

1 **AN ACT** *to amend* 51.61 (1) (intro.), 55.02 (2) (b) 4., 55.12 (2), 55.135 (1), (4) and (5)
2 and 55.15 (1); and *to create* 51.12, 55.01 (3), 55.01 (4k), 55.135 (1m), 55.135 (3m)
3 and 55.155 of the statutes; **relating to:** inpatient psychiatric treatment for individuals
4 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.

Overview

The draft amends the current law pertaining to emergency and temporary protective placement to allow emergency protective placement of an individual with irreversible dementia in an inpatient psychiatric facility, under certain circumstances, for up to 30 days, with a possible 30–day extension by the court. A probable cause hearing must be held within 72 hours of the emergency placement. This procedure would be used for an individual who is not already under a protective placement order.

The draft also provides that an individual with irreversible dementia who is already subject to a protective placement order may be temporarily transferred from their current placement to an inpatient psychiatric facility for evaluation, diagnosis, or treatment for up to 30 days if certain requirements are met. Consent of the guardian and the county department are required, except in case of an emergency. If an objection is made, the court must hold a hearing within 10 days; otherwise no hearing is required. Under the draft, a 30–day extension of the temporary transfer may be ordered by the court if certain requirements are met.

“Irreversible dementia” is defined under the draft 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. Irreversible dementia includes, but is not limited to, Alzheimer’s disease.

These provisions, and other related provisions, are described in detail, below.

Emergency Protective Placement in an Inpatient Facility

Under current law, protective placement (emergency, temporary, or permanent) 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. [s. 55.12 (2), stats.] “Treatment facility” means any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs, community support programs and rehabilitation programs. [s. 55.01 (6x), stats.]

The draft allows emergency protective placement of a person with irreversible dementia to be made in an inpatient facility under certain circumstances, as described below. “Inpatient facility” is defined as a public or private hospital or unit of a hospital which has as its primary purpose the diagnosis, treatment, and rehabilitation of mental illness and which provides 24-hour care. This definition is modeled after the definition of inpatient facility used in ch. 51, but does not include the following facilities that *are* included in the ch. 51 definition: a facility which has as its primary purpose the diagnosis, treatment, and rehabilitation of developmental disability, alcoholism, or drug abuse.

Emergency protective placement of a person with irreversible dementia may be made in an inpatient facility if the usual requirements for emergency protective placement are met and, in addition: (a) it appears probable that the behavior or condition creating the risk of serious physical harm that necessitates protective placement is substantially related to irreversible dementia; and (b) unless the individual is admitted to an inpatient facility for evaluation, diagnosis, 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 standard in Item (b) is the same as one of the standards in current law for involuntary administration of psychotropic medication as a protective service under s. 55.14 (3) (e), stats. However, under that provision, the substantial probability must be shown by specific evidence.

Transport of Individual Subject to Emergency Protective Placement in Inpatient Facility

Under the draft, a sheriff, police officer, fire fighter, guardian, or representative of a county department may take an individual into

custody and transport them to an inpatient facility for emergency protective placement. These are the same individuals who are authorized to transport an individual for emergency protective placement under current law.

Hearing on Emergency Protective Placement

As under current law applicable to other emergency protective placements, a probable cause hearing must be held within 72 hours of an emergency protective placement in an inpatient facility and the person making the emergency protective placement must file a petition for protective placement. If the individual is not under guardianship, a petition for guardianship must accompany the petition for protective placement. The guardianship petition must be submitted at the time of the probable cause hearing. The draft allows the court to grant an extension of time for submission of the guardianship petition “if requested by the person making the emergency protective placement”. This provision of the draft applies to all emergency protective placements.

Temporary Protective Placement in an Inpatient Facility

The draft authorizes the court, at the probable cause hearing held within 72 hours of emergency protective placement of an individual in an inpatient facility, to order temporary protective placement of the individual in an inpatient facility for up to 30 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 usual grounds for protective placement exist and, in addition both of the following:

- (a) That the individual has irreversible dementia and the behavior or condition creating the risk of serious physical harm (one of the required grounds for protective placement) is substantially related to irreversible dementia.
- (b) That unless the individual is placed in the inpatient facility for evaluation, diagnosis, 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. This is the same as one of the standards in current law for involuntary administration of psychotropic medication as a protective service under s. 55.14 (3) (e), stats. (Under that provision, the probability must be shown by specific evidence).

The draft provides that if the court orders temporary placement in an inpatient facility, and if, at the subsequent hearing on the petition for permanent protective placement the court orders that the individual be

provided protective placement, the court may, before commencement of the permanent protective placement, extend the temporary protective placement order for not more than 30 days if necessary for the individual to continue treatment in the inpatient facility. Under the draft, permanent protective placement may not be made to an inpatient facility.

Designation of Inpatient Facility for Emergency Protective Placements

The draft requires the county department to designate at least one inpatient facility for the purpose of emergency and temporary protective placement of individuals with irreversible dementia for psychiatric evaluation, diagnosis, or treatment.

Provisions Applicable to Inpatient Facilities Used for Emergency Protective Placements

The draft contains the following provisions that apply when an individual is placed in an inpatient facility by emergency protective placement. These provisions are modeled after provisions in current law pertaining to facilities used for emergency detention under s. 51.15, stats:

- When, upon the advice of the treatment staff, the director of an inpatient facility in which an individual has been placed for emergency protective placement determines that the grounds for emergency placement no longer exist, he or she must discharge the individual. [Modeled after current s. 51.15 (5), stats.]
- Unless a hearing is held as provided above, an individual may not be detained in an inpatient facility for more than a total of 72 hours, exclusive of Saturdays, Sundays, and legal holidays. [Modeled after current s. 51.15 (5), stats.]
- If the individual is released, the treatment director or his or her designee, upon the individual's request, must arrange for the individual's transportation to the locality where he or she was taken into custody. [Modeled after current s. 51.15 (6), stats.]
- When an individual is placed in an inpatient facility for emergency protective placement, the director and staff of the treatment facility may evaluate, diagnose and treat the individual during placement, if the individual consents. The individual has a right to refuse medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual must be advised of that right by the director of the facility or his or her designee, and a report of any evaluation and diagnosis and of all treatment provided shall be filed by that person with the court. [Modeled after current s. 51.15 (8) stats.]

- Any individual who acts in accordance with the provisions of the draft, including making a determination that an individual has or does not have irreversible 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. [Modeled after current s. 51.15 (11), stats.]

Rights of Individuals With Irreversible Dementia Who Are Receiving Services

Current law, in s. 51.61, sets forth a substantial set of rights that are granted to any person who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including, among others, any individual who is admitted to a treatment facility in accordance with ch. 55 or who is detained, committed, or placed under ch. 55. The draft specifies that these rights must also be granted to any such person who is receiving services for behaviors or conditions related to irreversible dementia. Thus, under the draft, these rights apply to any person placed in an inpatient facility by an emergency or temporary protective placement or by a temporary transfer, as also created by the draft.

Short-Term Psychiatric Treatment For Individuals Already Subject to a Protective Placement Order; Standards For Transfer

Under current law, an individual may not be transferred, under a protective placement order, to any facility for which commitment procedures are required under ch. 51. [s. 55.51 (1), stats.] The draft authorizes the transfer of an individual with irreversible dementia who is under a protective placement order to an inpatient facility for evaluation, diagnosis, or treatment, for a period not to exceed 30 days, as described below.

The draft provides that an individual who is under a protective placement order may be transferred to an inpatient facility for evaluation, diagnosis, or treatment if all of the following are true:

- (a) The individual has been diagnosed with irreversible dementia.
- (b) One of the following is true:

- 1. Unless the individual is admitted to a facility for evaluation, diagnosis, 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.

2. Unless the individual is admitted to a facility for evaluation, diagnosis, or treatment, the individual will incur a substantial probability of being subject to a change in placement based on the behavior or condition for which evaluation, diagnosis, or treatment in an inpatient facility is sought.

(c) A physician who has personal knowledge of the individual has conducted a physical examination of the individual within the past 7 days and has recommended that the individual be transferred to an inpatient facility for evaluation, diagnosis, or treatment.

(d) The protective placement facility has made reasonable efforts to address or accommodate the behavior or condition for which evaluation, diagnosis, or treatment in an inpatient facility is sought and these steps are documented in the individual's plan of care.

(e) The protective placement facility has a plan in place for the orderly return of the individual to the protective placement facility upon discharge from the inpatient facility.

(f) The protective placement facility has prepared detailed documentation of the individual's behaviors or condition related to the need for inpatient evaluation, diagnosis or treatment, including detailed information about the reasonable steps it has taken to address or accommodate the behavior or condition, and provides this documentation to the inpatient facility.

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 an inpatient facility, except in the case of an emergency transfer, as described below.

Who May Transfer; Notice Required

The draft provides that any of the following may transfer an individual: the individual's guardian, a county department (or agency with which it contracts), the Department of Health Services, or the protective placement facility. Whoever initiates the transfer must provide 10 days prior written notice of a transfer to the court that ordered the protective placement and to each of the other persons and entities authorized to initiate a transfer. The notice of transfer must include notice of the right of the individual under a protective placement, the individual's attorney, if any, or other interested person to petition the court for a hearing on the transfer.

Emergency Transfer

Under the draft, if an emergency makes it impossible to provide the 10 days prior written notice described above or to obtain the prior written consent of the guardian, the individual may be transferred without that prior written consent and notice. However, written notice must be provided immediately upon transfer to each of the persons and entities who have authority to transfer the individual, and notice must be provided to the court that ordered the protective placement, within a reasonable time, not to exceed 48 hours from the time of transfer. The notice must include notice of the right to a petition objecting to the emergency transfer

Petition Objecting to Transfer; Hearing; Order

An individual under protective placement, the individual's guardian, the individual's attorney, if any, or any other interested person may file a petition with the court objecting to a proposed transfer or to an emergency transfer described above. The petition must specify the reasons for the person's objection to the transfer.

The court must order a hearing within 10 days after the filing of a petition. The court must notify the petitioner, the individual under protective placement, the individual's guardian, the individual's attorney, if any, and the county department of the time and place of the hearing.

A guardian ad litem must be appointed to represent the individual under protective placement at the hearing. If the individual who is indigent, the county in which the hearing is held is liable for guardian ad litem fees.

The court must refer the individual under protective placement for appointment of legal counsel if the individual, the individual's guardian ad litem, or anyone on the individual's behalf requests that counsel be appointed for the individual.

The petitioner, individual under protective placement, the individual's guardian, the individual's guardian ad litem, and the individual's attorney, if any, have the right to attend the hearing and to present and cross-examine witnesses.

If a hearing is held and the court must determine whether to approve a proposed transfer or an emergency transfer, the court must consider whether the standards for transfer described above have been met and whether the proposed transfer to an inpatient facility 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 an inpatient facility 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 an inpatient facility meets the standards for transfer, the court must order the transfer of the individual to an inpatient facility for a period not to exceed 30 days.

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

1 **SECTION 1.** 51.12 of the statutes is created to read:

2 **51.12 Involuntary admissions under protective placement procedures.** An

3 individual may be admitted to an inpatient treatment facility as provided under s. 55.135 or

4 55.155.

NOTE: Authorizes treatment facilities to admit individuals who are subject to involuntary admission to a treatment facility under the provisions created in the draft for emergency protective placement and temporary transfers.

5 **SECTION 2.** 51.61 (1) (intro.) of the statutes is amended to read:

6 51.61 (1) (intro.) In this section, “patient” means any individual who is receiving

7 services for mental illness, developmental disabilities, alcoholism or drug dependency, or

8 behaviors or conditions related to irreversible dementia including any individual who is

9 admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who is

10 detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980, or who is

11 transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or

12 treatment for those conditions through the department or a county department under s. 51.42

13 or 51.437 or in a private treatment facility. “Patient” does not include persons committed

14 under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In

1 private hospitals and in public general hospitals, “patient” includes any individual who is
2 admitted for the primary purpose of treatment of mental illness, developmental disability,
3 alcoholism or drug abuse but does not include an individual who receives treatment in a
4 hospital emergency room nor an individual who receives treatment on an outpatient basis at
5 those hospitals, unless the individual is otherwise covered under this subsection. Except as
6 provided in sub. (2), each patient shall:

NOTE: Specifies that the patients rights provided for in ch. 51, stats.,
apply to individuals receiving services for behaviors or conditions
related to irreversible dementia.

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

8 55.01 (3) “Inpatient facility” means a public or private hospital or unit of a hospital
9 which has as its primary purpose the diagnosis, treatment, and rehabilitation or mental illness
10 and which provides 24-hour care.

NOTE: Creates a definition of “inpatient facility” for the purpose of ch.
55. This definition is the same as the definition of inpatient facility used
in ch. 51 except that it does not include a facility that has as its primary
purpose the diagnosis, treatment, and rehabilitation of developmental
disability, alcoholism, or drug abuse.

11 **SECTION 4.** 55.01 (4k) of the statutes is created to read:

12 55.01 (4k) “Irreversible dementia” means deterioration or loss of intellectual faculties,
13 reasoning power, memory, and will due to organic brain disease characterized by confusion,
14 disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and
15 from which recovery is impossible. Irreversible dementia includes, but is not limited to,
16 Alzheimer’s disease.

NOTE: This definition of “irreversible dementia” is the same definition
used in s. Ins 3.46 (3) (i), Wis. Adm. Code, pertaining to standards for
certain insurance coverage.

17 **SECTION 5.** 55.02 (2) (b) 4. of the statutes is amended to read:

1 55.02 (2) (b) 4. Designate at least one appropriate medical facility or protective
2 placement facility as an intake facility for the purpose of emergency protective placements
3 under s. 55.135 and at least one inpatient facility for the purpose of emergency and temporary
4 protective placement for psychiatric evaluation, diagnosis, or treatment under s. 55.135 (1m).

NOTE: Requires a county department to designate at least one appropriate facility for emergency and temporary protective placement for psychiatric evaluation, diagnosis, or treatment.

5 **SECTION 6.** 55.12 (2) of the statutes is amended to read:

6 55.12 (2) Subject to s. 46.279, protective placement may be made to nursing homes,
7 public medical institutions, centers for the developmentally disabled under the requirements
8 of s. 51.06 (3), foster care services or other home placements, or to other appropriate facilities,
9 but, except as provided under s. 55.135 (1m) or 55.155 (1m) may not be made to units for the
10 acutely mentally ill. An individual other than a person with irreversible dementia, who is
11 subject to an order for protective placement or protective services may be detained on an
12 emergency basis under s. 51.15 or involuntarily committed under s. 51.20 ~~or~~ An individual
13 who is subject to an order for protective placement or protective services may be voluntarily
14 admitted to a treatment facility for inpatient care under s. 51.10 (8). No individual who is
15 subject to an order for protective placement or services may be involuntarily transferred to,
16 detained in, or committed to a treatment facility for care except under s. 51.15 ~~or~~ 51.20, 55.135
17 (1m), or 55.155 (1m). Protective placement in a locked unit shall require a specific finding
18 of the court as to the need for the action.

NOTE: Allows protective placement to be made to units for the acutely mentally ill under the newly created procedures for emergency and temporary protective placement of an individual with irreversible dementia for the purpose of psychiatric evaluation, diagnosis, or treatment.

Specifies that a person with irreversible dementia who is subject to an order for protective placement or protective services is not subject to emergency detention under s. 51.15 or involuntary commitment under s. 57.20, but may be voluntarily admitted to a treatment facility as provided under current law.

1 **SECTION 7.** 55.135 (1), (4) and (5) of the statutes are amended to read:

2 55.135 (1) If, from personal observation of, or a reliable report made by a person who
3 identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if any, or
4 authorized representative of a county department or an agency with which it contracts under
5 s. 55.02 (2), it appears probable that an individual is so totally incapable of providing for his
6 or her own care or custody as to create a substantial risk of serious physical harm to himself
7 or herself or others as a result of developmental disability, degenerative brain disorder, serious
8 and persistent mental illness, or other like incapacities if not immediately placed, the
9 individual who personally made the observation or to whom the report is made may take into
10 custody and transport the individual to an appropriate medical or protective placement facility.

11 An individual may be transported to an inpatient facility as provided under sub. (1m). The
12 person making emergency protective placement shall prepare a statement at the time of
13 detention providing specific factual information concerning the person's observations or
14 reports made to the person and the basis for emergency placement. The statement shall be filed
15 with the director of the facility and with any petition under s. 55.075. At the time of emergency
16 protective placement the individual shall be informed by the director of the facility or the
17 director's designee, orally and in writing, of his or her right to contact an attorney and a
18 member of his or her immediate family and the right to have an attorney provided at public
19 expense, as provided under s. 55.105. The director or designee shall also provide the
20 individual with a copy of the statement by the person making emergency protective
21 placement.

1 (4) When an individual is detained under this section, a petition shall be filed under s.
2 55.075 by the person making the emergency protective placement and a preliminary hearing
3 shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, to establish
4 probable cause to believe the grounds for protective placement under s. 55.08 (1) and if the
5 emergency protective placement is made in an inpatient facility, probable cause to believe the
6 grounds under sub. (1m). The sheriff or other person making emergency protective placement
7 under sub. (1) or (1m) shall provide the individual with written notice and orally inform him
8 or her of the time and place of the preliminary hearing. If the detainee is not under
9 guardianship, a petition for guardianship shall accompany the protective placement petition,
10 except in the case of a minor who is alleged to have a developmental disability. The court may
11 extend the time period for submission of a petition for guardianship if requested by the person
12 making the emergency protective placement. In the event that protective placement is not
13 appropriate, the court may elect to treat a petition for protective placement as a petition for
14 commitment under s. 51.20 or 51.45 (13).

15 (5) Upon finding probable cause under sub. (4), the court may order temporary
16 protective placement up to 30 days pending the hearing for a permanent protective placement,
17 or the court may order such protective services as may be required. The court may order
18 temporary protective placement for up to 30 days in an inpatient facility if it finds, in addition
19 to the other requirements of this section, that the individual has irreversible dementia the
20 behavior or condition creating the risk of serious physical harm under sub. (1) is substantially
21 related to irreversible dementia, and unless the individual is placed in the inpatient facility for
22 evaluation, diagnosis, or treatment, the individual will incur a substantial probability of
23 physical harm, impairment, injury, or debilitation or will present a substantial probability of
24 physical harm to others. If the court orders temporary placement in an inpatient facility, and

1 if, at the hearing for permanent protective placement, the court orders that the individual be
2 provided protective placement, the court may, before commencement of the permanent
3 protective placement, extend the temporary protective placement order for not more than 30
4 days if necessary for the individual to continue treatment in the inpatient facility. If the court
5 orders under this subsection an individual who has a developmental disability to receive
6 temporary protective placement in an intermediate facility or in a nursing facility, and if at the
7 hearing for permanent protective placement the court orders that the individual be provided
8 protective placement, the court may, before commencement of permanent protective
9 placement, extend the temporary protective placement order for not more than 90 days if
10 necessary for the county department that is participating in the program under s. 46.278 or,
11 if s. 46.279 (4m) applies, the department's contractor to develop the plan required under s.
12 46.279 (4).

13 **SECTION 8.** 55.135 (1m) of the statutes is created to read:

14 55.135 **(1m)** An individual may be placed in an inpatient facility if, in addition to all
15 other requirements of this section, all of the following are true:

16 (a) It appears probable that the behavior or condition creating the risk of serious physical
17 harm under sub. (1) is substantially related to irreversible dementia.

18 (b) Unless the individual is admitted to an inpatient facility for evaluation, diagnosis,
19 or treatment, the individual will incur a substantial probability of physical harm, impairment,
20 injury, or debilitation or will present a substantial probability of physical harm to others.

21 **SECTION 9.** 55.135 (3m) of the statutes is created to read:

22 55.135 **(3m)** When, upon the advice of the treatment staff, the director of an inpatient
23 facility in which an individual has been placed under this section determines that the grounds
24 for emergency placement no longer exist, he or she shall discharge the individual detained

1 under this section. Unless a hearing is held under sub. (4), an individual may not be detained
2 in an inpatient facility for more than a total of 72 hours, exclusive of Saturdays, Sundays, and
3 legal holidays. If the individual is released, the treatment director or his or her designee, upon
4 the individual's request, shall arrange for the individual's transportation to the locality where
5 he or she was taken into custody. When an individual is placed in an inpatient facility under
6 this section, the director and staff of the treatment facility may evaluate, diagnose and treat
7 the individual during detention, if the individual consents. The individual has a right to refuse
8 medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be
9 advised of that right by the director of the facility or his or her designee, and a report of any
10 evaluation and diagnosis and of all treatment provided shall be filed by that person with the
11 court. Any individual who acts in accordance with this section, including making a
12 determination that an individual has or does not have irreversible dementia or evidences or
13 does not evidence a substantial probability of harm is not liable for any actions taken in good
14 faith. The good faith of the actor shall be presumed in any civil action. Whoever asserts that
15 the individual who acts in accordance with this section has not acted in good faith has the
16 burden of proving that assertion by evidence that is clear, satisfactory and convincing.

17 **SECTION 10.** 55.15 (1) of the statutes is amended to read:

18 55.15 (1) TRANSFERS AUTHORIZED. An individual under a protective placement order
19 may be transferred between protective placement units, between protective placement
20 facilities, or from a protective placement unit to a medical facility. The Except as provided
21 under s. 55.155, an individual may not be transferred, under ~~the a~~ protective placement order,
22 to any facility for which commitment procedures are otherwise required under ch. 51.

23 **SECTION 11.** 55.155 of the statutes is created to read:

1 **55.155 Temporary inpatient psychiatric treatment. (1) TREATMENT AUTHORIZED.**

2 An individual under a protective placement order may be transferred to an inpatient facility
3 for evaluation, diagnosis, or treatment for a period not to exceed 30 days if the requirements
4 of this section are met.

5 **(2) STANDARD FOR TRANSFER.** An individual may be transferred to an inpatient facility
6 for evaluation, diagnosis, or treatment for a period not to exceed 30 days under this section
7 if all of the following are true:

8 (a) The individual has been diagnosed with irreversible dementia.

9 (b) One of the following is true:

10 1. Unless the individual is admitted to an inpatient facility for evaluation, diagnosis, or
11 treatment, the individual will incur a substantial probability of physical harm, impairment,
12 injury, or debilitation or will present a substantial probability of physical harm to others.

13 2. Unless the individual is admitted to an inpatient facility for evaluation, diagnosis, or
14 treatment, the individual will incur a substantial probability of being subject to a change in
15 placement because of the behavior or condition for which evaluation, diagnosis, or treatment
16 in an inpatient facility is sought.

17 (c) A physician who has personal knowledge of the individual has conducted a physical
18 examination of the individual within the past 7 days and has recommended that the individual
19 be transferred to an inpatient facility for evaluation, diagnosis, or treatment.

20 (d) The protective placement facility has made reasonable efforts to address or
21 accommodate the behavior or condition for which evaluation, diagnosis, or treatment in an
22 inpatient facility is sought and these steps are documented in the individual's plan of care.

23 (e) The protective placement facility has a plan in place for the orderly return of the
24 individual to the protective placement facility upon discharge from the inpatient facility.

1 (f) The protective placement facility has prepared detailed documentation of the
2 behaviors or condition of the individual that necessitate inpatient evaluation, diagnosis, or
3 treatment, including detailed information regarding the efforts taken by the facility under par.
4 (d), and provides this documentation to the inpatient facility.

5 (3) WHO MAY TRANSFER. A guardian, a county department or agency with which it
6 contracts under s. 55.02 (2) that provided protective placement to the individual pursuant to
7 the order of the court, the department, or a protective placement facility may transfer an
8 individual under a protective placement order under the requirements of this section,
9 notwithstanding the fact that a court order has named a specific facility for the protective
10 placement of the individual.

11 (4) CONSENT OF GUARDIAN REQUIRED. No individual may be transferred under this
12 section without the written consent of the individual's guardian, except in the case of an
13 emergency transfer under sub. (6) (b).

14 (5) CONSENT OF COUNTY DEPARTMENT. No individual may be transferred under this
15 section without the written consent of the county department, except in the case of an
16 emergency transfer under sub. (6) (b).

17 (6) NOTICE OF TRANSFER. (a) *Nonemergency transfer.* A person or entity who initiates
18 a transfer shall provide 10 days' prior written notice of a transfer to the court that ordered the
19 protective placement and to each of the other persons and entities specified in sub. (3) who
20 did not initiate the transfer. The notice of transfer shall include notice of the right of the
21 individual under protective placement, the individual's attorney, if any, or other interested
22 person to petition the court for a hearing on the transfer.

23 (b) *Emergency transfer.* If an emergency makes it impossible to provide the notice
24 specified in par. (a) or to obtain the prior written consent of the guardian specified in sub. (4),

1 the individual may be transferred without the prior written consent of the guardian and without
2 the notice specified in par. (a). Written notice shall be provided immediately upon transfer
3 to each of the persons and entities specified under sub. (3) who did not initiate the transfer.
4 Notice shall also be provided to the court that ordered the protective placement within a
5 reasonable time, not to exceed 48 hours from the time of transfer. The notice shall include
6 notice of the right to file with the court under sub. (7) a petition objecting to the emergency
7 transfer.

8 (7) PETITION. An individual under protective placement, the individual's guardian, the
9 individual's attorney, if any, or any other interested person may file a petition with the court
10 objecting to a proposed transfer or to an emergency transfer made under sub. (6) (b). The
11 petition shall specify the reasons for the person's objection to the transfer.

12 (8) HEARING. (a) The court shall order a hearing within 10 days after the filing of a
13 petition under sub. (7).

14 (b) The court shall notify the petitioner, the individual under protective placement, the
15 individual's guardian, the individual's attorney, if any, and the county department of the time
16 and place of the hearing.

17 (c) A guardian ad litem shall be appointed to represent the individual under protective
18 placement at the hearing. If the individual is indigent, the county in which the hearing is held
19 shall be liable for guardian ad litem fees.

20 (cm) The court shall refer the individual under protective placement for appointment
21 of legal counsel as provided under s. 55.105 if the individual, the individual's guardian ad
22 litem, or anyone on the individual's behalf requests that counsel be appointed for the
23 individual.

1 (d) The petitioner, individual under protective placement, the individual's guardian, the
2 individual's guardian ad litem, and the individual's attorney, if any, have the right to attend the
3 hearing and to present and cross-examine witnesses.

4 (9) STANDARD FOR TRANSFER. In determining whether to approve a proposed transfer
5 or an emergency transfer made under sub. (6) (b), the court shall consider all of the following:

6 (a) Whether the requirements of sub. (2) have been met.

7 (b) Whether the proposed transfer to an inpatient facility is in the best interests of the
8 person under protective placement.

9 (10) ORDER RELATING TO TRANSFER. Following the hearing under sub. (8), the court shall
10 do one of the following:

11 (a) If the court finds that the individual continues to meet the standards under s. 55.08
12 (1) and the proposed transfer to an inpatient facility does not meet the standards for transfer
13 under sub. (2), the court shall issue an order prohibiting the transfer. The court shall include
14 the information relied upon as a basis for the order and shall make findings based on the
15 standards under sub. (2) in support of the denial of the transfer.

16 (b) If the court finds that the individual continues to meet the standards under s. 55.08
17 (1) and the proposed transfer to an inpatient facility meets the standard under sub. (2), the court
18 shall order transfer to an inpatient facility for a period not to exceed 30 days.

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

21 (END)