

**SUMMARY OF STATUTES PERTAINING TO ADMINISTRATION OF MEDICATION  
OR TREATMENT WITHOUT CONSENT**

**General Exception to Informed Consent Requirement in Emergencies**

Wisconsin law generally requires a physician to obtain informed consent to all treatment, including psychotropic medications, that they provide to any person. However, informed consent is not required in “emergencies where failure to provide treatment would be more harmful to the patient than treatment.” [s. 448.30 (5), Stats.] The statute does not specifically address whether it authorizes a physician to provide treatment not only without consent, but also against the wishes of the patient.

***Administration of Medication Without Consent Under ch. 51***

Psychotropic medications that have not been ordered by a court may be administered to a “patient” without their consent in a situation in which the medication is **necessary to prevent serious physical harm to the patient or to others**. In this context, “patient” means a person receiving services for mental illness developmental disabilities, alcoholism, or drug dependency, including a person subject to emergency detention or involuntary commitment. [s. 51.61 (1) (intro.) and (g) 1., Stats.]

***Court Order For IAPM as a Temporary Protective Service in Conversion Cases Under ch. 51***

If the court converts a ch. 51 involuntary commitment proceeding to a ch. 55 proceeding (as authorized under s. 51.20 (7) (d) 1., Stats.), the court may, without further notice, order the involuntary administration of psychotropic medication (IAPM) as a temporary protective service if it finds all of the following:

1. 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 two 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.<sup>1</sup>
3. The medication ordered will have therapeutic value.
4. The medication ordered will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. [s. 51.20 (7) (d) 1., Stats.]

***Court Order for Administration of Medication Without Consent After the Hearing on Probable Cause for Commitment Under ch. 51***

At or after the hearing to determine probable cause for commitment but prior to the final commitment order (other than for a subject individual who is alleged to meet the commitment standard under s. 51.20 (1) (a) 2. e.,) the court may order medication or treatment to be administered to the individual regardless of his or her consent if the court find probable cause to believe all of the following:

1. The individual is not competent to refuse medication or treatment.
2. The medication or treatment will have therapeutic value.
3. The medication or treatment will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. [s. 51.61 (1) (g) 3., Stats.]

***Ordered for Administration of Medication Regardless of Consent After Commitment Under ch. 51***

Following a final commitment order for an individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., Stats., the court *must* issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. [s. 51.61 (1) (g) 3m., Stats.]

For all other individuals, the court *may* issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent if a motion is filed and the court makes a determination following a hearing, that the individual is not competent to refuse medication or treatment or that a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and shall include a statement signed by a licensed physician that asserts that the individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. [s. 51.61 (1) (g) 3., Stats.]

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<sup>1</sup> An individual is not competent to refuse psychotropic medication if, because of serious and persistent mental illness, 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.

### ***IAPM as a Protective Service***

A court may authorize a guardian to consent to the involuntary administration of psychotropic medications to the ward as a protective service under s. 55.14, Stats. A guardian may not consent to IAPM on behalf of the ward under any other situation.

“IAPM” means any of the following:

- Placing psychotropic medication in an individual’s food or drink with knowledge that the individual protests receipt of the psychotropic medication.
- Forcibly restraining an individual to enable administration of psychotropic medication.
- Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits. [s. 55.14 (1) (a), Stats.]

A person is considered to be protesting against taking medication if they make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. “Protest” does not mean a discernible negative response to a proposed method of administration of the psychotropic medication. [s. 54.25 (2) (d) 2.ab and 55.14 (1) (c), Stats.]

The general requirements for obtaining an order for IAPM as a protective service are as follows.

A petition for IAPM must be filed, and must contain all of the allegations required for a standard petition for protective services and, in addition, must allege that all of the following are true:

- A physician has prescribed psychotropic medication for the individual.
- The individual is not competent to refuse psychotropic medication. An individual is not competent to refuse psychotropic medication if, as a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, 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:
  - The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment.
  - The individual is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to his or her condition in order to make an informed choice as to whether to accept or refuse psychotropic medication. [s. 55.14 (b), Stats.]
- The individual has refused to take the psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not feasible or is not in the best interests of the individual. The petition must state the reasons, if known, for the individual’s refusal to take the medication voluntarily and evidence showing that a reasonable number of attempts to administer the medication voluntarily using appropriate interventions have been unsuccessful.

- The condition for which the medication has been prescribed is likely to be improved by the medication and the individual is likely to respond positively to the medication.
- 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, which must be shown by specific evidence. [s. 55.14 (3), Stats.]

The evidence which must be shown is either of the following:

1. The individual's history of at least two 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. Those criteria are that the individual is dangerous because he or she does any of the following:

a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.

b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, 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. In this subd. 2. b., if the petition is filed under a court order under s. 938.30 (5) (c) 1. or (d) 1., a finding by the court exercising jurisdiction under chs. 48 and 938 that the juvenile committed the act or acts alleged in the petition under s. 938.12 or 938.13 (12) may be used to prove that the juvenile exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm.

c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial under this subd. 2. c. if reasonable provision for the subject individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The subject individual's status as a minor does not automatically establish a substantial

probability of physical impairment or injury under this subd. 2. c. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by a person other than a treatment facility, does not constitute reasonable provision for the subject individual's protection available in the community under this subd. 2. c.

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. No substantial probability of harm under this subd. 2. d. exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subd. 2. d. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subd. 2. d.

e. For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental,

emotional, or physical harm is not substantial under this subd. 2. e. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual may be provided protective placement or protective services under ch. 55. Food, shelter, or other care that is provided to an individual who is substantially incapable of obtaining food, shelter, or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this subd. 2. e. The individual's status as a minor does not automatically establish a substantial probability of suffering severe mental, emotional, or physical harm under this subd. 2. e.

The petition must include the written statement of a physician who has personal knowledge of the individual regarding the appropriate use of psychotropic medication for the individual's condition and specific data that indicates that the individual's current condition necessitates the use of psychotropic medication. [s. 55.14 (4), Stats.]

The guardian ad litem must report to the court whether the allegations in the petition are true, and whether involuntary administration of psychotropic medication is in the best interests of the individual. [s. 55.14 (5), Stats.]

The court may issue an order authorizing the individual's guardian to consent to IAPM to the individual and may order IAPM to the individual as a protective service, with the guardian's consent, if the court or jury finds by clear and convincing evidence that the allegations in the petition are true, psychotropic medication is necessary for treating the individual's condition, and all other requirements for ordering protective services have been met.

An order for involuntary administration of psychotropic medication as a protective service must do all of the following:

- Direct the development of a treatment plan for the individual, including a plan for the involuntary administration of psychotropic medication as ordered by the individual's treating physician. If the individual resides in a nursing home or hospital, the hospital must develop the treatment plan. If the individual resides elsewhere, the nursing home or county department must develop the treatment plan. The treatment plan must be approved by the guardian and reviewed and approved by the court. If the court approves the plan, the court must order the county department to ensure that psychotropic medication is administered in accordance with the plan.

Order the individual to comply with the treatment plan, and specify the methods of involuntary administration of psychotropic medication to which the guardian may consent. An order authorizing the forcible restraint of an individual shall require a registered nurse, licensed practical nurse, physician, or physician's assistant to be present at all times that psychotropic medication is administered in this manner and must require the person or facility using forcible restraint to maintain records stating the date of each administration, the medication administered, and the method of forcible restraint utilized. [s. 55.14 (8), Stats.]

***Informed Consent for Administration of Psychotropic Medications to a Nursing Home Resident***

If any of the following types of psychotropic medications have a Food and Drug Administration (FDA)-mandated “boxed warning,” a special consent procedure must be followed before a nursing home may administer the medication to a resident who has a degenerative brain disorder:

- An antipsychotic.
- An antidepressant.
- Lithium carbonate.
- A tranquilizer.

The nursing home must obtain written informed consent on a form provided by the Department of Health Services. The informed consent may be provided by the resident or, if he or she is incapacitated, by a guardian or health care agent. The written consent is not required if the prescription was written or reauthorized while the resident was off the nursing home’s premises. [s. 50.08 (3m), Stats.]

The statutes contain an exception for emergency situations. Written consent is not required when all of the following apply:

- The resident is not the subject of a court order to administer psychotropic medications under s. 55.14, Stats.
- There is an emergency in which a resident is at significant risk of physical or emotional harm or the resident puts others at significant risk of physical harm and in which time and distance preclude obtaining written informed consent before administering psychotropic medication
- A physician has determined that the resident or others will be harmed if the psychotropic medication is not administered before written informed consent is obtained.

If the emergency exception applies, before the nursing home administers the psychotropic medication, it must obtain the oral consent of the resident or, if he or she is incapacitated, a guardian or health care agent. If the nursing home is able to obtain oral consent, the nursing home may administer the psychotropic medication for up to 10 days, at which time no more medication may be given until written consent has been obtained. If the resident is incapacitated and the nursing home has made a good faith effort to obtain the oral consent of guardian or health care agent, but has been unable to contact such person, the nursing home may administer the psychotropic medication for up to 24 hours before oral or written consent is obtained. [s. 50.08 (4), Stats.]