychiatric condition of an individual with dementia that is not
12 related to dementia.

13 **SECTION 24.** 55.50 of the statutes is created to read:

14 **55.50 Department reports to the legislature. (1)** By June 30 of each even–numbered
15 year, the department shall submit to the legislature under s. 13.172 (2) a report that includes
16 all of the following:

17 1. Identification of the dementia crisis units designated by counties under s. 55.55 and
18 the capacity of those units, as provided in reports submitted by counties under s. 55.53 (1).

19 2. A summary of the procedures used by counties to solicit information and advice from
20 the public when making dementia crisis unit designations under s. 55.55, as provided in reports
21 submitted under s. 55.53 (1).

22 3. A summary of the information provided to the department by counties under s. 55.53
23 (2).

24 **SECTION 25.** 55.53 of the statutes is created to read:

1 **55.53 County reports**. The county department shall prepare and submit a report to the
2 department that identifies the dementia crisis unit or units that it has designated under s. 55.55
3 and the capacity of each designated unit. The report shall include a description of the process
4 utilized to solicit information and advice from the public and a summary of the information
5 and advice received. The report shall be updated whenever the county makes a new
6 designation or revokes a designation from a unit.

7 (2) The county department shall annually prepare and submit a report to the department
8 that states the total number of petitions filed in the county under 55.59 and 55.65 and the total
9 number of those petitions that resulted in a placement in a dementia crisis unit.

10 **SECTION 26.** 55.55 of the statutes is created to read:

11 **55.55 County designation of dementia crisis unit.** The county department shall
12 designate at least one unit or part of a unit of a public or private facility as a dementia crisis
13 unit for the purpose of emergency and temporary protective placement of individuals with
14 dementia for psychiatric evaluation, diagnosis, services, or treatment. The county may not
15 designate a dementia crisis unit under this subdivision unless it finds that the facility in which
16 the unit is located is qualified and equipped to provide, and competent in providing, the
17 diagnosis, evaluation, and treatment of dementia and medical, psychiatric, and behavioral care
18 to individuals with dementia and the designated unit or part of a unit provides a therapeutic
19 environment that is appropriate for, and designed to prevent harm to, individuals with
20 dementia. The county department shall solicit information and advice from the public,
21 including family caregivers of individuals with dementia, organizations concerned with
22 Alzheimer's disease and dementia, the treatment of mental illness or the provision of
23 long–term care, and any other appropriate individuals or organizations, to aid it in carrying
24 out its responsibility to designate one or more dementia crisis units under this subdivision.

1 The county department shall implement a procedure to periodically review and update the
2 designation of one or more dementia crisis units under this subdivision as necessary and
3 appropriate.

> **NOTE:** Requires a county department to identify at least one dementia crisis unit for emergency and temporary protective placement for psychiatric evaluation, diagnosis, or treatment. A unit that has not been so identified by the county may not be used for emergency or temporary protective placements under the procedures created in the draft.

4 **SECTION 27.** 55.57 of the statutes is created to read:

5 **55.57 Involuntary administration of psychotropic medications as an emergency**
6 **protective service. (1)** In this section:

7 (a) "Involuntary administration of psychotropic medication" means any of the
8 following:

9 1. Placing psychotropic medication in an individual's food or drink with knowledge that
10 the individual protests receipt of the psychotropic medication.

11 2. Forcibly restraining an individual to enable administration of psychotropic
12 medication.

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

15 (b) "Not competent to refuse psychotropic medication" means that, as a result of
16 dementia, serious and persistent mental illness, or other like incapacities, and after the
17 advantages and disadvantages of and alternatives to accepting the particular psychotropic
18 medication have been explained to an individual, one of the following is true:

19 1. The individual is incapable of expressing an understanding of the advantages and
20 disadvantages of accepting treatment and the alternatives to accepting treatment.

1 2. The individual is substantially incapable of applying an understanding of the
2 advantages and disadvantages of accepting treatment and the alternatives to accepting
3 treatment to his or her condition in order to make an informed choice as to whether to accept
4 or refuse psychotropic medication.

5 (c) "Protest" means make more than one discernible negative response, other than mere
6 silence, to the offer of, recommendation for, or other proffering of voluntary receipt of
7 psychotropic medication. "Protest" does not mean a discernible negative response to a
8 proposed method of administration of the psychotropic medication.

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

11 **(2)** Involuntary administration of psychotropic medication may be provided as an
12 emergency protective service to an individual with dementia, or to an individual who, based
13 on observation and currently available information, appears to have dementia, if all of the
14 following are true:

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

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

17 (c) The individual's condition or the symptoms for which psychotropic medication has
18 been prescribed are likely to be improved or alleviated by administration of psychotropic
19 medication and the individual is likely to respond positively to psychotropic medication.

20 (d) Unless psychotropic medication is administered involuntarily, the individual will
21 incur a substantial probability of physical harm, impairment, injury, or debilitation or will
22 present a substantial probability of physical harm to others.

1 (e) For an individual who is not currently placed in a dementia crisis unit, there is a
2 substantial likelihood that unless psychotropic medication is administered involuntarily, the
3 individual will be subject to involuntary placement in a dementia crisis unit under s. 55.59.
4 (f) If the individual resides in a nursing home, as defined in s. 50.01 (3), a
5 community–based residential facility, as defined in s. 50.01 (1g), an adult family home, as
6 defined in s. 50.01 (1), or a residential care apartment complex, as defined in s. 50.01 (6d),
7 all of the following are true:
8 1. A physical examination of the individual has been conducted and a physician has
9 determined with reasonable probability and documented in writing that the behavior is not
10 caused by a physical condition or illness that could be treated successfully by means other than
11 psychotropic medication.
12 2. The facility has made reasonable efforts to address or accommodate the behavior or
13 condition for which involuntary administration of psychotropic medications is requested and
14 these efforts are documented in the individual's plan of care.
15 3. The facility has prepared detailed documentation of the behaviors or condition of the
16 individual for which involuntary administration of psychotropic medications is sought.
17 (g) The individual meets the standards for protective services under s. 55.08 (2).
18 **(3)** Any county department or agency with which the county department contracts
19 under s. 55.02 (2) that provides involuntary administration of psychotropic medication as an
20 emergency protective service to an individual under sub. (2) shall immediately file a petition
21 for involuntary administration of psychotropic medication to the individual under s. 55.14.
22 The petition shall be served on the individual, the individual's guardian, the individual's legal
23 counsel, and guardian ad litem, if any, and the county department. A preliminary hearing shall
24 be held within 72 hours after the first dose of medication is administered under sub. (2),

1 excluding Saturdays, Sundays, and legal holidays, to establish probable cause that the criteria
2 under s. 55.14 are present. The county department or agency shall provide the individual with
3 written notice of, and orally inform the individual of, the time and place of the preliminary
4 hearing.

5 **(4)** If the individual is not under guardianship, a petition for guardianship shall
6 accompany the petition for involuntary administration of psychotropic medication under sub.
7 (2).

8 **(5)** Upon finding probable cause under sub. (3) and finding that the medication will not
9 unreasonably impair the ability of the individual to prepare for and participate in subsequent
10 legal proceedings, the court may order involuntary administration of psychotropic medication
11 to continue to be provided as an emergency protective service to the individual for up to 30
12 days from the date of the order, pending the hearing under s. 55.14. If the individual is not
13 under guardianship, the court shall appoint a temporary guardian.

14 **(6)** If the individual is under guardianship, a good faith effort shall be made to obtain
15 the consent of the guardian before involuntary administration of psychotropic medication is
16 provided as an emergency protective service.

17 **SECTION 28.** 55.59 of the statutes is created to read:

18 **55.59 Emergency protective placement in a dementia crisis unit. (1)** PLACEMENT
19 AUTHORIZED; GROUNDS. If, from personal observation of, or a reliable report made by a person
20 who identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if any, or
21 authorized representative of a county department or an agency with which it contracts under
22 s. 55.02 (2), it appears probable that an individual is so totally incapable of providing for his
23 or her own care or custody as to create a substantial risk of serious physical harm to himself
24 or herself or others as a result of dementia, mental illness, or a psychiatric condition if not

1 immediately placed, the individual who personally made the observation or to whom the
2 report is made may take an individual into custody, transport the individual to a medical
3 facility or a dementia crisis unit if all of the following are true:

4 (a) The individual has dementia or, based on observation and currently available
5 information, the individual appears to have dementia.

6 (b) The individual has engaged in behavior that creates a substantial risk of serious
7 physical harm to himself or herself or others, as manifested by recent acts or omissions.

8 (c) It appears probable that unless the individual is admitted to a dementia crisis unit
9 for behavioral or psychiatric evaluation, diagnosis, services, or treatment, the individual will
10 incur a substantial probability of physical harm, impairment, injury, or debilitation or will
11 present a substantial probability of physical harm to others. The substantial probability shall
12 be manifested by evidence of recent acts, attempts, or behavior of the individual, a pattern of
13 recent acts or omissions by the individual, or by evidence that the individual or others are
14 placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act,
15 attempt, or threat to do serious physical harm by the individual.

16 **(1m)** ADMISSION TO DEMENTIA CRISIS UNITS. An individual who has been detained under
17 sub. (1) may be admitted to a dementia crisis unit if both of the following are true:

18 (a) A physical examination of the individual has been conducted and a physician has
19 determined with reasonable probability, and documented in writing, that the behavior
20 described in sub. (1) is not caused by a physical condition or illness that could be treated safely
21 and appropriately in a setting other than a dementia crisis unit and that the physician
22 recommends that the individual be placed in a dementia crisis unit for behavioral or
23 psychiatric evaluation, diagnosis, services, or treatment for the purpose of addressing the
24 behavior.

1 (b) The placement is in an environment that is appropriate for the individual.

2 **(1t)** TRANSPORTATION TO DEMENTIA CRISIS UNIT. An individual who is authorized to
3 detain and transport an individual under sub. (1) may transport an individual to a dementia
4 crisis unit for admission under sub. (1m) if the subject individual was detained at a different
5 facility under sub. (1).

6 **(2)** STATEMENT; RIGHT TO AN ATTORNEY. The person who took the individual into custody
7 under sub. (1) shall prepare a statement at the time of detention providing specific factual
8 information concerning the person's observations or reports made to the person and the basis
9 for taking the individual into custody under sub. (1). If the individual is admitted to a dementia
10 crisis unit, the statement shall be filed with the director of the dementia crisis unit and with
11 any petition under s. 55.075. At the time of admission, the director of the dementia crisis unit
12 or the director's designee shall inform the individual, orally and in writing, of his or her right
13 to contact an attorney and a member of his or her immediate family and the right to have an
14 attorney provided at public expense, as provided under s. 55.105. The director or designee
15 shall provide the individual with a copy of the statement by the person making the emergency
16 protective placement.

17 **(3)** FALSE STATEMENTS. Whoever signs a statement under sub. (2) while knowing that
18 information contained in the statement to be false is guilty of a Class H felony.

19 **(4)** PETITION; CONTENTS. When an individual is protectively placed under this section,
20 the person making the emergency protective placement shall immediately file a petition under
21 s. 55.075. In addition to the allegations required under s. 55.08 (1), the petition shall allege
22 that the grounds under subs. (1) and (1m) are true.

23 **(5)** HEARING. A preliminary hearing shall be held within 96 hours of detention,
24 excluding Saturdays, Sundays, and legal holidays, to establish probable cause to believe the

1 grounds for protective placement under s. 55.08 (1) and the grounds under subs. (1) and (1m).
2 An individual is considered to be detained when he or she is taken into custody for the purpose
3 of emergency protective placement. At the request of the subject individual or his or her
4 counsel or guardian ad litem, the hearing may be postponed, but in no case may the
5 postponement exceed 7 days from the date of emergency protective placement. In the event
6 that protective placement is not appropriate, the court may elect to treat a petition for
7 protective placement under this section as a petition for commitment under s. 51.20 or 51.45
8 (13).

9 **(6)** ORDER. Upon finding probable cause under sub. (5), the court may order temporary
10 protective placement for up to 45 days in a dementia crisis unit, pending the hearing for
11 permanent protective placement. If the court does not find probable cause for placement in
12 a dementia crisis unit, but does find probable cause for placement in a protective placement
13 facility other than a dementia crisis unit, it shall so order. The court may order such protective
14 services as may be required. The order, and any subsequent extension of the order under s.
15 55.61, shall state that the county in which the original order for protective placement of the
16 individual was issued shall be responsible for transportation of the individual to any facility
17 to which placement of the individual is ordered upon discharge of the individual from the
18 dementia crisis unit.

19 **(7)** MEDICATION AND TREATMENT. When an individual is placed in a dementia crisis unit
20 under this section, or remains in a dementia crisis unit pursuant to an extension of an order
21 issued under this section, the director and staff of the dementia crisis unit may evaluate,
22 diagnose and treat the individual if the individual consents. The individual has a right to refuse
23 medication and treatment except as provided in an order under s. 55.57 or 55.63 or in a
24 situation in which medication or treatment is necessary to prevent serious physical harm to

1 the individual or others. The director of the dementia crisis unit or his or her designee shall
2 advise the individual of these rights. The court may order the involuntary administration of
3 psychotropic medication as a temporary protective service to the individual only as provided
4 in s. 55.57.

5 **(8)** RIGHTS; LIABILITY. When, upon the advice of the treatment staff, the director of a
6 dementia crisis unit in which an individual has been placed for emergency or temporary
7 protective placement under this section determines that the grounds for emergency or
8 temporary protective placement no longer exist, he or she shall notify the county department
9 in order to arrange for transfer of the individual to a protective placement facility under s.
10 55.12. Any individual who acts in accordance with this section, including making a
11 determination that an individual has or does not have dementia or evidences or does not
12 evidence a substantial probability of harm, is not liable for any actions taken in good faith.
13 The good faith of the actor shall be presumed in any civil action. Whoever asserts that the
14 individual who acts in accordance with this section has not acted in good faith has the burden
15 of proving that assertion by evidence that is clear, satisfactory and convincing.

16 **SECTION 29.** 55.61 of the statutes is created to read:

17 **55.61 Extension of temporary protective placement in a dementia crisis unit. (1)**
18 EXTENSION AUTHORIZED. An order for temporary protective placement in a dementia crisis unit
19 under s. 55.59 (6) may be extended by the court for up to 60 days if the requirements of this
20 section are met.

21 **(2)** PETITION. (a) *Time limit.* A petition for extension of temporary protective placement
22 in a dementia crisis unit shall be filed no fewer than 10 days prior to expiration of the period
23 of temporary protective placement ordered under s. 55.59 (6). If an emergency makes it

1 impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration
2 of the period of temporary protective placement ordered under s. 55.59 (6).
3 (b) *Filing; service*. An individual under an order for temporary protective placement in
4 a dementia crisis unit, the individual's guardian, the individual's legal counsel or guardian ad
5 litem, if any, the department, the county department that placed the individual or provided the
6 protective services under an order of the court, an agency with which the county department
7 contracts under s. 55.02 (2), or any interested person may file a petition for extension of an
8 order for temporary protective placement in a dementia crisis unit. The petition shall be served
9 on the individual, the individual's guardian, the individual's legal counsel and guardian ad
10 litem, if any, and the county department
11 (c) *Allegations*. A petition for extension of an order for temporary protective placement
12 in a dementia crisis unit shall allege that all of the following are true:
13 1. The individual continues to meet the standards for protective placement under s.
14 55.08 (1).
15 2. The individual has dementia.
16 3. The individual has engaged in behavior that creates a substantial risk of serious
17 physical harm to himself or herself or others, as manifested by recent acts or omissions.
18 4. A physical examination of the individual has been conducted and a physician has
19 determined with reasonable probability and documented in writing that the behavior is not
20 caused by a physical condition or illness that could be treated safely and appropriately in a
21 setting other than a dementia crisis unit and the physician recommends that the individual
22 continue placement in the dementia crisis unit for behavioral or psychiatric evaluation,
23 diagnosis, services, or treatment.

1 5. Unless the individual continues placement in the dementia crisis unit for behavioral
2 or psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a
3 substantial probability of physical harm, impairment, injury, or debilitation or will present a
4 substantial probability of physical harm to others. The substantial probability shall be
5 manifested by evidence of recent acts, attempts, or behavior of the individual, a pattern of
6 recent acts or omissions by the individual, or by evidence that the individual or others are
7 placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act,
8 attempt, or threat by the individual to do serious physical harm.

9 6. Reasonable efforts have been made to locate an appropriate placement for the
10 individual in a less restrictive setting.

11 **(3)** EXAMINATION. (a) If a petition is filed under this section, the court shall appoint 2
12 licensed physicians specializing in psychiatry, or one licensed physician and one licensed
13 psychologist, or 2 licensed physicians one of whom shall have specialized training in
14 psychiatry, if available, or 2 physicians, to personally examine the individual. The examiners
15 shall have the specialized knowledge determined by the court to be appropriate to the needs
16 of the subject individual. The examiners may not be related to the individual by blood,
17 marriage, or adoption and may not have any interest in his or her property.

18 (b) One of the examiners appointed under par. (a) may be selected by the individual if
19 the individual makes his or her selection known to the court within 24 hours after receipt of
20 the petition for extension of the temporary protective placement in the dementia crisis unit.
21 The court may deny the individual's selection if the examiner does not meet the requirements
22 of par. (a) or the individual's selection is not available.

23 (c) If requested by the individual, the individual's attorney, or any other interested party
24 with court permission, the individual has a right at his or her own expense or, if indigent and

1 with approval of the court hearing the petition, at the reasonable expense of the individual's
2 county of legal residence, to secure an additional medical or psychological examination and
3 to offer the evaluator's personal testimony as evidence at the hearing.

4 (d) Prior to the examination, the individual shall be informed that his or her statements
5 can be used as a basis for an extension of the current temporary protective placement in the
6 dementia crisis unit, that he or she has the right to remain silent and that the examiner is
7 required to make a report to the court even if the subject individual remains silent. The
8 issuance of such a warning to the individual prior to each examination establishes a
9 presumption that the individual understands that he or she need not speak to the examiner.

10 (e) The examiners shall personally observe and examine the individual at any suitable
11 place and satisfy themselves, if reasonably possible, as to the individual's mental condition,
12 and shall make independent reports to the court. The individual's treatment records shall be
13 available to the examiners. A written report shall be made of all such examinations and filed
14 with the court. The report and testimony, if any, by the examiners shall be based on beliefs
15 to a reasonable degree of medical certainty, or professional certainty if an examiner is a
16 psychologist, in regard to the existence of the facts alleged in the petition and the
17 appropriateness of various treatment modalities or facilities. If the examiners are unable to
18 make conclusions to a reasonable degree of medical or professional certainty, the examiners
19 shall so state in their report and testimony, if any. The individual, the individual's attorney,
20 and guardian ad litem shall have access to all psychiatric and other reports at least 72 hours
21 in advance of the hearing under sub. (4).

22 (f) On motion of either party, all parties shall produce at a reasonable time and place
23 designated by the court all physical evidence which each party intends to introduce in
24 evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical

1 evidence in the presence of a person designated by the court. The order shall specify the time,
2 place and manner of making the inspection, copies, photographs, or transcriptions, and may
3 prescribe such terms and conditions as are just. The court may, if the motion is made by the
4 individual, delay the hearing for such period as may be necessary for completion of discovery.

5 **(4)** HEARING. A hearing shall be held prior to the expiration of the order for temporary
6 protective placement of the individual in a dementia crisis unit under s. 55.59 (6). A trial by
7 a jury shall be held if demanded by the individual sought to be protected or his or her attorney
8 or guardian ad litem. The hearing shall be held as part of the same proceedings in which the
9 petition for permanent protective placement of the individual is heard. The petition shall be
10 heard immediately after the order for permanent protective placement of the individual is
11 made. If the court does not order permanent protective placement of the individual, the petition
12 under this section shall be dismissed.

13 **(5)** ORDER. After a hearing under sub. (4) on a petition for extension of an order for
14 temporary protective placement in a dementia crisis unit, the court shall make one of the
15 following orders and shall include in the order the information relied on as a basis for that
16 order:

17 (a) If the court finds that the individual meets the standards for protective placement
18 under s. 55.08 and the allegations under sub. (2) (c) are true, it shall order continued temporary
19 placement in the dementia crisis unit for a period not to exceed 60 days from the date of
20 expiration of the original order under s. 55.59 (6).

21 (b) If the court finds that the individual meets the standards for protective placement
22 under s. 55.08 (1) and the allegations under sub. (2) (c) are true, but that the individual would
23 be better served in a different dementia crisis unit, it shall order transfer of the individual to

1 that dementia crisis unit and temporary placement in that dementia crisis unit for a period not
2 to exceed 60 days from the date of expiration of the original order under s. 55.59 (6).
3 (c) If the court finds that the individual meets the standards for protective placement
4 under s. 55.08 (1) but the allegations under sub. (2) (c) are not true, the court shall order transfer
5 of the individual to a protective placement facility.
6 (d) If the court finds the individual no longer meets the standards for protective
7 placement under s. 55.08 (1), it shall terminate the protective placement, as provided in s.
8 55.17.
9 **(6)** SUBSEQUENT EXTENSIONS. An order under sub. (5) (a) or (b) may be extended in
10 increments of no more than 60 days. For each such extension, a petition alleging that the
11 individual meets the standards for protective placement under s. 55.08 (1) and that the
12 allegations under sub. (2) (c) are true shall be filed no later than 10 days prior to the expiration
13 of the most–recently issued order for temporary placement. If an emergency makes it
14 impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration
15 of the most recently–issued order for temporary placement ordered under sub. (5). The
16 petition shall be served on the individual, the individual's guardian, the individual's legal
17 counsel and guardian ad litem, if any, and the county department. Examination shall be
18 conducted as provided in sub. (3). A hearing shall be held prior to the expiration of the
19 most–recently issued order for temporary placement. A trial by a jury shall be held if
20 demanded by the individual or his or her attorney or guardian ad litem. After hearing, the court
21 shall issue an order issued as provided in sub. (5).
22 **SECTION 30.** 55.63 of the statutes is created to read:
23 **55.63 Involuntary administration of psychotropic medications as a protective**
24 **service.** The following provisions apply to involuntary administration of psychotropic

1 medications as a protective service under s. 55.14, stats., for an individual who has dementia
2 or an individual who, based on observation and currently available information, appears to
3 have dementia:

4 **(1)** EVIDENCE REQUIRED. The substantial probability of physical harm, impairment,
5 injury, or debilitation required under s. 55.14 (3) (e) shall be shown by evidence of recent acts,
6 attempts, or behavior of the individual, a pattern of recent acts or omissions by the individual,
7 or by evidence that the individual or others are placed at substantial risk of serious physical
8 harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm
9 by the individual.

10 **(2)** PHYSICIAN STATEMENT. The physician statement required under s. 55.14 (4) shall state
11 that the physician has determined with reasonable probability and documented in writing that
12 the behavior for which treatment with psychotropic medication is sought is not caused by a
13 physical condition or illness that could be treated successfully by means other than
14 psychotropic medication.

15 **(3)** If the individual resides in a nursing home, as defined in s. 50.01 (3), a
16 community–based residential facility, as defined in s. 50.01 (1g), an adult family home, as
17 defined in s. 50.01 (1), or a residential care apartment complex, as defined in s. 50.01 (6d),
18 the petition shall allege that reasonable efforts have been made to address or accommodate the
19 behavior or condition for which treatment with psychotropic medication is sought. Evidence
20 of the facility's response to the individual's behavior or condition, as documented in records
21 maintained by the facility, shall be attached to the petition.

22 **SECTION 31.** 55.65 of the statutes is created to read:

23 **55.65 Temporary transfer to dementia crisis unit. (1)** TRANSFER AUTHORIZED. An
24 individual who is under a protective placement order and has dementia, or based on currently

1 available information and observation appears to have dementia, may be transferred to a
2 dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment
3 for a period not to exceed 45 days if the requirements of this section are met.

4 **(2)** PETITION. (a) *Filing; services.* An individual under protective placement, the
5 individual's guardian, the individual's legal counsel or guardian ad litem, if any, the
6 department, the county department that placed the individual or provided the protective
7 services under an order of the court, an agency with which the county department contracts
8 under s. 55.02 (2), or any interested person may file a petition at any time for temporary
9 transfer of the individual to a dementia crisis unit for behavioral or psychiatric evaluation,
10 diagnosis, services, or treatment. The petition shall be served on the individual, the
11 individual's guardian, the individual's legal counsel and guardian ad litem, if any, and the
12 county department.

13 **(3)** ALLEGATIONS. The petition shall allege all of the following:

14 (a) The individual has been diagnosed with dementia or, based upon currently available
15 information appears to have dementia.

16 (b) The individual has engaged in behavior that creates a substantial risk of serious
17 physical harm to himself or herself or others as manifested by recent acts or omissions.

18 (c) A physician who has personal knowledge of the individual has conducted a physical
19 examination of the individual within the past 7 days and, based on that examination, the
20 following are true:

21 1. The physician has determined with reasonable probability and documented in writing
22 that the behavior is not caused by a physical condition or illness that could be treated safely
23 and appropriately in a setting other than a dementia crisis unit.

1 2. The physician has determined with reasonable probability that the individual's
2 behavior or condition may be improved by transfer to a dementia crisis unit for behavioral or
3 psychiatric evaluation, diagnosis, services, or treatment.
4 (d) Unless the individual is temporarily transferred to a dementia crisis unit for
5 behavioral or psychiatric evaluation, diagnosis, services, or treatment, the individual will
6 incur a substantial probability of being subject to a change in permanent placement to a more
7 restrictive setting due to the inability of the current placement facility to provide for the safety
8 of the individual or others due to the behavior of the individual. The substantial probability
9 of a change in placement to a more restrictive setting shall be shown by the following:
10 1. Evidence of recent acts, attempts, or behavior of the individual, a pattern of recent
11 acts or omissions by the individual, or by evidence that the individual or others are placed at
12 substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt,
13 or threat to do serious physical harm by the individual.
14 2. Evidence of the facility's response to acts, attempts, omissions or threats identified
15 in subd. 1., as documented in records maintained by the facility.
16 (e) The protective placement facility has made reasonable efforts to address or
17 accommodate the behavior or condition for which behavioral or psychiatric evaluation,
18 diagnosis, services, or treatment in a dementia crisis unit is sought and these efforts are
19 documented in the individual's plan of care.
20 (f) The placement is in an environment that is appropriate for the individual.
21 (g) One of the following is true:
22 1. The protective placement facility has a plan in place for the orderly return of the
23 individual to the protective placement facility upon discharge from the dementia crisis unit,

1 which specifies the conditions under which the individual will be readmitted to the facility,
2 and a copy of the plan is included with the petition.
3 2. The protective placement facility has determined that readmission of the individual
4 to the protective placement facility upon discharge from the dementia crisis unit is not in the
5 best interests of the individual, and includes, with the petition, specific factual information
6 supporting this conclusion.
7 (h) The protective placement facility has prepared detailed documentation of the
8 behaviors or condition of the individual that necessitate inpatient behavioral or psychiatric
9 evaluation, diagnosis, services or treatment, including detailed information about the physical
10 examination conducted under par. (c), and efforts taken by the facility under par. (e), and this
11 documentation will be provided to the dementia crisis unit.
12 **(4)** CONSENT OF GUARDIAN REQUIRED. No individual may be transferred under this
13 section without the written consent of the individual's guardian, except in the case of an
14 emergency transfer under sub. (6).
15 **(5)** CONSENT OF COUNTY DEPARTMENT. No individual may be transferred under this
16 section without the written consent of the county department, except in the case of an
17 emergency transfer under sub. (6).
18 **(6)** EMERGENCY TRANSFER; PETITION. If an emergency makes it impossible to file a
19 petition as specified in sub. (2) or to obtain the prior written consent of the guardian specified
20 in sub. (4), the individual may be transferred without the prior written consent of the guardian
21 and without a prior court order. A petition containing all of the allegations in sub. (3), and
22 identification of the specific facts and circumstances which made it impossible to carry out
23 the transfer under the nonemergency procedures, shall be filed immediately upon transfer.

1 **(7)** HEARING. (a) The court shall order a hearing within 72 hours after an individual
2 is transferred under sub. (6) or a petition is filed under sub. (2). At the request of the subject
3 individual or his or her counsel or guardian ad litem, the hearing may be postponed, but in no
4 case may the postponement exceed 7 days from the date of the emergency transfer.
5 (b) The court shall notify the petitioner, the individual under protective placement, the
6 individual's guardian, the individual's attorney, if any, and the county department of the time
7 and place of the hearing.
8 (c) A guardian ad litem shall be appointed to represent the individual under protective
9 placement at the hearing. If the individual is indigent, the county in which the hearing is held
10 shall be liable for guardian ad litem fees.
11 (cm) The court shall refer the individual under protective placement for appointment
12 of legal counsel as provided under s. 55.105 if the individual, the individual's guardian ad
13 litem, or anyone on the individual's behalf requests that counsel be appointed for the
14 individual.
15 (d) The petitioner, individual under protective placement, the individual's guardian, the
16 individual's guardian ad litem, and the individual's attorney, if any, have the right to attend the
17 hearing and to present and cross–examine witnesses.
18 **(8)** STANDARD FOR TRANSFER. In determining whether to approve a proposed or
19 emergency transfer the court shall consider all of the following:
20 (a) Whether there is probable cause to believe the allegations under sub. (3).
21 (b) Whether the proposed transfer to a dementia crisis unit is in the best interests of the
22 individual.

1 (c) In the case of an emergency transfer, whether there is probable cause to believe that
2 specific facts and circumstances made it impossible to carry out the transfer under
3 nonemergency procedures as specified under sub. (6).

4 **(9)** ORDER RELATING TO TRANSFER. Following the hearing under sub. (7), the court shall
5 do one of the following:

6 (a) If the court finds that the individual continues to meet the standards for protective
7 placement under s. 55.08 (1) and the allegations under sub. (3) and, if applicable, sub. (6), are
8 not true, the court shall issue an order prohibiting the transfer. The court shall include the
9 information relied upon as a basis for the order and shall make findings based on the
10 allegations under sub. (3) and, if applicable, sub. (6), in support of the denial of the transfer.

11 (b) If the court finds that the individual continues to meet the standards for protective
12 placement under s. 55.08 (1) and the allegations under sub. (3) and, if applicable, sub. (6) are
13 true, the court shall order transfer to a dementia crisis unit for a period not to exceed 45 days.
14 The order, and any subsequent extension of the order under s. 55.67, shall state that the county
15 in which the original order for protective placement of the individual was issued shall be
16 responsible for transportation of the individual to any facility to which placement of the
17 individual is ordered upon discharge of the individual from the dementia crisis unit.

18 (c) If the court finds that the individual no longer meets the standards for protective
19 placement under s. 55.08 (1), the court shall terminate the protective placement, as provided
20 in s. 55.17.

21 **(10)** MEDICATION AND TREATMENT. When an individual is placed in a dementia crisis unit
22 under this section, or remains in a dementia crisis unit pursuant to an extension of an order
23 issued under this section, the director and staff of the dementia crisis unit may evaluate,
24 diagnose, and treat the individual if the individual consents. The individual has a right to

1 refuse medication except as provided in an order under s. 55.57 or 55.63, or in a situation in
2 which medication or treatment is necessary to prevent serious physical harm to the individual
3 or others. The director of the dementia crisis unit or his or her designee shall advise the
4 individual of these rights. The court may order the involuntary administration of psychotropic
5 medication as a temporary protective service to the individual only as provided under s. 55.57.

6 **(11)** RIGHTS. When, upon the advice of the treatment staff, the director of a dementia
7 crisis unit to which an individual has been transferred under this section determines that the
8 grounds for transfer no longer exist, he or she shall notify the county department in order to
9 arrange for transfer to a protective placement facility under s. 55.12.

10 **(12)** LIABILITY. Any individual who acts in accordance with this section, including
11 making a determination that an individual has or does not have dementia or evidences or does
12 not evidence a substantial probability of harm, is not liable for any actions taken in good faith.
13 The good faith of the actor shall be presumed in any civil action. Whoever asserts that the
14 individual who acts in accordance with this section has not acted in good faith has the burden
15 of proving that assertion by evidence that is clear, satisfactory and convincing.

16 **SECTION 32.** 55.67 of the statutes is created to read:

17 **55.67 Extension of temporary transfer to a dementia crisis unit. (1)** EXTENSION
18 AUTHORIZED. (1) An order for temporary transfer to a dementia crisis unit under s. 55.65 (9)
19 may be extended by the court for up to 60 days if the requirements of this section are met.

20 **(2)** PETITION. (a) *Time limit.* A petition for extension of temporary transfer to a
21 dementia crisis unit shall be filed no less than 10 days prior to expiration of the period of
22 temporary transfer ordered under s. 55.65 (9). If an emergency makes it impossible to file a
23 petition sooner, a petition may be filed up to 72 hours prior to expiration of the period of
24 temporary transfer ordered under s. 55.65 (9).

1 (b) *Filing; service.* An individual under an order for temporary transfer to a dementia
2 crisis unit, the individual's guardian, the individual's legal counsel or guardian ad litem, if any,
3 the department, the county department that placed the individual or provided the protective
4 services under an order of the court, an agency with which the county department contracts
5 under s. 55.02 (2), or any interested person may file a petition for extension of the order. The
6 petition shall be served on the individual, the individual's guardian, the individual's legal
7 counsel and guardian ad litem, if any, and the county department
8 (c) *Allegations.* A petition for extension of an order for temporary transfer to a dementia
9 crisis unit shall allege that all of the following are true:
10 1. The individual continues to meet the standards for protective placement under s.
11 55.08 (1).
12 2. The individual has dementia.
13 3. The individual has engaged in behavior that creates a substantial risk of serious
14 physical harm to himself or herself or others, as manifested by recent acts or omissions.
15 4. A physical examination of the individual has been conducted and a physician has
16 been determined with reasonable probability and documented in writing that the behavior is
17 not caused by a physical condition or illness that could be treated safely and appropriately in
18 a setting other than a dementia crisis unit and the physician recommends that the individual
19 continue placement in the dementia crisis unit for behavioral or psychiatric evaluation,
20 diagnosis, services, or treatment.
21 5. Unless the individual continues placement in the dementia crisis unit for behavioral
22 or psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a
23 substantial probability of physical harm, impairment, injury, or debilitation or will present a
24 substantial probability of physical harm to others. The substantial probability shall be

1 manifested by evidence of recent acts, attempts, or behavior of the individual, a pattern of
2 recent acts or omissions by the individual, or by evidence that the individual or others are
3 placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act,
4 attempt, or threat by the individual to do serious physical harm.

5 6. Reasonable efforts have been made to locate an appropriate placement for the
6 individual in a less restrictive setting.

7 **(3)** EXAMINATION. (a) If a petition is filed under this section, the court shall appoint 2
8 licensed physicians specializing in psychiatry, or one licensed physician and one licensed
9 psychologist, or 2 licensed physicians one of whom shall have specialized training in
10 psychiatry, if available, or 2 physicians, to personally examine the individual. The examiners
11 shall have the specialized knowledge determined by the court to be appropriate to the needs
12 of the individual. The examiners may not be related to the individual by blood, marriage, or
13 adoption and may not have any interest in his or her property.

14 (b) One of the examiners appointed under par. (a) may be selected by the individual if
15 the individual makes his or her selection known to the court within 24 hours after receipt of
16 the petition for extension of the temporary protective placement in the dementia crisis unit.
17 The court may deny the individual's selection if the examiner does not meet the requirements
18 of par. (a) or the individual's selection is not available.

19 (c) If requested by the individual, the individual's attorney, or any other interested party
20 with court permission, the individual has a right at his or her own expense or, if indigent and
21 with approval of the court hearing the petition, at the reasonable expense of the individual's
22 county of legal residence, to secure an additional medical or psychological examination and
23 to offer the evaluator's personal testimony as evidence at the hearing.

1 (d) Prior to the examination, the individual shall be informed that his or her statements
2 can be used as a basis for an extension of the current temporary placement in the dementia
3 crisis unit, that he or she has the right to remain silent and that the examiner is required to make
4 a report to the court even if the individual remains silent. The issuance of such a warning to
5 the individual prior to each examination establishes a presumption that the individual
6 understands that he or she need not speak to the examiner.

7 (e) The examiners shall personally observe and examine the individual at any suitable
8 place and satisfy themselves, if reasonably possible, as to the individual's mental condition,
9 and shall make independent reports to the court. The individual's treatment records shall be
10 available to the examiners. A written report shall be made of all such examinations and filed
11 with the court. The report and testimony, if any, by the examiners shall be based on beliefs
12 to a reasonable degree of medical certainty, or professional certainty if an examiner is a
13 psychologist, in regard to the existence of the facts alleged in the petition and the
14 appropriateness of various treatment modalities or facilities. If the examiners are unable to
15 make conclusions to a reasonable degree of medical or professional certainty, the examiners
16 shall so state in their report and testimony, if any. The individual, the individual's attorney and
17 guardian ad litem shall have access to all psychiatric and other reports at least 72 hours in
18 advance of the hearing under sub. (4).

19 (f) On motion of either party, all parties shall produce at a reasonable time and place
20 designated by the court all physical evidence which each party intends to introduce in
21 evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical
22 evidence in the presence of a person designated by the court. The order shall specify the time,
23 place and manner of making the inspection, copies, photographs, or transcriptions, and may

1 prescribe such terms and conditions as are just. The court may, if the motion is made by the
2 individual, delay the hearing for such period as may be necessary for completion of discovery.
3 **(4)** HEARING. A hearing on the petition shall be held prior to the expiration of the order
4 for temporary transfer of the individual to a dementia crisis unit under s. 55.65 (9). A trial by
5 a jury shall be held if demanded by the individual sought to be protected or his or her attorney
6 or guardian ad litem.
7 **(5)** ORDER. After a hearing under sub. (4) on a petition for extension of an order for
8 temporary transfer to a dementia crisis unit, the court shall make one of the following orders
9 and shall include in the order the information relied on as a basis for that order:
10 (a) If the court finds that the allegations under sub. (2) (c) are true, it shall order
11 continued temporary transfer to the dementia crisis unit for a period not to exceed 60 days from
12 the date of expiration of the original order under s. 55.65 (9).
13 (b) If the court finds that the allegations under sub. (2) (c) are true, but that the individual
14 would be better served in a different dementia crisis unit, it shall order transfer of the individual
15 to that dementia crisis unit and temporary placement in that dementia crisis unit.
16 (c) If the court finds that the allegations under sub. (2) (c) 2. to 6. are not true, but the
17 individual continues to meet the standards for protective placement under s. 55.08 (1), the
18 court shall order transfer of the individual to a facility for permanent protective placement.
19 (d) If the court finds the individual no longer meets the standards for protective
20 placement under s. 55.08 (1), it shall terminate the protective placement, as provided in s.
21 55.17.
22 **(6)** SUBSEQUENT EXTENSIONS. An order under (5) (a) or (b) may be extended in
23 increments of no more than 60 days. For each such extension, a petition alleging that the
24 individual meets the standards under sub. (2) (c) shall be filed no later than 10 days prior to

1 the expiration of the most–recently issued order for temporary transfer to a dementia crisis
2 unit. If an emergency makes it impossible to file a petition sooner, a petition may be filed up
3 to 72 hours prior to expiration of the period of temporary transfer ordered under s. 55.67 (5).
4 The petition shall be served on the individual, the individual's guardian, the individual's legal
5 counsel and guardian ad litem, if any, and the county department. Examination shall be
6 conducted as provided in sub. (3). A hearing shall be held prior to the expiration of the
7 most–recently issued order for temporary placement. A trial by a jury shall be held if
8 demanded by the individual or his or her attorney or guardian ad litem. After the hearing, the
9 court shall issue an order as provided in sub. (5).
10 **(END)**