

1 **AN ACT** *to amend* 51.61 (1) (intro.), 55.12 (2), 55.135 (1), (4) and (5) and 55.15 (1);
 2 and *to create* 51.12, 55.01 (3), 55.01 (4k), 55.02 (2) (b) 5., 55.135 (1m), 55.135
 3 (3m), 55.135 (5m) and 55.155 of the statutes; **relating to:** inpatient psychiatric
 4 treatment for individuals 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 current law to allow emergency protective placement of an individual who appears to suffer from irreversible dementia in an inpatient facility, 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 facility for up to 30 days if ordered by a court after a hearing, or without court order in the case of an emergency. In the case of an emergency transfer, a probable cause hearing must be held within 72 hours. Consent of the guardian and the county department are required, except in case of an emergency.

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

Definitions

“Inpatient facility” is defined as a public or private facility, including an inpatient facility under s. 51.01 (10), or a treatment facility under s. 51.01 (19), that has been identified by a county department as qualified and equipped to provide behavioral or psychiatric evaluation, diagnosis, services, and treatment to individuals with irreversible dementia under s. 55.02 (2) (b) 5.

“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.

Designation of Inpatient Facility for Emergency Temporary Protective Placements

The draft requires each county department to identify at least one inpatient facility for the purpose of emergency and temporary protective placement for psychiatric evaluation, diagnosis, services, or treatment under s. 55.135 (1m). The county may not identify an inpatient facility under this subdivision unless it finds that the facility is qualified and equipped to provide behavioral or psychiatric evaluation, diagnosis, services, and treatment to individuals with irreversible dementia.

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.

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 an inpatient facility for emergency protective placement if the existing requirements for emergency protective placement are met and, in addition, all of the following are true:

- (a) It appears probable that the individual has irreversible 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 physical examination of the individual has been conducted by a physician and, based on that examination, it has been determined with reasonable certainty that the behavior is not caused by a physical condition or illness that could be treated in a setting other than an inpatient facility and the physician recommends that the individual be placed in an inpatient facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment.

(d) Unless the individual is admitted to an inpatient facility 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, a pattern of recent acts or omissions, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.

(e) The individual is placed in a unit or setting that is physically separate from any unit or location in which acutely mentally ill individuals are located.

Transport of Individual; Statement

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. The person making the emergency protective placement 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. The statement must be filed with the director of the facility and with the petition for protective placement.

Probable Cause Hearing

A probable cause hearing must be held within 72 hours of an emergency protective placement in an inpatient facility. 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. 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.

Order for Temporary Protective Placement in an Inpatient Facility

The court may, at the probable cause hearing, 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 existing grounds for emergency protective placement exist and, all of the allegations listed in items (a) through (e), above, are true.

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.

Medication Order

If the court, after hearing, orders of the temporary placement of the individual in an inpatient facility, the court may, without further notice, order the involuntary administration of psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. 55.14 (3) (e) apply, that the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in any subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, as a result of irreversible dementia, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, one of the following is true:

- a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.
- b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her serious and persistent mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

Temporary Transfer of Placement to Inpatient Facility

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 authorizes the court to order the transfer of an individual with irreversible dementia who is under a protective placement order to an inpatient facility for behavioral or psychiatric evaluation, diagnosis,

services or treatment, for a period not to exceed 30 days, as described below.

Petition

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

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

- (a) The individual has been diagnosed with irreversible 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 certainty that the behavior is not caused by a physical condition or illness that could be treated in a setting other than an inpatient facility.
 2. The physician has recommended determined with reasonable certainty that the individual's behavior or condition may be improved by transfer to an inpatient facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment.
- (d) One of the following is true:
 1. Unless the individual is admitted to an inpatient facility 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, a pattern of recent acts or omissions, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.
 2. Unless the individual is admitted to an inpatient facility 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 in a more restrictive setting due to the

inability of personnel at the current placement facility to provide for the safety of the individual or others due to the behavior of the individual. The substantial probability shall be manifested by evidence of recent acts, attempts, or behavior, a pattern of recent acts or omissions, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.

(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 an inpatient facility is sought and these steps are documented in the individual's plan of care.

(f) 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.

(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 under par. (b) efforts taken by the facility under par. (e), and provides this documentation to the inpatient facility.

(h) The individual is placed in a unit or setting that is physically separate from any unit or location in which acutely mentally ill individuals are located.

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.

Hearing; Order to Transfer

The court must order a hearing within 72 hours after the filing of a petition for transfer.

At the hearing, 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.

Medication Order

If the court, after hearing, orders of the temporary transfer of the individual to an inpatient facility, the court may, without further notice, order the involuntary administration of psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. 55.14 (3) (e) apply, that the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in any subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, as a result of irreversible dementia, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, one of the following is true:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her serious and persistent mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

Emergency Transfer of Placement to Inpatient Facility; Probable Cause Hearing; Order

If an emergency makes it impossible to file a petition prior to transfer to an inpatient facility 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 an inpatient facility 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 and issue an order as described 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.

Provisions Applicable to Inpatient Facilities Used for Emergency or Temporary Protective Placements

The draft contains the following provisions that apply when an individual is placed in an inpatient facility by emergency or temporary 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.

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: Amends a portion of ch. 51, stats., to authorize 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 of protective placement.

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 any
8 individual with irreversible dementia who is receiving psychiatric or behavioral services in

1 an inpatient facility under s. 55.01 (3) pursuant to s. 55.135 or 55.155, including any individual
2 who is admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who
3 is detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980, or who is
4 transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or
5 treatment for those conditions through the department or a county department under s. 51.42
6 or 51.437 or in a private treatment facility. “Patient” does not include persons committed
7 under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In
8 private hospitals and in public general hospitals, “patient” includes any individual who is
9 admitted for the primary purpose of treatment of mental illness, developmental disability,
10 alcoholism or drug abuse but does not include an individual who receives treatment in a
11 hospital emergency room nor an individual who receives treatment on an outpatient basis at
12 those hospitals, unless the individual is otherwise covered under this subsection. Except as
13 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 under the provisions created in the draft.

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

15 55.01 (3) “Inpatient facility” means a public or private facility, including an inpatient
16 facility under s. 51.01 (10), or a treatment facility under s. 51.01 (19), that has been identified
17 by a county department as qualified and equipped to provide behavioral or psychiatric
18 evaluation, diagnosis, services, and treatment to individuals with irreversible dementia under
19 s. 55.02 (2) (b) 5.

NOTE: Creates a definition of “inpatient facility” for the purpose of ch.
55.

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

1 55.01 (4k) “Irreversible dementia” means deterioration or loss of intellectual faculties,
2 reasoning power, memory, and will due to organic brain disease characterized by confusion,
3 disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and
4 from which recovery is impossible. Irreversible dementia includes, but is not limited to,
5 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.

6 **SECTION 5.** 55.02 (2) (b) 5. of the statutes is created to read:

7 55.02 (2) (b) 5. Identify at least one inpatient facility for the purpose of emergency and
8 temporary protective placement for psychiatric evaluation, diagnosis, services, or treatment
9 under s. 55.135 (1m). The county may not identify an inpatient facility under this subdivision
10 unless it finds that the facility is qualified and equipped to provide behavioral or psychiatric
11 evaluation, diagnosis, services, and treatment to individuals with irreversible dementia.

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

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

13 55.12 (2) Subject to s. 46.279, protective placement may be made to nursing homes,
14 public medical institutions, centers for the developmentally disabled under the requirements
15 of s. 51.06 (3), foster care services or other home placements, or to other appropriate facilities,
16 but may not be made to units for the acutely mentally ill. An individual other than a person
17 with irreversible dementia, who is subject to an order for protective placement or protective
18 services may be detained on an emergency basis under s. 51.15 or involuntarily committed
19 under s. 51.20 ~~or~~. An individual who is subject to an order for protective placement or
20 protective services may be voluntarily admitted to a treatment facility for inpatient care under

1 s. 51.10 (8). No individual who is subject to an order for protective placement or services may
2 be involuntarily transferred to, detained in, or committed to a treatment facility for care except
3 under s. 51.15 ~~or~~ 51.20, 55.135 (1m), or 55.155 (1m). Protective placement in a locked unit
4 shall require a specific finding of the court as to the need for the action.

NOTE: Retains the provision in current law that prohibits protective placements to be made to units for the acutely mentally ill.

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. Authorizes involuntary transfer to an inpatient facility under the newly created procedures.

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

6 55.135 (1) If, from personal observation of, or a reliable report made by a person who
7 identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if any, or
8 authorized representative of a county department or an agency with which it contracts under
9 s. 55.02 (2), it appears probable that an individual is so totally incapable of providing for his
10 or her own care or custody as to create a substantial risk of serious physical harm to himself
11 or herself or others as a result of developmental disability, degenerative brain disorder, serious
12 and persistent mental illness, or other like incapacities if not immediately placed, the
13 individual who personally made the observation or to whom the report is made may take into
14 custody and transport the individual to an appropriate medical or protective placement facility.
15 An individual may be transported to an inpatient facility as provided under sub. (1m). The
16 person making emergency protective placement shall prepare a statement at the time of
17 detention providing specific factual information concerning the person's observations or
18 reports made to the person and the basis for emergency placement. The statement shall be filed
19 with the director of the facility and with any petition under s. 55.075. At the time of emergency

1 protective placement the individual shall be informed by the director of the facility or the
2 director's designee, orally and in writing, of his or her right to contact an attorney and a
3 member of his or her immediate family and the right to have an attorney provided at public
4 expense, as provided under s. 55.105. The director or designee shall also provide the
5 individual with a copy of the statement by the person making emergency protective
6 placement.

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

NOTES: For what length of time should the court be authorized to extend
the deadline for submission of the guardianship petition?

Should the draft permit the individual or his or her counsel to request a postponement of the probable cause hearing as is permitted in the case of a probable cause hearing for involuntary commitment under s. 51.20 (7)? That statute permits a voluntary postponement of up to 7 days.

1 (5) Upon finding probable cause under sub. (4), the court may order temporary
2 protective placement up to 30 days pending the hearing for a permanent protective placement,
3 or the court may order such protective services as may be required. The court may order
4 temporary protective placement for up to 30 days in an inpatient facility if it finds, in addition
5 to the other requirements of this section, that the allegations under sub. (1m) are true. If the
6 court orders temporary placement in an inpatient facility, and if, at the hearing for permanent
7 protective placement, the court orders that the individual be provided protective placement,
8 the court may, before commencement of the permanent protective placement, extend the
9 temporary protective placement order for not more than 30 days if necessary for the individual
10 to continue treatment in the inpatient facility. If the court orders under this subsection an
11 individual who has a developmental disability to receive temporary protective placement in
12 an intermediate facility or in a nursing facility, and if at the hearing for permanent protective
13 placement the court orders that the individual be provided protective placement, the court may,
14 before commencement of permanent protective placement, extend the temporary protective
15 placement order for not more than 90 days if necessary for the county department that is
16 participating in the program under s. 46.278 or, if s. 46.279 (4m) applies, the department's
17 contractor to develop the plan required under s. 46.279 (4).

COMMENT: Should the draft require additional evidence and findings at the protective placement hearing before a court may authorize a 30-day extension of the emergency placement in an inpatient facility? See the COMMENT following s. 55.155 (9).

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

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

3 (a) It appears probable that the individual suffers from irreversible dementia.

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

6 (c) A physical examination of the individual has been conducted by a physician and,
7 based on that examination, it has been determined with reasonable certainty that the behavior
8 is not caused by a physical condition or illness that could be treated in a setting other than an
9 inpatient facility and the physician recommends that the individual be placed in an inpatient
10 facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment.

11 (d) Unless the individual is admitted to an inpatient facility for behavioral or psychiatric
12 evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability
13 of physical harm, impairment, injury, or debilitation or will present a substantial probability
14 of physical harm to others. The substantial probability shall be manifested by evidence of
15 recent acts, attempts, or behavior, a pattern of recent acts or omissions, or by evidence that
16 others are placed in reasonable fear of violent behavior and serious physical harm to them, as
17 evidenced by a recent overt act, attempt, or threat to do serious physical harm.

18 (e) The individual is placed in a unit or setting that is physically separate from any unit
19 or location in which acutely mentally ill individuals are located.

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

21 55.135 **(3m)** When, upon the advice of the treatment staff, the director of an inpatient
22 facility in which an individual has been placed under this section determines that the grounds
23 for emergency placement no longer exist, he or she shall discharge the individual detained
24 under this section. Unless a hearing is held under sub. (4), an individual may not be detained

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

16 **SECTION 10.** 55.135 (5m) of the statutes is created to read:

17 55.135 **(5m)** MEDICATION ORDER. If the court, after hearing, orders the temporary
18 placement of the individual in an inpatient facility, the court may, without further notice, order
19 the involuntary administration of psychotropic medication as a temporary protective service
20 if it finds that there is probable cause to believe that the allegations under s. 55.14 (3) (e) apply,
21 that the individual is not competent to refuse psychotropic medication and that the medication
22 ordered will have therapeutic value and will not unreasonably impair the ability of the
23 individual to prepare for and participate in any subsequent legal proceedings. An individual
24 is not competent to refuse psychotropic medication if, as a result of irreversible dementia, and

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

3 a. The individual is incapable of expressing an understanding of the advantages and
4 disadvantages of accepting treatment and the alternatives.

5 b. The individual is substantially incapable of applying an understanding of the
6 advantages, disadvantages and alternatives to his or her serious and persistent mental illness
7 in order to make an informed choice as to whether to accept or refuse psychotropic medication.

NOTE: The provisions relating to involuntary administration of psychotropic medications are closely modeled after s. 51.20 (7) (d) 1., stats., pertaining to medication orders issued at a hearing on probable cause for involuntary commitment under ch. 51, stats., in cases when the proceeding is “converted” to a ch. 55 proceeding by the court.

8 **SECTION 11.** 55.15 (1) of the statutes is amended to read:

9 55.15 (1) TRANSFERS AUTHORIZED. An individual under a protective placement order
10 may be transferred between protective placement units, between protective placement
11 facilities, or from a protective placement unit to a medical facility. The Except as provided
12 under s. 55.155, an individual may not be transferred, under ~~the~~ a protective placement order,
13 to any facility for which commitment procedures are otherwise required under ch. 51.

14 **SECTION 12.** 55.155 of the statutes is created to read:

15 **55.155 Temporary transfer to inpatient facility.** (1) TRANSFER AUTHORIZED. An
16 individual under a protective placement order may be transferred to an inpatient facility for
17 behavioral or psychiatric evaluation, diagnosis, services, or treatment for a period not to
18 exceed 30 days if the requirements of this section are met.

19 (2) PETITION. (a) *Filing; services.* An individual under protective placement, the
20 individual’s guardian, the individual’s legal counsel or guardian ad litem, if any, the
21 department, the county department that placed the individual or provided the protective

1 services under an order of the court, an agency with which the county department contracts
2 under s. 55.02 (2), or any interested person may file a petition at any time for temporary
3 transfer of the individual to an inpatient facility for behavioral or psychiatric evaluation,
4 diagnosis, services, or treatment. The petition shall be served on the individual, the
5 individual's guardian, the individual's legal counsel and guardian ad litem, if any, and the
6 county department.

7 (3) The petition shall allege all of the following:

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

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

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

14 1. The physician has determined with reasonable certainty that the behavior is not
15 caused by a physical condition or illness that could be treated in a setting other than an inpatient
16 facility.

17 2. The physician has determined with reasonable certainty that the individual's
18 behavior or condition may be improved by transfer to an inpatient facility for behavioral or
19 psychiatric evaluation, diagnosis, services, or treatment.

20 (d) One of the following is true:

21 1. Unless the individual is admitted to an inpatient facility for behavioral or psychiatric
22 evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability
23 of physical harm, impairment, injury, or debilitation or will present a substantial probability
24 of physical harm to others. The substantial probability shall be manifested by evidence of

1 recent acts, attempts, or behavior, a pattern of recent acts or omissions, or by evidence that
2 others are placed in reasonable fear of violent behavior and serious physical harm to them, as
3 evidenced by a recent overt act, attempt, or threat to do serious physical harm.

NOTE: This provision is modeled after portions of s. 51.20 (1) (a) 2.,
stats., which specifies required contents of a petition for involuntary
commitment under ch. 51, stats.

4 2. Unless the individual is admitted to an inpatient facility for behavioral or psychiatric
5 evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability
6 of being subject to a change in permanent placement in a more restrictive setting due to the
7 inability of personnel at the current placement facility to provide for the safety of the
8 individual or others due to the behavior of the individual. The substantial probability shall be
9 manifested by evidence of recent acts, attempts, or behavior, a pattern of recent acts or
10 omissions, or by evidence that others are placed in reasonable fear of violent behavior and
11 serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do
12 serious physical harm.

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

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

19 (g) The protective placement facility has prepared detailed documentation of the
20 behaviors or condition of the individual that necessitate inpatient behavioral or psychiatric
21 evaluation, diagnosis, services, or treatment, including detailed information regarding the

1 physical examination conducted under par. (b) efforts taken by the facility under par. (d), and
2 provides this documentation to the inpatient facility.

3 (h) The individual is placed in a unit or setting that is physically separate from any unit
4 or location in which acutely mentally ill individuals are located.

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

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

11 (6) EMERGENCY TRANSFER. If an emergency makes it impossible to file a petition as
12 specified in sub. (2) or to obtain the prior written consent of the guardian specified in sub. (4),
13 the individual may be transferred without the prior written consent of the guardian and without
14 a prior court order. A petition containing all of the allegations in sub. (3) and identification
15 of the specific facts and circumstances which made it impossible to carry out the transfer under
16 the nonemergency procedures, shall be filed immediately upon transfer.

17 (7) HEARING. (a) The court shall order a hearing within 72 hours after the filing of a
18 petition under sub. (2) or (6).

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

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

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

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

8 **(8) STANDARD FOR TRANSFER.** In determining whether to approve a proposed or
9 emergency transfer the court shall consider all of the following:

10 (a) Whether there is probable cause to believe the allegations made under sub. (3).

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

13 (c) In the case of an emergency transfer, whether there is probable cause to believe the
14 additional allegations required under sub. (6).

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

17 (a) If the court finds that the individual continues to meet the standards under s. 55.08
18 (1) and the proposed transfer to an inpatient facility does not meet the standards for transfer
19 under sub. (3) and, if applicable sub. (6), the court shall issue an order prohibiting the transfer.
20 The court shall include the information relied upon as a basis for the order and shall make
21 findings based on the standards under sub. (3) in support of the denial of the transfer.

22 (b) If the court finds that the individual continues to meet the standards under s. 55.08
23 (1) and the proposed transfer to an inpatient facility meets the standards under sub. (3) and,

1 if applicable sub. (6), the court shall order transfer to an inpatient facility for a period not to
2 exceed 30 days.

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

COMMENT: The draft authorizes a court to order the transfer of an individual to an inpatient facility for up to 30 days. Should the draft provide for periods of transfer of more than 30 days, and if so, under what circumstances? For temporary placements of more than 30 days, should the draft require examination by two specialists, and the right to a jury trial as is required under s. 51.20 (9) and (11), for an involuntary commitment under ch. 51?

5 **(10) MEDICATION ORDER.** If the court, after hearing, orders of the temporary transfer of
6 the individual to an inpatient facility, the court may, without further notice, order the
7 involuntary administration of psychotropic medication as a temporary protective service
8 under this paragraph if it finds that there is probable cause to believe that the allegations under
9 s. 55.14 (3) (e) apply, that the individual is not competent to refuse psychotropic medication
10 and that the medication ordered will have therapeutic value and will not unreasonably impair
11 the ability of the individual to prepare for and participate in any subsequent legal proceedings.
12 An individual is not competent to refuse psychotropic medication if, as a result of irreversible
13 dementia, and after the advantages and disadvantages of and alternatives to accepting the
14 particular psychotropic medication have been explained to the individual, one of the following
15 is true:

16 a. The individual is incapable of expressing an understanding of the advantages and
17 disadvantages of accepting treatment and the alternatives.

18 b. The individual is substantially incapable of applying an understanding of the
19 advantages, disadvantages and alternatives to his or her serious and persistent mental illness
20 in order to make an informed choice as to whether to accept or refuse psychotropic medication.

NOTE: The provisions relating to involuntary administration of psychotropic medications are closely modeled after s. 51.20 (7) (d) 1., stats., pertaining to medication orders issued at a hearing on probable cause for involuntary commitment under ch. 51, stats., in cases when the proceeding is “converted” to a ch. 55 proceeding by the court.

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(END)