

1 **AN ACT** *to amend* 51.01 (13) (b), 51.15 (1) (a) (intro.), 51.61 (1) (intro.), 51.67, 55.02
2 (3), 55.10 (1), 55.12 (2), 55.135 (1), (4) and (5) and 55.15 (1); and *to create* 51.01
3 (4v), 51.12, 51.15 (1m), 51.20 (1) (a) 1m., 55.01 (1x), 55.01 (3), 55.02 (1) (a) 5.,
4 55.02 (2) (b) 5., 55.135 (1m), (3m), and (5m), 55.137, 55.155 and 55.157 of the
5 statutes; **relating to:** inpatient psychiatric treatment for individuals with dementia.

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

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

Overview

The draft provides that individuals with dementia are not subject to ch. 51 emergency detention and involuntary commitment procedures. The draft creates procedures within ch. 55 under which individuals with dementia may be protectively placed or transferred to certain facilities, in a planned manner or in an emergency situation, for the purpose of behavioral or psychiatric evaluation, diagnosis, services, or treatment. These placements may be made for 45 days, with subsequent extensions of up to 90 days possible.

Under these new procedures, an individual may be placed only in a facility that has been identified by the county department as qualified and equipped to provide, and competent in providing, the diagnosis, evaluation, and treatment of dementia and medical, psychiatric, or behavioral care to individuals with dementia.

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

Definitions

"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. Dementia includes, but is not limited to, Alzheimer's disease.

"Inpatient facility" is defined as a public or private facility that has been identified by a county department as qualified and equipped to provide, and competent in providing, diagnosis, evaluation, and treatment of dementia and medical, psychiatric, and behavioral care, services, and treatment to individuals with dementia under s. 55.02 (2) (b) 5.

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

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

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

The draft inserts a provision in ch 51 which states that a person who, has dementia or who, based on observation and currently available information, appears to have dementia, may not be detained under ch. 51. The draft specifies that a person who has, or who, based on observation or currently available information appears to have dementia may be detained as provided under the newly created procedures in the draft for emergency protective placement transfer of protective placement.

The draft adds, as a new required ground in a petition for involuntary commitment under ch. 51, that "based on observation and currently available information, the individual does not appear to have dementia."

Under current law, if the court determines, after a hearing on probable cause for involuntary commitment under ch. 51, that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may appoint a temporary guardian and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and must proceed as if a petition had been made for guardianship and protective placement or services. This procedure is commonly referred to as a "conversion" from ch. 51 to ch. 55. Under current law, if the individual is in a ch. 51 treatment facility at the time of conversion, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available.

The draft specifies that in cases of conversion, if the individual is in a ch. 51 treatment facility at the time of conversion, and the individual has

dementia, the individual may remain in that facility only if the facility is identified by a county as an inpatient facility under s. 55.02 (2) (b) 5. This is a facility that is qualified and equipped to provide, and competent in providing, the diagnosis, evaluation, and treatment of dementia and medical, psychiatric, or behavioral care to individuals with dementia.

Requirement That Corporation Counsel Assist in Prosecuting Conversion Cases

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

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

Designation of Inpatient Facility for Emergency and Temporary Protective Placements; Reports

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

The draft requires the county department to solicit information and advice from the public, including family caregivers of individuals with dementia, organizations concerned with Alzheimer's disease and dementia, the treatment of mental illness or the provision of long-term care, and any other appropriate individuals or organizations, to aid it in carrying out its responsibility to designate one or more inpatient facilities.

The county department must implement a procedure to periodically review and update the designation of one or more inpatient facilities as necessary and appropriate.

The county department must prepare and submit a report to the department of health services (DHS) that identifies the inpatient facility or facilities that it has designated and provides information on the capacity of the county protective service system to provide appropriate and timely behavioral or psychiatric evaluation, diagnosis, services, or treatment to individuals with dementia. The report must include a

description of the process the county department utilized to solicit information and advice from the public and a summary of the information and advice it received.

The draft also requires DHS annually to submit to the legislature a report that lists the inpatient facilities designated by counties as inpatient facilities and summarizes the public input obtained by county departments in making those designations. The report must identify any issues identified by the counties in making the designations and must provide information on the capacity of county protective service systems to provide appropriate and timely behavioral or psychiatric evaluation, diagnosis, services, or treatment to individuals with dementia.

Emergency Protective Placement in an Inpatient Facility

Under current law, an individual may be placed in a protective placement facility (but not an inpatient facility) without a court order if it appears probable that an individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious physical harm to himself or herself or others as a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities if not immediately placed. This is referred to as an “emergency protective placement”.

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

Under current law, emergency protective placement may not be made to a unit for the acutely mentally ill, and no individual who is subject to an order for protective placement or services may be involuntarily transferred to, detained in, or committed to a treatment facility for care except under s. 51.15 or 51.20.

The draft 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) Based on observation and currently available information, it appears probable that the individual has dementia.

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

(c) A physical examination of the individual has been conducted by a physician and, based on that examination, it has been determined with reasonable certainty and documented in writing that the behavior is not caused by a physical condition or illness that could be treated safely and appropriately in a setting other than 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 proposed placement is in an inpatient facility that has a unit or part of a unit that provides a therapeutic environment that is appropriate for the individual and is designed to minimize mental and physical harm.

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

Probable Cause Hearing

A probable cause hearing must be held within 72 hours of an emergency protective placement in an inpatient facility. At the request of the subject individual, his or her counsel or guardian ad litem, the probable cause hearing may be postponed, but in no case may the postponement exceed 7 days from the date of emergency protective placement. If the individual is not under guardianship, a petition for guardianship must accompany the petition for protective placement. The guardianship petition must be submitted at the time of the probable cause hearing.

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 45 days, pending the hearing on the petition for permanent protective placement. The court may make this order if it finds probable cause to believe that the existing grounds for emergency protective placement exist and all of the allegations listed in items (a) through (e), above, are true.

Final Hearing on Protective Placement

The hearing on permanent protective placement must be held within 45 days after the emergency protective placement in an inpatient facility. At the hearing on permanent protective placement, the court may order permanent protective placement in a protective placement facility, but not an inpatient facility. If continued placement in the inpatient facility is desired, a petition for extension of the order for temporary placement must be filed, as described below. Current law provides the right to a jury trial if demanded by the individual sought to be protected or his or her attorney or guardian ad litem. The court must require a comprehensive evaluation of the individual, and the individual has the right to secure an independent evaluation as provided in s. 55.11 (2).

Extension of Temporary Protective Placement in an Inpatient Facility

Under the draft, the order for temporary placement in the inpatient facility may be extended beyond the initial 45-day period if certain requirements are met. A petition for extension of the temporary placement must be filed prior to the hearing on the petition for permanent protective placement. If the court orders permanent protective placement of the individual, the hearing on the petition for extension is held immediately after that order is issued. If the court does not order permanent protective placement of the individual, the petition for extension must be dismissed. If requested, a jury trial must be held. Allegations similar to those required to be proven at the probable cause hearing must be proven. The court must also appoint 2 examiners, as is required for involuntary commitments under ch. 51, to examine the individual and provide a report to the court before the hearing or trial. The court may order an extension for a period of not more than 90 days.

Subsequent Extensions

Temporary placement in the inpatient facility may subsequently be extended in increments of no more than 90 days. For each such extension, a petition alleging that the individual meets the standards for temporary placement in the inpatient facility must be filed no later than 10 days prior to the expiration of the most-recently issued order for

temporary placement. If an emergency makes it impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration of the period of temporary protective placement. The petition must be served on the individual, the individual's guardian, the individual's legal counsel, and guardian ad litem, if any, and the county department. Examination by 2 experts must be conducted and a hearing must be held. A trial by a jury must be provided if demanded by the individual or his or her attorney or guardian ad litem. After the hearing, if grounds for continued placement of the inpatient are proven, the court may issue an order extending the temporary placement for up to 90 days

Medication Orders

Under the draft, if a court orders the temporary placement of an individual with dementia to an inpatient facility under the procedures described above, the court may, without further notice, order the involuntary administration of psychotropic medication as a temporary protective service if it finds that there is probable cause to believe all of the following:

1. The allegations under s. 55.14 (3) (e) apply. That statute reads as follows: 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 shall be evidenced by one of the following:

- a. 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), a settlement agreement approved by a court under s. 51.20 (8) (bg), or commitment ordered under s. 51.20 (13).

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

2. 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 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 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 45 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 DHS, 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 dementia or appears to have dementia.
- (b) The individual has engaged in behavior that creates a substantial risk of serious physical harm to himself or herself or others as manifested by recent acts or omissions.
- (c) A physician who has personal knowledge of the individual has conducted a physical examination of the individual within the past 7 days and, based on that examination, the following are true:
 1. The physician has determined with reasonable certainty and documented in writing that the behavior is not caused by a physical condition or illness that could be treated safely and appropriately in a setting other than an inpatient facility.
 2. The physician has 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 to 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 individual upon discharge from the inpatient facility.

(g) The protective placement facility specifies in writing, the conditions under which the individual will be readmitted as a resident of the facility. This information must be included with the petition.

(h) 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.

(i) The proposed placement is in an inpatient facility that has a unit or part of a unit that provides a therapeutic environment that is appropriate for the individual and is designed to minimize mental and physical harm.

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 may order the transfer of the individual to an inpatient facility for a period not to exceed 45 days.

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

Extension of Temporary Transfer to an Inpatient Facility

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

Subsequent Extensions

Temporary transfer to the inpatient facility may be subsequently extended in increments of no more than 90 days. For each such extension, a petition alleging that the individual meets the standards for temporary transfer to the inpatient facility must be filed no later than 10 days prior to the expiration of the most-recently issued order for temporary transfer. If an emergency makes it impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration of the period of temporary transfer.

The petition must be served on the individual, the individual's guardian, the individual's legal counsel, and guardian ad litem, if any, and the county department. Examination by 2 experts must be conducted and a hearing must be held. A trial by a jury must be provided if demanded by the individual sought to be protected or his or her attorney or guardian ad litem. After the hearing, if grounds for continued transfer to the inpatient facility are proven, the court may issue an order extending the temporary placement for up to 90 days.

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. At the request of the subject individual, his or her counsel or guardian ad litem, the probable cause hearing may be postponed, but in no case may the postponement exceed 7 days from the date of the emergency transfer.

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

Medication Orders

Under the draft, if a court orders the temporary transfer of an individual with dementia to an inpatient facility under the procedures described

above, the court may, without further notice, order the involuntary administration of psychotropic medication as a temporary protective service if it finds that there is probable cause to believe all of the following:

1. The allegations under s. 55.14 (3) (e) apply. That statute reads as follows: 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 shall be evidenced by one of the following:

a. 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), a settlement agreement approved by a court under s. 51.20 (8) (bg), or commitment ordered under s. 51.20 (13).

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

2. 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 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.

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 through 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 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 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

person with dementia who is receiving behavioral or psychiatric evaluation, diagnosis, services, or treatment.

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

2 51.01 (4v) “Dementia” means deterioration or loss of intellectual faculties, reasoning
3 power, memory, and will due to organic brain disease characterized by confusion,
4 disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and
5 from which recovery is impossible. Dementia includes, but is not limited to, Alzheimer’s
6 disease.

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

8 51.01 (13) (b) “Mental illness”, for purposes of involuntary commitment, means a
9 substantial disorder of thought, mood, perception, orientation, or memory which grossly
10 impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary
11 demands of life, but does not include alcoholism or dementia.

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

13 **51.12 Involuntary admissions under protective placement procedures.** An
14 individual may be admitted to an inpatient treatment facility as provided under s. 55.135 or
15 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.

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

17 51.15 (1) (a) (intro.) A law enforcement officer or other person authorized to take a child
18 into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an
19 individual into custody if the officer or person has cause to believe that the individual is

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

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

5 51.15 **(1m)** DETENTION OF INDIVIDUALS WITH DEMENTIA. A person who, has dementia
6 or who, based on observation and currently available information, appears to have dementia,
7 may not be detained under this section. A person who, has dementia or who, based on
8 observation and currently available information, appears to have dementia, may be detained
9 as provided under s. 55.135 for purposes of emergency protective placement or as provided
10 under 55.155 for purposes transfer of protective placement.

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

12 51.20 **(1)** (a) 1m. Based on observation and currently available information, the
13 individual does not appear to have dementia.

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

15 51.61 **(1)** (intro.) In this section, “patient” means any individual who is receiving
16 services for mental illness, developmental disabilities, alcoholism or drug dependency, or any
17 individual with dementia who is receiving behavioral or psychiatric evaluation diagnosis,
18 services, or treatment in an inpatient facility under s. 55.01 (3), including any individual who
19 is admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who is
20 detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980, or who is
21 transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or
22 treatment for those conditions through the department or a county department under s. 51.42
23 or 51.437 or in a private treatment facility. “Patient” does not include persons committed
24 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 any individuals with dementia who is receiving behavioral or
psychiatric evaluation, diagnosis, services, or treatment in an inpatient
facility.

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

8 **51.67 Alternate procedure; protective services.** If, after a hearing under s. 51.13 (4)
9 or 51.20, the court finds that commitment under this chapter is not warranted and that the
10 subject individual is a fit subject for guardianship and protective placement or services, the
11 court may, without further notice, appoint a temporary guardian for the subject individual and
12 order temporary protective placement or services under ch. 55 for a period not to exceed 30
13 days. Temporary protective placement for an individual in a center for the developmentally
14 disabled is subject to s. 51.06 (3). Any interested party may then file a petition for permanent
15 guardianship or protective placement or services, including medication, under ch. 55. If the
16 individual is in a treatment facility, and the individual does not have dementia, the individual
17 may remain in the facility during the period of temporary protective placement if no other
18 appropriate facility is available. If the individual is in a treatment facility, and the individual
19 does have dementia, the individual may remain in the facility during the period of temporary
20 protective placement only if the facility is identified by a county as an inpatient facility under
21 s. 55.02 (2) (b) 5. The court may order psychotropic medication as a temporary protective

1 service under this section if it finds that there is probable cause to believe the individual is not
2 competent to refuse psychotropic medication and that the medication ordered will have
3 therapeutic value and will not unreasonably impair the ability of the individual to prepare for
4 and participate in subsequent legal proceedings. An individual is not competent to refuse
5 psychotropic medication if, because of serious and persistent mental illness, and after the
6 advantages and disadvantages of and alternatives to accepting the particular psychotropic
7 medication have been explained to the individual, one of the following is true:

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

9 55.01 (1x) “Dementia” means deterioration or loss of intellectual faculties, reasoning
10 power, memory, and will due to organic brain disease characterized by confusion,
11 disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and
12 from which recovery is impossible. Dementia includes, but is not limited to, Alzheimer’s
13 disease.

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

15 55.01 (3) “Inpatient facility” means a public or private facility that has been designated
16 by a county department as qualified and equipped to provide, and competent in providing,
17 diagnosis, evaluation, and treatment of dementia and medical, psychiatric and behavioral care
18 to individuals with dementia under s. 55.02 (2) (b) 5.

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

19 **SECTION 11.** 55.02 (1) (a) 5. of the statutes is created to read:

20 55.02 (1) (a) 5. The department shall annually submit to the legislature under s. 13.172
21 (2) a report that lists the inpatient facilities designated by counties under sub. (2)(b)5. and
22 summarizes the public information and advice obtained by county departments in making

1 those designations. The report shall identify any issues identified by the counties in making
2 the designations and shall provide information on the capacity of county protective service
3 systems to provide appropriate and timely behavioral or psychiatric evaluation, diagnosis,
4 services, or treatment to individuals with dementia.

5 **SECTION 12.** 55.02 (2) (b) 5. of the statutes is created to read:

6 55.02 (2) (b) 5. Designate at least one facility as an inpatient facility for the purpose of
7 emergency and temporary protective placement for psychiatric evaluation, diagnosis,
8 services, or treatment. The county may not designate an inpatient facility under this
9 subdivision unless it finds that the facility is qualified and equipped to provide, and competent
10 in providing, the diagnosis, evaluation, and treatment of dementia and medical, psychiatric,
11 and behavioral care to individuals with dementia. The county department shall solicit
12 information and advice from the public, including family caregivers of individuals with
13 dementia, organizations concerned with Alzheimer's disease and dementia, the treatment of
14 mental illness or the provision of long-term care, and any other appropriate individuals or
15 organizations, to aid it in carrying out its responsibility to designate one or more facilities
16 under this subdivision. The county department shall implement a procedure to periodically
17 review and update the designation of one or more facilities under this subdivision as necessary
18 and appropriate. The county department shall prepare and submit a report to the department
19 that identifies the inpatient facility or facilities that it has designated and provides information
20 on the capacity of the county protective service system to provide appropriate and timely
21 behavioral or psychiatric evaluation, diagnosis, services, or treatment to individuals with
22 dementia. The report shall include a description of the process utilized to solicit information
23 and advice from the public and a summary of the information and advice received.

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

1 **SECTION 13.** 55.02 (3) of the statutes is amended to read:

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

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

7 (b) The subject individual has dementia.

8 **SECTION 14.** 55.10 (1) of the statutes is amended to read:

9 55.10 (1) TIME LIMITS. A petition for protective placement or protective services shall
10 be heard within 60 days after it is filed unless an extension of this time is requested by the
11 petitioner, the individual sought to be protected or the individual's guardian ad litem, or the
12 county department, in which case the court may extend the date for hearing by up to 45 days.
13 A petition for emergency protective placement that is filed under s. 55.135 (4) in conjunction
14 with an emergency protective placement in an inpatient facility shall be heard within 45 days
15 after it is filed. The court may not extend the time for hearing a petition for protective
16 placement that is filed under s. 55.135 (4) in conjunction with an emergency protective
17 placement in an inpatient facility. If an individual under s. 50.06 (3) alleges that another
18 individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests
19 of the incapacitated individual or if the incapacitated individual verbally objects to or

1 otherwise actively protests the admission, the petition shall be heard as soon as possible within
2 the 60-day period.

3 **SECTION 15.** 55.12 (2) of the statutes is amended to read:

4 55.12 (2) Subject to s. 46.279, protective placement may be made to nursing homes,
5 public medical institutions, centers for the developmentally disabled under the requirements
6 of s. 51.06 (3), foster care services or other home placements, or to other appropriate facilities,
7 but may not be made to units for the acutely mentally ill. An individual other than an
8 individual with dementia, who is subject to an order for protective placement or protective
9 services may be detained on an emergency basis under s. 51.15 or involuntarily committed
10 under s. 51.20 ~~or~~. An individual who is subject to an order for protective placement or
11 protective services may be voluntarily admitted to a treatment facility for inpatient care under
12 s. 51.10 (8). No individual who is subject to an order for protective placement or services may
13 be involuntarily transferred to, detained in, or committed to a treatment facility for care except
14 under s. 51.15 or 51.20. This subsection does not prohibit placement in or transfer to an
15 inpatient facility as provided in s. 55.135 (1m) or 55.155 (1m). Protective placement in a
16 locked unit 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 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. 51.20, 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.

17 **SECTION 16.** 55.135 (1), (4) and (5) of the statutes are amended to read:

18 55.135 (1) If, from personal observation of, or a reliable report made by a person who
19 identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if any, or

1 authorized representative of a county department or an agency with which it contracts under
2 s. 55.02 (2), it appears probable that an individual is so totally incapable of providing for his
3 or her own care or custody as to create a substantial risk of serious physical harm to himself
4 or herself or others as a result of developmental disability, degenerative brain disorder, serious
5 and persistent mental illness, or other like incapacities if not immediately placed, the
6 individual who personally made the observation or to whom the report is made may take into
7 custody and transport the individual to an appropriate medical or protective placement facility.
8 An individual may be transported to an inpatient facility for emergency protective placement
9 only if the individual has dementia or, based on observation and currently available
10 information, appears to have dementia and only as provided under sub. (1m). The person
11 making emergency protective placement shall prepare a statement at the time of detention
12 providing specific factual information concerning the person's observations or reports made
13 to the person and the basis for emergency placement. The statement shall be filed with the
14 director of the facility and with any petition under s. 55.075. At the time of emergency
15 protective placement the individual shall be informed by the director of the facility or the
16 director's designee, orally and in writing, of his or her right to contact an attorney and a
17 member of his or her immediate family and the right to have an attorney provided at public
18 expense, as provided under s. 55.105. The director or designee shall also provide the
19 individual with a copy of the statement by the person making emergency protective
20 placement.

21 (4) When an individual is detained under this section, a petition shall be filed under s.
22 55.075 by the person making the emergency protective placement and a preliminary hearing
23 shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, to establish
24 probable cause to believe the grounds for protective placement under s. 55.08 (1). If the

1 emergency protective placement is made in an inpatient facility, the petition shall allege that
2 the grounds under sub. (1m) are true, and the preliminary hearing shall also establish probable
3 cause to believe the grounds for emergency placement in an inpatient facility under sub. (1m).
4 For the purposes of emergency protective placement in an inpatient facility under sub. (1m),
5 an individual is considered to be detained when he or she arrives at the inpatient facility. In
6 the case of emergency placement in an inpatient facility, at the request of the subject
7 individual, his or her counsel or guardian ad litem, the hearing may be postponed, but in no
8 case may the postponement exceed 7 days from the date of emergency protective placement.
9 The sheriff or other person making emergency protective placement under sub. (1) or (1m)
10 shall provide the individual with written notice and orally inform ~~him or her~~ the individual of
11 the time and place of the preliminary hearing. If the detainee is not under guardianship, a
12 petition for guardianship shall accompany the protective placement petition, except in the case
13 of a minor who is alleged to have a developmental disability. In the event that protective
14 placement is not appropriate, the court may elect to treat a petition for protective placement
15 as a petition for commitment under s. 51.20 or 51.45 (13).

16 (5) Upon finding probable cause under sub. (4), the court may order temporary
17 protective placement up to 30 days pending the hearing for a permanent protective placement,
18 or the court may order such protective services as may be required. The court may, upon
19 finding probable cause under sub. (4), order temporary protective placement for up to 45 days
20 in an inpatient facility, pending the hearing for a permanent protective placement, if it finds,
21 in addition to the other requirements of this section, probable cause to believe the grounds for
22 emergency protective placement in an inpatient facility under sub. (1m). If the court orders
23 under this subsection an individual who has a developmental disability to receive temporary
24 protective placement in an intermediate facility or in a nursing facility, and if at the hearing

1 for permanent protective placement the court orders that the individual be provided protective
2 placement, the court may, before commencement of permanent protective placement, extend
3 the temporary protective placement order for not more than 90 days if necessary for the county
4 department that is participating in the program under s. 46.278 or, if s. 46.279 (4m) applies,
5 the department's contractor to develop the plan required under s. 46.279 (4).

6 **SECTION 17.** 55.135 (1m), (3m), and (5m) of the statutes are created to read:

7 55.135 (1m) Emergency protective placement of an individual may be made in an
8 inpatient facility under this section if, in addition to all other requirements of this section, all
9 of the following are true:

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

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

14 (c) A physical examination of the individual has been conducted by a physician and,
15 based on that examination, it has been determined with reasonable certainty and documented
16 in writing that the behavior is not caused by a physical condition or illness that could be treated
17 safely and appropriately in a setting other than an inpatient facility and the physician
18 recommends that the individual be placed in an inpatient facility for behavioral or psychiatric
19 evaluation, diagnosis, services, or treatment for the purpose of addressing the behavior.

20 (d) Unless the individual is admitted to an inpatient facility for behavioral or psychiatric
21 evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability
22 of physical harm, impairment, injury, or debilitation or will present a substantial probability
23 of physical harm to others. The substantial probability shall be manifested by evidence of
24 recent acts, attempts, or behavior, a pattern of recent acts or omissions, or by evidence that

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

3 (e) The proposed placement is in an inpatient facility that has a unit or part of a unit that
4 provides a therapeutic environment that is appropriate for the individual and is designed to
5 minimize mental and physical harm.

6 **(3m)** When, upon the advice of the treatment staff, the director of an inpatient facility
7 in which an individual has been placed for emergency or temporary protective placement
8 under this section determines that the grounds for emergency or temporary placement no
9 longer exist, he or she shall [discharge the individual detained under this section] [notify the
10 county department in order to arrange for transfer to a protective placement facility under s.
11 55.12]. Unless a hearing is held under sub. (4), an individual may not be detained in an
12 inpatient facility for more than a total of 72 hours, exclusive of Saturdays, Sundays, and legal
13 holidays. When an individual is placed in an inpatient facility under this section, the director
14 and staff of the treatment facility may evaluate, diagnose and treat the individual during
15 detention, if the individual consents. The individual has a right to refuse medication and
16 treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be advised of that right
17 by the director of the facility or his or her designee, and a report of any evaluation and
18 diagnosis and of all treatment provided shall be filed by that person with the court. Any
19 individual who acts in accordance with this section, including making a determination that an
20 individual has or does not have dementia or evidences or does not evidence a substantial
21 probability of harm is not liable for any actions taken in good faith. The good faith of the actor
22 shall be presumed in any civil action. Whoever asserts that the individual who acts in
23 accordance with this section has not acted in good faith has the burden of proving that assertion
24 by evidence that is clear, satisfactory and convincing.

1 **(5m) MEDICATION ORDER.** If the court, after hearing, orders the temporary placement
2 of the individual in an inpatient facility, the court may, without further notice, order the
3 involuntary administration of psychotropic medication as a temporary protective service if it
4 finds that there is probable cause to believe that the allegations under s. 55.14 (3) (e) apply,
5 that the individual is not competent to refuse psychotropic medication and that the medication
6 ordered will have therapeutic value and will not unreasonably impair the ability of the
7 individual to prepare for and participate in any subsequent legal proceedings. An individual
8 is not competent to refuse psychotropic medication if, as a result of dementia, and after the
9 advantages and disadvantages of and alternatives to accepting the particular psychotropic
10 medication have been explained to the individual, one of the following is true:

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

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

NOTE: These 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.

Under this provision, involuntary administration of psychotropic medications may not be ordered unless, among other requirements, the court finds probable cause to believe that the allegations under s. 55.14 (3) (e), stats., apply. Those allegations are as follows:

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 shall 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), a settlement agreement approved by a court under s. 51.20 (8) (bg), or commitment ordered under s. 51.20 (13).

2. Evidence that the individual meets one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e. (These are the dangerousness standards for involuntary commitment under ch. 51).

COMMENT: The committee may wish to specify how long the order to provide IAPM as a temporary protective service should be valid. In addition, the committee should review the provisions relating to medication orders in this draft in light of those in WLC: 0015/3.

1 **SECTION 18.** 55.137 of the statutes is created to read:

2 **55.137 Extension of temporary protective placement in an inpatient facility. (1)**

3 EXTENSION AUTHORIZED. Temporary protective placement in an inpatient facility under s.
4 55.135 (5) may be extended by court order for up to 90 days if the requirements of this section
5 are met.

6 **(2) PETITION.** (a) *Time limit.* A petition for extension of temporary protective placement
7 in an inpatient facility shall be filed no fewer than 10 days prior to expiration of the period of
8 temporary protective placement ordered under s. 55.135 (5). If an emergency makes it
9 impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration
10 of the period of temporary protective placement ordered under s. 55.135 (5).

11 (b) *Filing; service.* An individual under an order for temporary protective placement in
12 an inpatient facility, the individual's guardian, the individual's legal counsel or guardian ad
13 litem, if any, the department, the county department that placed the individual or provided the
14 protective services under an order of the court, an agency with which the county department
15 contracts under s. 55.02 (2), or any interested person may file a petition for extension of an

1 order for temporary protective placement in an inpatient facility. The petition shall be served
2 on the individual, the individual's guardian, the individual's legal counsel and guardian ad
3 litem, if any, and the county department

COMMENT: This provision is modeled after s. 55.16 (2), relating to
modification of an order for protective placement or protective services.

4 (c) *Allegations.* A petition for extension of an order for temporary protective placement
5 in an inpatient facility shall allege that all of the following are true:

6 1. The individual suffers from dementia.

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

9 3. A physical examination of the individual has been conducted by a physician and,
10 based on that examination, it has been determined with reasonable certainty and documented
11 in writing that the behavior is not caused by a physical condition or illness that could be treated
12 safely and appropriately in a setting other than an inpatient facility and the physician
13 recommends that the individual continue placement in the inpatient facility for behavioral or
14 psychiatric evaluation, diagnosis, services, or treatment.

15 4. Unless the individual continues placement in the inpatient facility for behavioral or
16 psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a substantial
17 probability of physical harm, impairment, injury, or debilitation or will present a substantial
18 probability of physical harm to others. The substantial probability shall be manifested by
19 evidence of recent acts, attempts, or behavior, a pattern of recent acts or omissions, or by
20 evidence that others are placed in reasonable fear of violent behavior and serious physical
21 harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.

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

8 (b) One of the examiners appointed under par. (a) may be selected by the subject
9 individual if the subject individual makes his or her selection known to the court within 24
10 hours after receipt of the petition for extension of the temporary protective placement in the
11 inpatient facility. The court may deny the subject individual's selection if the examiner does
12 not meet the requirements of par. (a) or the subject individual's selection is not available.

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

18 (d) Prior to the examination, the subject individual shall be informed that his or her
19 statements can be used as a basis for an extension of the current temporary placement in the
20 inpatient facility, that he or she has the right to remain silent and that the examiner is required
21 to make a report to the court even if the subject individual remains silent. The issuance of such
22 a warning to the subject individual prior to each examination establishes a presumption that
23 the individual understands that he or she need not speak to the examiner.

1 (e) The examiners shall personally observe and examine the subject individual at any
2 suitable place and satisfy themselves, if reasonably possible, as to the individual's mental
3 condition, and shall make independent reports to the court. The subject individual's treatment
4 records shall be available to the examiners. A written report shall be made of all such
5 examinations and filed with the court. The report and testimony, if any, by the examiners shall
6 be based on beliefs to a reasonable degree of medical certainty, or professional certainty if an
7 examiner is a psychologist, in regard to the existence of the facts alleged in the petition and
8 the appropriateness of various treatment modalities or facilities. If the examiners are unable
9 to make conclusions to a reasonable degree of medical or professional certainty, the examiners
10 shall so state in their report and testimony, if any. The reports of the examiners shall be
11 submitted to the court no later than ____ days/hours prior to the hearing under sub. (4). The
12 subject individual, the individual's attorney, and guardian ad litem shall have access to all
13 psychiatric and other reports 48 hours in advance of the hearing under sub. (4).

14 (f) On motion of either party, all parties shall produce at a reasonable time and place
15 designated by the court all physical evidence which each party intends to introduce in
16 evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical
17 evidence in the presence of a person designated by the court. The order shall specify the time,
18 place and manner of making the inspection, copies, photographs, or transcriptions, and may
19 prescribe such terms and conditions as are just. The court may, if the motion is made by the
20 subject individual, delay the hearing for such period as may be necessary for completion of
21 discovery.

22 (4) HEARING. A hearing shall be held prior to the expiration of the order for temporary
23 protective placement of the individual in an inpatient facility under s. 55.135 (5). The hearing
24 shall be held as part of the same proceedings in which the petition for permanent protective

1 placement of the individual is heard if the court orders permanent protective placement of the
2 individual. A trial by a jury shall be held if demanded by the individual sought to be protected
3 or his or her attorney or guardian ad litem. The petition shall be heard immediately after the
4 order for permanent protective placement of the individual is made. If the court does not order
5 permanent protective placement of the individual, the petition under this section shall be
6 dismissed.

7 (5) ORDER. After a hearing under sub. (4) on a petition for extension of an order for
8 temporary protective placement in an inpatient facility, the court shall make one of the
9 following orders and shall include in the order the information relied on as a basis for that
10 order:

11 (a) If the court finds that the individual meets the standards under sub. (2) (c), it shall
12 order continued temporary placement in the inpatient facility for a period not to exceed 90
13 days from the date of expiration of the original order under s. 55.135 (5).

14 (b) If the court finds that the individual meets the standards under sub. (2) (c), but that
15 the individual would be better served in a different inpatient facility, it shall order transfer of
16 the individual to that inpatient facility and temporary placement in that inpatient facility for
17 a period not to exceed 90 days from the date of expiration of the original order under s. 55.135
18 (5).

19 (c) If the court finds that the individual does not meet the standards under sub. (2) (c),
20 the court shall order transfer of the individual to a facility for permanent protective placement.

21 (6) SUBSEQUENT EXTENSIONS. An order under sub. (5) (a) or (b) may be extended in
22 increments of no more than 90 days. For each such extension, a petition alleging that the
23 individual meets the standards under sub. (2) (c) shall be filed no later than 10 days prior to
24 the expiration of the most-recently issued order for temporary placement. If an emergency

1 makes it impossible to file a petition sooner, a petition may be filed up to 72 hours prior to
2 expiration of the most recently-issued order for temporary placement ordered under s. 55.135
3 (5). The petition shall be served on the individual, the individual's guardian, the individual's
4 legal counsel and guardian ad litem, if any, and the county department. Examination shall be
5 conducted as provided in sub. (3). A hearing shall be held prior to the expiration of the
6 most-recently issued order for temporary placement. A trial by a jury shall be held if
7 demanded by the individual or his or her attorney or guardian ad litem. After hearing, the court
8 shall issue an order issued as provided in sub. (5).

9 **SECTION 19.** 55.15 (1) of the statutes is amended to read:

10 55.15 (1) TRANSFERS AUTHORIZED. An individual under a protective placement order
11 may be transferred between protective placement units, between protective placement
12 facilities, or from a protective placement unit to a medical facility. The individual may not
13 be transferred, under the a protective placement order, to any facility for which commitment
14 procedures are required under ch. 51. This provision does not prohibit transfer to an inpatient
15 facility as provided in s. 55.155.

16 **SECTION 20.** 55.155 of the statutes is created to read:

17 **55.155 Temporary transfer to inpatient facility.** (1) TRANSFER AUTHORIZED. An
18 individual under a protective placement order may be transferred to an inpatient facility for
19 behavioral or psychiatric evaluation, diagnosis, services, or treatment for a period not to
20 exceed 45 days if the requirements of this section are met.

21 (2) PETITION. (a) *Filing; services.* An individual under protective placement, the
22 individual's guardian, the individual's legal counsel or guardian ad litem, if any, the
23 department, the county department that placed the individual or provided the protective
24 services under an order of the court, an agency with which the county department contracts

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

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

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

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

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

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

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

19 (d) One of the following is true:

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

1 others are placed in reasonable fear of violent behavior and serious physical harm to them, as
2 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. a. and b., stats., which specifies required contents of a petition for involuntary commitment under ch. 51, stats.

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

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

16 (f) The protective placement facility has a plan in place for the individual upon
17 discharge from the inpatient facility. A copy of the plan shall be attached to the petition.

18 (g) The protective placement facility specifies, in writing, the conditions under which
19 the individual will be readmitted as a resident of the facility, and includes this information with
20 the petition.

21 (h) The protective placement facility has prepared detailed documentation of the
22 behaviors or condition of the individual that necessitate inpatient behavioral or psychiatric

1 evaluation, diagnosis, services, or treatment, including detailed information regarding the
2 physical examination conducted under par. (c) efforts taken by the facility under par. (e), and
3 provides this documentation to the inpatient facility.

4 (i) The placement is in an inpatient facility that has a unit or part of a unit that provides
5 a therapeutic environment that is appropriate for the individual and is designed to minimize
6 mental and physical harm.

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

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

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

19 (7) HEARING. (a) The court shall order a hearing within 72 hours after the filing of a
20 petition under sub. (2) or (6). At the request of the subject individual, his or her counsel or
21 guardian ad litem, a hearing under sub. (6) may be postponed, but in no case may the
22 postponement exceed 7 days from the date of the emergency transfer.

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

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

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

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

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

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

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

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

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

23 (a) If the court finds that the individual continues to meet the standards under s. 55.08
24 (1) and the proposed transfer to an inpatient facility does not meet the standards for transfer

1 under sub. (3) and, if applicable, sub. (6), the court shall issue an order prohibiting the transfer.
2 The court shall include the information relied upon as a basis for the order and shall make
3 findings based on the allegations under sub. (3) in support of the denial of the transfer.

4 (b) If the court finds that the individual continues to meet the standards under s. 55.08
5 (1) and the allegations under sub. (3) and, if applicable sub. (6) are true, the court shall order
6 transfer to an inpatient facility for a period not to exceed 45 days.

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

9 **(9m)** When, upon the advice of the treatment staff, the director of an inpatient facility
10 in which an individual has been placed for emergency or temporary transfer under this section
11 determines that the grounds for emergency or temporary transfer no longer exist, he or she
12 shall notify the county department in order to arrange for transfer to a protective placement
13 facility under s. 55.12. Unless a hearing is held under sub. (7), an individual may not be
14 detained in an inpatient facility for more than a total of 72 hours, exclusive of Saturdays,
15 Sundays, and legal holidays. When an individual is placed in an inpatient facility under this
16 section, the director and staff of the treatment facility may evaluate, diagnose and treat the
17 individual during detention, if the individual consents. The individual has a right to refuse
18 medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be
19 advised of that right by the director of the facility or his or her designee, and a report of any
20 evaluation and diagnosis and of all treatment provided shall be filed by that person with the
21 court. Any individual who acts in accordance with this section, including making a
22 determination that an individual has or does not have dementia or evidences or does not
23 evidence a substantial probability of harm is not liable for any actions taken in good faith. The
24 good faith of the actor shall be presumed in any civil action. Whoever asserts that the

1 individual who acts in accordance with this section has not acted in good faith has the burden
2 of proving that assertion by evidence that is clear, satisfactory and convincing.

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

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

15 b. The individual is substantially incapable of applying an understanding of the
16 advantages, disadvantages and alternatives to his or her serious and persistent mental illness
17 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. See the NOTE following SECTION 10.

COMMENT: See the COMMENT following SECTION 16 of the draft.

18 **SECTION 21.** 55.157 of the statutes is created to read:

1 **55.157 Extension of temporary transfer to an inpatient facility. (1) EXTENSION**

2 AUTHORIZED. (1) An order for temporary transfer to an inpatient facility under s. 55.155 (9)
3 may be extended by the court for up to 90 days if the requirements of this section are met.

4 **(2) PETITION.** (a) *Time limit.* A petition for extension of temporary transfer to an
5 inpatient facility shall be filed no less than 10 days prior to expiration of the period of
6 temporary transfer ordered under s. 55.155 (9). If an emergency makes it impossible to file
7 a petition sooner, a petition may be filed up to 72 hours prior to expiration of the period of
8 temporary transfer ordered under s. 55.155 (9).

9 (b) *Filing; service.* An individual under an order for temporary transfer to an inpatient
10 facility, the individual's guardian, the individual's legal counsel or guardian ad litem, if any,
11 the department, the county department that placed the individual or provided the protective
12 services under an order of the court, an agency with which the county department contracts
13 under s. 55.02 (2), or any interested person may file a petition for extension of the order. The
14 petition shall be served on the individual, the individual's guardian, the individual's legal
15 counsel and guardian ad litem, if any, and the county department

COMMENT: This provision is modeled after s. 55.16 (2), relating to
 modification of an order for protective placement or protective services.

16 (c) *Allegations.* A petition for extension of an order for temporary transfer to an inpatient
17 facility shall allege that all of the following are true:

18 1. The individual suffers from dementia.

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

21 3. A physical examination of the individual has been conducted by a physician and,
22 based on that examination, it has been determined with reasonable certainty that the behavior

1 is not caused by a physical condition or illness that could be treated in a setting other than an
2 inpatient facility and the physician recommends that the individual continue placement in the
3 inpatient facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment.

4 4. Unless the individual continues placement in the inpatient facility for behavioral or
5 psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a substantial
6 probability of physical harm, impairment, injury, or debilitation or will present a substantial
7 probability of physical harm to others. The substantial probability shall be manifested by
8 evidence of recent acts, attempts, or behavior, a pattern of recent acts or omissions, or by
9 evidence that others are placed in reasonable fear of violent behavior and serious physical
10 harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.

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

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

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

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

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

10 (e) The examiners shall personally observe and examine the subject individual at any
11 suitable place and satisfy themselves, if reasonably possible, as to the individual's mental
12 condition, and shall make independent reports to the court. The subject individual's treatment
13 records shall be available to the examiners. A written report shall be made of all such
14 examinations and filed with the court. The report and testimony, if any, by the examiners shall
15 be based on beliefs to a reasonable degree of medical certainty, or professional certainty if an
16 examiner is a psychologist, in regard to the existence of the facts alleged in the petition and
17 the appropriateness of various treatment modalities or facilities. If the examiners are unable
18 to make conclusions to a reasonable degree of medical or professional certainty, the examiners
19 shall so state in their report and testimony, if any. The reports of the examiners shall be
20 submitted to the court no later than ____ days/hours prior to the hearing under sub. (4). The
21 subject individual, the individual's attorney and guardian ad litem shall have access to all
22 psychiatric and other reports 48 hours in advance of the hearing under sub. (4).

23 (f) On motion of either party, all parties shall produce at a reasonable time and place
24 designated by the court all physical evidence which each party intends to introduce in

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

7 (4) HEARING. A hearing on the petition shall be held prior to the expiration of the order
8 for temporary transfer of the individual to an inpatient facility under s. 55.155 (9). A trial by
9 a jury shall be held if demanded by the individual sought to be protected or his or her attorney
10 or guardian ad litem.

11 (5) ORDER. After a hearing under sub. (4) on a petition for extension of an order for
12 temporary transfer to an inpatient facility, the court shall make one of the following orders and
13 shall include in the order the information relied on as a basis for that order:

14 (a) If the court finds that the individual meets the standards under sub. (2) (c), it shall
15 order continued temporary transfer to the inpatient facility for a period not to exceed 90 days
16 from the date of expiration of the original order under s. 55.155 (9).

17 (b) If the court finds that the individual meets the standards under sub. (2) (c), but that
18 the individual would be better served in a different inpatient facility, it shall order transfer of
19 the individual to that inpatient facility and temporary placement in that inpatient facility.

20 (c) If the court finds that the individual does not meet the standards under sub. (2) (c),
21 the court shall order transfer of the individual to a facility for permanent protective placement.

22 (6) SUBSEQUENT EXTENSIONS. An order under (5) (a) or (b) may be extended in
23 increments of no more than 90 days. For each such extension, a petition alleging that the
24 individual meets the standards under sub. (2) (c) shall be filed no later than 10 days prior to

1 the expiration of the most–recently issued order for temporary transfer to an inpatient facility.
2 If an emergency makes it impossible to file a petition sooner, a petition may be filed up to 72
3 hours prior to expiration of the period of temporary transfer ordered under s. 55.155 (5). The
4 petition shall be served on the individual, the individual’s guardian, the individual’s legal
5 counsel and guardian ad litem, if any, and the county department. Examination shall be
6 conducted as provided in sub. (3). A hearing shall be held prior to the expiration of the
7 most–recently issued order for temporary placement. A trial by a jury shall be held if
8 demanded by the individual or his or her attorney or guardian ad litem. After the hearing, the
9 court shall issue an order as provided in sub. (5).

10 (END)