

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1315/P2ins
TJD:.....

1 INSERT 14-1

2 **SECTION 1.** 51.01 (4r) of the statutes is amended to read:

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

History: 1975 c. 430 ss. 11, 81; 1977 c. 26; 1977 c. 203 s. 106; 1977 c. 428; 1981 c. 79 s. 17; 1983 a. 189 s. 329 (19); 1983 a. 441; 1985 a. 29 s. 3202 (23); 1985 a. 265, 307; 1993 a. 445; 1995 a. 27; 1997 a. 47; 1999 a. 9; 2005 a. 264, 344, 387, 388; 2007 a. 45; 2009 a. 28; 2011 a. 126.

(END INSERT 14-1)

8 INSERT 15-24

9 **SECTION 2.** 51.20 (1) (aw) of the statutes is created to read:

10 51.20 (1) (aw) Notwithstanding the prohibitions against emergency detention
11 of a individual who has dementia under ss. 51.12 and 51.15 (1m), an individual who
12 has or, based on observation and currently available information, appears to have
13 dementia and who is competent may be involuntarily committed based on a petition
14 filed under this section if the individual otherwise meets the criteria for involuntary
15 commitment under sub. (1) (a).

(END INSERT 15-24)

16 INSERT 18-9

17 **SECTION 3.** 55.01 (1v) of the statutes is amended to read:

18 55.01 (1v) “Degenerative brain disorder” means the loss or dysfunction of brain
19 cells to the extent that the individual is substantially impaired in his or her ability
20 to provide adequately for his or her own care or custody or to manage adequately his

1 or her property or financial affairs. “Degenerative brain disorder” includes
2 dementia.

History: 1973 c. 284; 1975 c. 393, 430; 1979 c. 221; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1991 a. 316; 1993 a. 445; 2003 a. 33; 2005 a. 264, 387, 388; 2007 a. 45, 96; 2011 a. 126.

(END INSERT 18-9)

3 INSERT 23-8

4 This subchapter applies to the provision of behavioral and psychiatric
5 evaluation, diagnosis, services, and treatment to individuals with dementia, which
6 may be provided to address or alleviate symptoms or conditions associated with
7 dementia or to address a mental illness or psychiatric condition of an individual with
8 dementia that is not related to dementia.

(END INSERT 23-8)

9 INSERT 29-25

10 At the probable cause hearing under this subsection, the court shall make a
11 finding of whether the individual who is the subject of the hearing is likely to be found
12 incompetent.

(END INSERT 29-25)

13 INSERT 30-3

14 (b) If, under par. (a), the court finds that the individual has dementia but is not
15 likely to be found incompetent or that the individual does not have dementia, the
16 court may treat the petition under this section as a petition for commitment under
17 s. 51.20[✓] or 51.45 (13)[✓]. The court shall review the petition filed under this section
18 under the standards under s. 51.20 (1) (a)[✓] or 51.45 (13) (a)[✓] to determine whether an
19 order of detention shall be issued without further notice. Placement shall be made
20 in a facility described under s. 51.20 (2) (d)[✓] or 51.45 (13) (h)[✓]. The court shall schedule
21 the full, final hearing under s. 51.20 (7) (c)[✓] or 51.45 (13) (e)[✓].

****NOTE: Please review this provision to convert an emergency placement to a dementia crisis unit to an involuntary commitment under ch. 51 to ensure it meets your intent.

(END INSERT 30-3)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1315/P2dn

TJD:/.....

Sac

Date

To Mary Matthias and Brian Larson:

Please review this preliminary draft, especially the new provisions added in this version. As I do not believe there will be significant changes to the draft after this version before the draft is introduced, please conform your prefatory note to the current draft. I do not anticipate adding an analysis so your note will serve as the analysis to the bill.

Tamara J. Dodge
Legislative Attorney
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1315/P2dn
TJD:sac:rs

October 24, 2013

To Mary Matthias and Brian Larson:

Please review this preliminary draft, especially the new provisions added in this version. As I do not believe there will be significant changes to the draft after this version before the draft is introduced, please conform your prefatory note to the current draft. I do not anticipate adding an analysis so your note will serve as the analysis to the bill.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
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Dodge, Tamara

From: Matthias, Mary
Sent: Tuesday, December 03, 2013 8:15 AM
To: Dodge, Tamara
Cc: Larson, Brian; Mautz, Kelly
Subject: LRB 1315-P2 changes.docx
Attachments: LRB 1315-P2 changes.docx

Hi Tami-

Attached are the changes we would like to the draft. As you can see, they are very minimal.

I am finishing up making edits to the Pref Note-there aren't many changes, just a word or phrase here and there.

What would be the quickest way to handle the Pref Note? We could make the changes and send you the Pref Note as a new document that you can insert into the draft, or I can bring you the paper copy of the draft with my handwritten changes (or I can scan a copy and send it to you). Please let me know which you prefer.

We are hoping to get the draft introduced asap- today or tomorrow if possible.

Thanks!

Mary

Tami-

Please make the following changes to LRB 1315/P2:

1. Page 15, line 5; delete "who is not"
2. Page 15, line 6: delete: "competent and"
3. Page 15, line 8: delete" "is not competent and"
4. Page 29, line 4: delete: "the individual does not have dementia" and replace that phrase with "protective placement is otherwise not appropriate"
5. Page 51, line 15: change "te" to "the".

Thank you!

Mary

Dodge, Tamara

From: Matthias, Mary
Sent: Tuesday, December 03, 2013 1:34 PM
To: Dodge, Tamara
Subject: LRB 1315/P2 Pref Note
Attachments: pref_note.docx

Tami-

Here's the revised Pref Note for the Alzheimer's draft-

Thanks!!

Mary Matthias
Principal Attorney | Wisconsin Legislative Council | 608.266.0932
<http://legis.wisconsin.gov/lc/>

From: Young, Tracey
Sent: Tuesday, December 03, 2013 1:32 PM
To: Matthias, Mary
Subject:

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MM:ty

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 "Care and Treatment 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 generally 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 in 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.

"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 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 involuntarily committed under ch. 51 unless he or she is competent.

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 or appears to have dementia, the individual may remain 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 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 physician has determined with reasonable probability and documented in writing 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 psychotropic 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, 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) 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 shown 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:

(d) A physician has conducted a physical examination of the individual and determined and documented in writing that there is a reasonable probability 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.

(e) 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 the individual meets the grounds for protective placement and 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 the individual has dementia but is not likely to be found incompetent or that protective placement is otherwise not appropriate, the court may elect to treat the petition as a petition for involuntary commitment under ch. 51.

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. If the court does not find probable cause for placement in a dementia crisis unit but does find probable cause for placement in a protective placement facility other than a dementia crisis unit, it shall so order.

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, the protective placement facility, or any interested person.

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 that there is a 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.

Dodge, Tamara

From: Matthias, Mary
Sent: Thursday, December 05, 2013 3:51 PM
To: Dodge, Tamara
Cc: Larson, Brian
Subject: RE: Questions on LRB-1315

Tami-

Your editors are amazing. I agree with all the changes they suggest. (see below)

Thanks so much!

Mary

Mary Matthias
Principal Attorney | Wisconsin Legislative Council | 608.266.0932
<http://legis.wisconsin.gov/lc/>

From: Dodge, Tamara
Sent: Thursday, December 05, 2013 3:23 PM
To: Matthias, Mary; Larson, Brian
Subject: Questions on LRB-1315

Mary and Brian,

Our editors perform a technical and substantive review of the pref note, but we don't change the substance without your okay since it is your note. Below is a list of questions on the pref note and we also came across one substantive issue in the bill.

- ✓ 1. In the /P2 we changed the language, regarding the physician determining a reasonable probability. We found two instances in the /P2 draft that this was not changed (p. 22, line 19 and p. 50, line 2). I will go ahead and change them to make them consistent with the rest unless you object. (An example of the language we changed it to is on p. 37 line 23.) Sounds good.
- ✓ Do you want us to change the language in the pref note then to match the bill at every mention of reasonable probability? Yes.thanks.
- ✓ 2. On page 1, the pref note reads:
"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.

Technically the definition in the bill does not say "services, and treatment" in bold above. You could just remove "defined as" and say "'Dementia crisis unit" is a unit..." or you could just remove the language that isn't in the definition. (Or, you could add the language to the definition.) Please remove "services, and treatment" from the Pref Note.

- ✓3. On page 12 of the pref note is it intentional that the sentence read “existing grounds for emergency protective placement exist” or should the “existing” be deleted. That’s my blooper. Please delete “existing” from the Pref Note.

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. If the court does not find probable cause for placement in a dementia crisis unit but does find probable cause for placement in a protective placement facility other than a dementia crisis unit, it shall so order.

- ✓4. On page 14 of the pref note, As far as I can tell, the bill does not list the facility as one of the entities that may petition for transfer. I’m looking at p. 37 of the /P2. Let me know if I’m missing something, if you want to remove the protective placement facility from the pref note, or if you want to add the facility to the bill. Please remove “the protective placement facility” from the Pref Note.

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, the protective placement facility, or any interested person.

5. On page 16 of the pref note: I think the “may” in bold below should be a must. See page 41, line 16 of the draft --Yes- please change “may’ to “must”.

(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.

6. On page 18 of the pref note there is the same issue as in point 5 of this email. (See page 47, line 9 of the /P2) Yes- please change “may’ to “must”.

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.

Those are my issues. If you have any questions, I will be around for a while tonight so please feel free to contact me.

Thanks,

Tami

Tamara J. Dodge

Attorney

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1315/P2

TJD:sac:6

RMR

In: 12/3

Due Thurs 12/5

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today if possible

-gen cat

1 **AN ACT to renumber and amend** 55.02 (3); **to amend** 51.01 (4r), 51.01 (13) (b),
 2 51.15 (1) (a) (intro.), 51.61 (1) (intro.), 51.67, 55.01 (1v), 55.10 (1), 55.12 (2),
 3 55.135 (1), 55.14 (1) (b) 2., 55.14 (3) (e) (intro.) and (4), 55.15 (1) and 55.18 (1)
 4 (b); and **to create** 51.01 (4v), 51.12, 51.15 (1m), 51.20 (1) (a) 1m., 51.20 (1) (aw),
 5 subchapter I (title) of chapter 55 [precedes 55.001], 55.01 (1x), 55.01 (1y), 55.02
 6 (3) (a) and (b), 55.13 (6), 55.14 (3) (em) and (4m), subchapter II (title) of chapter
 7 55 [precedes 55.50], 55.50, 55.55, 55.59, 55.61, 55.65, 55.67, 55.70, 55.73 and
 8 55.74 of the statutes; **relating to:** psychiatric and behavioral care and
 9 treatment for individuals with dementia, dementia care units, and providing
 10 a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

anal. v. note

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

Insert JLC Pref note

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

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

***NOTE: Please note that I did not review the prefatory note and did not change the prefatory note to correspond to changes in the draft.

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

6 **SECTION 2.** 51.01 (4v) of the statutes is created to read:

7 51.01 (4v) “Dementia” means deterioration or loss of intellectual faculties,
8 reasoning power, memory, and will due to organic brain disease characterized by
9 confusion, disorientation, apathy, or stupor of varying degrees that is not capable of
10 being reversed and from which recovery is impossible. “Dementia” includes
11 Alzheimer’s disease.

12 **SECTION 3.** 51.01 (13) (b) of the statutes is amended to read:

13 51.01 (13) (b) “Mental illness”, for purposes of involuntary commitment, means
14 a substantial disorder of thought, mood, perception, orientation, or memory which
15 grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet
16 the ordinary demands of life, but does not include dementia or alcoholism.

17 **SECTION 4.** 51.12 of the statutes is created to read:

18 **51.12 Involuntary admissions under protective placement**
19 **procedures.** Admission to a dementia crisis unit as defined under s. 55.01 (1y) may
20 be made under protective placement procedures under ss. 55.59 and 55.65.

21 **SECTION 5.** 51.15 (1) (a) (intro.) of the statutes is amended to read:

22 51.15 (1) (a) (intro.) ~~A- Except as provided in sub. (1m),~~ a law enforcement
23 officer or other person authorized to take a child into custody under ch. 48 or to take
24 a juvenile into custody under ch. 938 may take an individual into custody if the officer
25 or person has cause to believe that the individual is mentally ill, is drug dependent,

1 or is developmentally disabled and, based on observation and currently available
2 information, that the individual does not have or does not appear to have dementia,
3 and that the individual evidences any of the following:

4 **SECTION 6.** 51.15 (1m) of the statutes is created to read:

5 51.15 (1m) DETENTION OF INDIVIDUALS WITH DEMENTIA. An individual who is not
6 competent and who has or, based on observation and currently available
7 information, appears to have dementia may not be detained under this section. An
8 individual who is not competent and has or, based on observation and currently
9 available information, appears to have dementia may be detained only as provided
10 under s. 55.59 for purposes of emergency protective placement or as provided under
11 s. 55.65 for purposes of transfer of protective placement.

12 **SECTION 7.** 51.20 (1) (a) 1m. of the statutes is created to read:

13 51.20 (1) (a) 1m. Based on observation and currently available information, the
14 individual does not have or appear to have dementia or the individual has or appears
15 to have dementia but is competent.

16 **SECTION 8.** 51.20 (1) (aw) of the statutes is created to read:

17 51.20 (1) (aw) Notwithstanding the prohibitions against emergency detention
18 of a individual who has dementia under ss. 51.12 and 51.15 (1m), an individual who
19 has or, based on observation and currently available information, appears to have
20 dementia and who is competent may be involuntarily committed based on a petition
21 filed under this section if the individual otherwise meets the criteria for involuntary
22 commitment under sub. (1) (a).

23 **SECTION 9.** 51.61 (1) (intro.) of the statutes is amended to read:

24 51.61 (1) (intro.) In this section, “patient” means any individual who is
25 receiving services for mental illness, developmental disabilities, alcoholism or drug

1 dependency, including any individual who is admitted to a treatment facility in
2 accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed
3 under this chapter or ch. 48, 55, 971, 975 or 980, or who is transferred to a treatment
4 facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment for those
5 conditions through the department or a county department under s. 51.42 or 51.437
6 or in a private treatment facility. In this section, “patient” also means any individual
7 who is receiving psychiatric or behavioral care or services in a dementia crisis unit,
8 as defined in s. 55.01 (1y), under subch. II of ch. 55, to the extent that provisions of
9 this section do not conflict with provisions of ch. 55 applicable to that individual.

10 “Patient” does not include persons committed under ch. 975 who are transferred to
11 or residing in any state prison listed under s. 302.01. In private hospitals and in
12 public general hospitals, “patient” includes any individual who is admitted for the
13 primary purpose of treatment of mental illness, developmental disability, alcoholism
14 or drug abuse but does not include an individual who receives treatment in a hospital
15 emergency room nor an individual who receives treatment on an outpatient basis at
16 those hospitals, unless the individual is otherwise covered under this subsection.
17 Except as provided in sub. (2), each patient shall:

18 **SECTION 10.** 51.67 of the statutes is amended to read:

19 **51.67 Alternate procedure; protective services.** If, after a hearing under
20 s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not
21 warranted and that the subject individual is a fit subject for guardianship and
22 protective placement or services, the court may, without further notice, appoint a
23 temporary guardian for the subject individual and order temporary protective
24 placement or services under ch. 55 for a period not to exceed 30 days. Temporary
25 protective placement for an individual in a center for the developmentally disabled

1 is subject to s. 51.06 (3). Any interested party may then file a petition for permanent
2 guardianship or protective placement or services, including medication, under ch.
3 55. If the individual is in a treatment facility, and the individual does not have or,
4 based on observation and currently available information, appear to have dementia,
5 the individual may remain in the facility during the period of temporary protective
6 placement if no other appropriate facility is available. If the individual is in a
7 treatment facility and the individual has or, based on currently available
8 information, appears to have dementia, the individual may remain in the facility
9 during the period of temporary protective placement only if the facility is designated
10 by a county as a dementia crisis unit under s. 55.55 and the facility provides an
11 environment that is appropriate for the individual. For an individual who has or,
12 based on currently available information, appears to have dementia, the court may
13 order psychotropic medication as an emergency protective service under this section
14 only as provided in s. 55.70. The court may order psychotropic medication as a
15 temporary protective service under this section for an individual who does not have
16 or appear to have dementia if it finds that there is probable cause to believe the
17 individual is not competent to refuse psychotropic medication and that the
18 medication ordered will have therapeutic value and will not unreasonably impair the
19 ability of the individual to prepare for and participate in subsequent legal
20 proceedings. An individual is not competent to refuse psychotropic medication if,
21 because of serious and persistent mental illness, and after the advantages and
22 disadvantages of and alternatives to accepting the particular psychotropic
23 medication have been explained to the individual, one of the following is true:

24 **SECTION 11.** Subchapter I (title) of chapter 55 [precedes 55.001] of the statutes
25 is created to read:

1 55.02 (3) CORPORATION COUNSEL. (intro.) The corporation counsel of the county
2 in which the petition is brought may or, if requested by the court, shall assist in
3 conducting proceedings under this chapter. The corporation counsel shall assist in
4 conducting any proceedings under this chapter in which all of the following are true:

5 **SECTION 16.** 55.02 (3) (a) and (b) of the statutes are created to read:

6 55.02 (3) (a) The proceedings are initiated under s. 51.20 (7) (d) 1. or 51.67.

7 (b) The subject individual has or appears to have dementia.

8 **SECTION 17.** 55.10 (1) of the statutes is amended to read:

9 55.10 (1) TIME LIMITS. A petition for protective placement or protective services
10 shall be heard within 60 days after it is filed unless an extension of this time is
11 requested by the petitioner, the individual sought to be protected or the individual's
12 guardian ad litem, or the county department, in which case the court may extend the
13 date for hearing by up to 45 days. The court shall hear a petition for protective
14 placement that is filed under s. 55.59 (6) in conjunction with an emergency protective
15 placement in a dementia crisis unit within 45 days after it is filed. The court may
16 not extend the time for hearing a petition for protective placement that is filed under
17 s. 55.59 (6) in conjunction with an emergency protective placement in a dementia
18 crisis unit. If an individual under s. 50.06 (3) alleges that another individual is
19 making a health care decision under s. 50.06 (5) (a) that is not in the best interests
20 of the incapacitated individual or if the incapacitated individual verbally objects to
21 or otherwise actively protests the admission, the petition shall be heard as soon as
22 possible within the 60-day period.

23 **SECTION 18.** 55.12 (2) of the statutes is amended to read:

24 55.12 (2) Subject to s. 46.279, protective placement may be made to nursing
25 homes, public medical institutions, centers for the developmentally disabled under

1 the requirements of s. 51.06 (3), foster care services or other home placements, or to
2 other appropriate facilities, ~~but~~. Protective placement may not be made to units a
3 unit for the acutely mentally ill unless the unit is designated as a dementia crisis unit
4 under s. 55.55 and appropriate procedures under subch. II are followed. A protective
5 placement that is otherwise permissible under subch. I is not prohibited solely
6 because the placement facility has one or more units or locations designated under
7 s. 55.55 or is associated with a facility that is designated under s. 55.55. An
8 individual, other than an individual who has or, based on observation and currently
9 available information, appears to have dementia, who is subject to an order for
10 protective placement or protective services may be detained on an emergency basis
11 under s. 51.15 or involuntarily committed under s. 51.20 or. An individual who is
12 subject to an order for protective placement or protective services may be voluntarily
13 admitted to a treatment facility or a dementia crisis unit for inpatient care under s.
14 51.10 (8). No individual who is subject to an order for protective placement or
15 services may be involuntarily transferred to, detained in, or committed to a
16 treatment facility for care except under s. 51.15 or 51.20. This subsection does not
17 prohibit the placement or transfer of an individual who has or, based on currently
18 available information, appears to have dementia in or to a dementia crisis unit as
19 provided in s. 55.59 or 55.65. Protective placement in a locked unit shall require a
20 specific finding of the court as to the need for the action.

21 **SECTION 19.** 55.13 (6) of the statutes is created to read:

22 55.13 (6) For an individual who has or, based on observation and currently
23 available information, appears to have dementia, involuntary administration of
24 psychotropic medications may be provided as an emergency protective service only
25 as provided under s. 55.70.