

1 **AN ACT** *to repeal* 55.14 (3) (e) 1. and 2.; *to amend* 55.14 (3) (e) (intro.); and *to create*
2 55.13 (6) and 55.133 of the statutes; **relating to:** involuntary administration of
3 psychotropic medication to a person with irreversible dementia.

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

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

IAPM as an Emergency Protective Service

Current Law

Under current law, involuntary administration of psychiatric medication (IAPM) may be ordered as a protective service pursuant to a petition filed under s. 55.14, stats. The court must hold a hearing on the petition 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.

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.

Under the draft, “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 the draft, IAPM may be provided as an emergency protective service 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.
- (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) Unless psychotropic medication is administered involuntarily, there is a substantial likelihood that the individual may be subject to involuntary admission to an inpatient facility for psychiatric treatment.
- (f) If the individual resides in a long-term care facility, all reasonable efforts have been made to address the behaviors or condition by means other than psychotropic medication and an appropriate evaluation of the individual's physical condition has been conducted.

If the individual is under guardianship; involuntarily administration of psychiatric medication may not be provided as an emergency protective service without the consent of the guardian.

The standard for obtaining an order for IAPM is lower than the standard for involuntary commitment, in order to facilitate treatment in place, with the goal of preventing the need to transfer the individual out of their current placement for treatment.

A county department or agency with which the county department contracts that provides IAPM as an emergency protective service to an individual must file a petition for IAPM to the individual as a protective service under s. 55.14, stats. A preliminary hearing must be held within 72 hours, excluding Saturdays, Sundays, and legal holidays, to establish probable cause that the criteria under s. 55.14, stats., are present. The draft does not specify the exact timing for filing a petition or holding a hearing on the petition.

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, 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 submitted to the court prior to the time of the hearing on the petition under s. 55.14, stats., and the guardianship petition must be heard prior to the petition under s. 55.14, stats.

A petition under s. 55.14, stats., may not be withdrawn except in the case of the death of the individual or commencement of proceedings for involuntary admission of the individual to an inpatient psychiatric facility for psychiatric treatment.

IAPM as a Non-Emergency Protective Service

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 draft eliminates the requirement that the substantial probability of physical harm, impairment, injury, or debilitation must be evidenced in a specific manner. Instead, under the draft, the substantial probability of

physical harm, impairment, injury, or debilitation may be shown using any evidence acceptable to the court.

1 **SECTION 1.** 55.13 (6) of the statutes is created to read:

2 55.13 (6) Involuntary administration of psychotropic medications may be provided as
3 an emergency protective service only as provided under s. 55.133.

4 **SECTION 2.** 55.133 of the statutes is created to read:

5 **55.133 Involuntary administration of psychotropic medications as an emergency**
6 **protective service. (1)** In this section:

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

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

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

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

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

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

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

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

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

10 **(2)** Involuntary administration of psychotropic medications may be provided as an
11 emergency protective service only if all of the following are true:

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

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

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

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

20 (e) Unless psychotropic medication is administered involuntarily, there is a substantial
21 likelihood that the individual may be subject to involuntary admission to a inpatient facility
22 for psychiatric treatment.

1 (f) If the individual resides in a long-term care facility, all reasonable efforts have been
2 made to address the behaviors or condition by means other than psychotropic medications and
3 an appropriate evaluation of the individual's physical condition has been conducted.

COMMENT: Should the draft require the Department of Health Services to promulgate rules describing the efforts to address the individual's condition or behaviors that must be made by the long-term care facility before psychotropic medications may be administered as an emergency protective services?

4 (3) Any county department or agency with which the county department contracts
5 under s. 55.02 (2) that provides involuntary administration of psychotropic medication as an
6 emergency protective service to an individual under sub. (1) shall file a petition for involuntary
7 administration of psychotropic medication to the individual under s. 55.14. A preliminary
8 hearing shall be held within 72 hours, excluding Saturdays, Sundays, and legal holidays, to
9 establish probable cause that the criteria under s. 55.14 are present. The county department
10 or agency shall provide the individual with written notice of, and orally inform the individual
11 of, the time and place of the preliminary hearing.

COMMENT: Under current law, if emergency protective services are provided, filing a petition is optional. Under the draft, a petition must be filed. What should be the required timing of the petition? Should the draft require the hearing to be held within 72 hours after the petition is filed or 72 hours after IAPM begins?

12 (4) Upon finding probable cause under sub. (3), the court may order involuntary
13 administration of psychotropic medication to continue to be provided as an emergency
14 protective service for up to 30 days pending the hearing under s. 55.14.

15 (5) If the individual is not under guardianship, a petition for guardianship shall be
16 submitted to the court prior to the time of the hearing on the petition under s. 55.14, and the
17 guardianship petition shall be heard prior to the petition under s. 55.14.

1 **(6)** If the individual is under guardianship, involuntarily administration of psychiatric
2 medication may not be provided as an emergency protective service without consent of the
3 guardian.

4 **(7)** A petition under s. 55.14, that is filed under sub. (3) may not be withdrawn except
5 in case of the death of the subject individual or commencement of proceedings for involuntary
6 admission of the individual to an inpatient facility for psychiatric treatment.

7 **SECTION 3.** 55.14 (3) (e) (intro.) of the statutes is amended to read:

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

13 **SECTION 4.** 55.14 (3) (e) 1. and 2. of the statutes are repealed.

NOTE: Eliminates the requirement that the substantial probability of physical harm, impairment, injury, or debilitation that must be shown in order to obtain an order for IAPM as a protective service be evidenced in a specific manner. Instead, under the draft, the substantial probability of physical harm, impairment, injury, or debilitation may be shown using any evidence acceptable to the court.